

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2186

By Committee on Taxation

2-1

1 AN ACT concerning income taxation; relating to apportionment of
2 business income; sales factor for certain taxpayers; election; **requiring**
3 **the secretary of revenue to report to the legislature**; amending
4 K.S.A. 79-3271 and 79-3279 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 79-3271 is hereby amended to read as follows: 79-
8 3271. As used in this act, unless the context otherwise requires: (a) For tax
9 years commencing prior to January 1, 2008, "business income" means
10 income arising from transactions and activity in the regular course of the
11 taxpayer's trade or business and includes income from tangible and
12 intangible property if the acquisition, management, and disposition of the
13 property constitute integral parts of the taxpayer's regular trade or business
14 operations, except that a taxpayer may elect that all income constitutes
15 business income. For tax years commencing after December 31, 2007,
16 "business income" means: (1) Income arising from transactions and
17 activity in the regular course of the taxpayer's trade or business; (2)
18 income arising from transactions and activity involving tangible and
19 intangible property or assets used in the operation of the taxpayer's trade or
20 business; or (3) income of the taxpayer that may be apportioned to this
21 state under the provisions of the Constitution of the United States and laws
22 thereof, except that a taxpayer may elect that all income constitutes
23 business income. Any election made under this subsection shall be
24 effective and irrevocable for the tax year in which the election is made and
25 the following nine tax years and shall be binding on all members of a
26 unitary group of corporations.

27 (b) "Commercial domicile" means the principal place from which the
28 trade or business of the taxpayer is directed or managed.

29 (c) "Compensation" means wages, salaries, commissions and any
30 other form of remuneration paid to employees for personal services.

31 (d) "Financial organization" means any bank, trust company, savings
32 bank, industrial bank, land bank, safe deposit company, private banker,
33 savings and loan association, credit union, cooperative bank, or any type
34 of insurance company, but such term shall not be deemed to include any
35 business entity, other than those hereinbefore enumerated, whose primary
36 business activity is making consumer loans or purchasing retail installment

1 contracts from one or more sellers.

2 (e) "Nonbusiness income" means all income other than business
3 income.

4 (f) "Public utility" means any business entity which owns or operates
5 for public use any plant, equipment, property, franchise, or license for the
6 transmission of communications, transportation of goods or persons, or the
7 production, storage, transmission, sale, delivery, or furnishing of
8 electricity, water, steam, oil, oil products or gas.

9 (g) "Original return" means the first return filed to report the income
10 of a taxpayer for a taxable year or period, irrespective of whether such
11 return is filed on a single entity basis or a combined basis.

12 (h) "Sales" means, except as otherwise provided in K.S.A. 79-3285,
13 and amendments thereto, all gross receipts of the taxpayer not allocated
14 under K.S.A. 79-3274 through 79-3278, and amendments thereto.

15 (i) "State" means any state of the United States, the District of
16 Columbia, the Commonwealth of Puerto Rico, any territory or possession
17 of the United States, and any foreign country or political subdivision
18 thereof.

19 (j) "Telecommunications company" means any business entity or
20 unitary group of entities whose primary business activity is the
21 transmission of communications in the form of voice, data, signals or
22 facsimile communications by wire or fiber optic cable.

23 (k) "Distressed area taxpayer" means a corporation which: (1) Is
24 located in a county which has a population of not more than 45,000
25 persons and which, as certified by the department of commerce, has
26 sustained an adverse economic impact due to the closure of a state hospital
27 in such county pursuant to the recommendations of the hospital closure
28 commission; and (2) which has a total annual payroll of \$20,000,000 or
29 more for employees employed within such county.

30 (l) For the purposes of this subsection and ~~subsection (b)(5) of K.S.A.~~
31 79-3279(b)(5), and amendments thereto, the following terms are defined:

32 (1) "Administration services" include clerical, fund or shareholder
33 accounting, participant record keeping, transfer agency, bookkeeping, data
34 processing, custodial, internal auditing, legal and tax services performed
35 for an investment company;

36 (2) "distribution services" include the services of advertising,
37 servicing, marketing, underwriting or selling shares of an investment
38 company, but, in the case of advertising, servicing or marketing shares,
39 only where such service is performed by a person who is, or in the case of
40 a closed end company, was, either engaged in the services of underwriting
41 or selling investment company shares or affiliated with a person who is
42 engaged in the service of underwriting or selling investment company
43 shares. In the case of an open end company, such service of underwriting

1 or selling shares must be performed pursuant to a contract entered into
2 pursuant to 15 U.S.C. § 80a-15(b), as in effect on the effective date of this
3 act;

4 (3) "investment company", means any person registered under the
5 federal Investment Company Act of 1940, as in effect on the effective date
6 of this act, or a company which would be required to register as an
7 investment company under such act except that such person is exempt to
8 such registration pursuant to § 80a-3(c)(1) of such act;

9 (4) "investment funds service corporation" includes any corporation
10 or S corporation headquartered in and doing business in this state which
11 derives more than 50% of its gross income from the provision of
12 management, distribution or administration services to or on behalf of an
13 investment company or from trustees, sponsors and participants of
14 employee benefit plans which have accounts in an investment company;

15 (5) "management services" include the rendering of investment
16 advice to an investment company making determinations as to when sales
17 and purchases of securities are to be made on behalf of the investment
18 company, or the selling or purchasing of securities constituting assets of an
19 investment company, and related activities, but only where such activity or
20 activities are performed:

21 (A) Pursuant to a contract with the investment company entered into
22 pursuant to 15 U.S.C. § 80a-15(a), in effect on the effective date of this
23 act; or

24 (B) for a person that has entered into such contract with the
25 investment company;

26 (6) "qualifying business income" is business income derived from the
27 provision of management, distribution or administration services to or on
28 behalf of an investment company or from trustees, sponsors and
29 participants of employee benefit plans which have accounts in an
30 investment company; and

31 (7) "residence" is the fund shareholder's primary residence address.

32 (m) *For the purposes of this subsection and K.S.A. 79-3279(b)(7),*
33 *and amendments thereto, the following terms are defined:*

34 (1) *"Agricultural activities" means all commercial enterprises*
35 *identified under the following North American industry classification*
36 *system (NAICS) codes:*

37 (A) *423820, farm and garden machinery and equipment merchant*
38 *wholesalers;*

39 (B) *4245, farm product raw material merchant wholesalers;*

40 (C) *424910, farm supplies merchant wholesalers;* ~~or~~

41 (D) *493130, farm product warehousing and storage; or*

42 (E) **112210, hog and pig farming;**

43 (2) *"manufacturing" means all commercial enterprises identified*

1 under the North American industry classification system (NAICS) sectors
2 31-33, ~~as assigned by the secretary of the department of labor;~~

3 (3) "production of electricity" means all commercial enterprises
4 identified under the North American industry classification system
5 (NAICS) industry codes 221114 and 221115, ~~as assigned by the secretary~~
6 ~~of the department of labor; and~~

7 (4) "storage of electricity" means storing electric energy for a period
8 of time using commercially available technology that is capable of storing
9 electric energy by chemical, thermal, mechanical or other means and then
10 returning the energy in the form of electricity after storage;

11 (5) **other scientific and technical consulting services for biofuel**
12 **facility identified under the North American industry classification**
13 **system (NAICS) industry code 541690;**

14 (6) **petroleum and petroleum products merchant wholesalers**
15 **identified under the North American industry classification system**
16 **(NAICS) industry code 424720; and**

17 (7) **paper and paper product merchant wholesalers identified**
18 **under the North American industry classification system (NAICS)**
19 **industry code 4241.**

20 Sec. 2. K.S.A. 79-3279 is hereby amended to read as follows: 79-
21 3279. (a) All business income of railroads and interstate motor carriers of
22 persons or property for-hire shall be apportioned to this state by
23 multiplying the business income by a fraction, in the case of railroads, the
24 numerator of which is the freight car miles in this state and the
25 denominator of which is the freight car miles everywhere, and, in the case
26 of interstate motor carriers, the numerator of which is the total number of
27 miles operated in this state and the denominator of which is the total
28 number of miles operated everywhere.

29 (b) All business income of any other taxpayer shall be apportioned to
30 this state by one of the following methods:

31 (1) By multiplying the business income by a fraction, the numerator
32 of which is the property factor plus the payroll factor plus the sales factor,
33 and the denominator of which is three; or

34 (2) at the election of a qualifying taxpayer, by multiplying the
35 business income by a fraction, the numerator of which is the property
36 factor plus the sales factor, and the denominator of which is two.

37 (A) For purposes of this subsection (b)(2), a qualifying taxpayer is
38 any taxpayer whose payroll factor for a taxable year exceeds 200% of the
39 average of the property factor and the sales factor. Whenever two or more
40 corporations are engaged in a unitary business and required to file a
41 combined report, the fraction comparison provided by this subsection (b)
42 (2) shall be calculated by using the payroll factor, property factor and sales
43 factor of the combined group of unitary corporations.

1 (B) An election under this subsection (b)(2) shall be made by
2 including a statement with the original tax return indicating that the
3 taxpayer elects to apply the apportionment method under this subsection
4 (b)(2). The election shall be effective and irrevocable for the taxable year
5 of the election and the following nine taxable years. The election shall be
6 binding on all members of a unitary group of corporations.
7 Notwithstanding the above, the secretary of revenue may upon the request
8 of the taxpayer, grant permission to terminate the election under this
9 subsection (b)(2) prior to expiration of the ~~ten-year~~ 10-year period.

10 (3) At the election of a qualifying telecommunications company, by
11 multiplying the business income by a fraction, the numerator of which is
12 the information carrying capacity of wire and fiber optic cable available
13 for use in this state, and the denominator of which is the information
14 carrying capacity of wire and fiber optic cable available for use
15 everywhere during the tax year.

16 (A) For purposes of this subsection (b)(3), a qualifying
17 telecommunications company is a telecommunications company that is a
18 qualifying taxpayer under paragraph (A) of subsection (b)(2).

19 (B) A qualifying telecommunications company shall make the
20 election under this subsection (b)(3) in the same manner as provided under
21 paragraph (B) of subsection (b)(2).

22 (4) At the election of a distressed area taxpayer, by multiplying the
23 business income by the sales factor. The election shall be made by
24 including a statement with the original tax return indicating that the
25 taxpayer elects to apply this apportionment method. The election may be
26 made only once, it must be made on or before December 31, 1999 and it
27 shall be effective for the taxable year of the election and the following nine
28 taxable years for so long as the taxpayer maintains the payroll amount
29 prescribed by subsection (j) of K.S.A. 79-3271, and amendments thereto.

30 (5) At the election of the taxpayer made at the time of filing of the
31 original return, the qualifying business income of any investment funds
32 service corporation organized as a corporation or S corporation which
33 maintains its primary headquarters and operations or is a branch facility
34 that employs at least 100 individuals on a full-time equivalent basis in this
35 state and has any investment company fund shareholders resided in this
36 state shall be apportioned to this state as provided in this subsection, as
37 follows:

38 (A) By multiplying the investment funds service corporation's
39 qualifying business income from administration, distribution and
40 management services provided to each investment company by a fraction,
41 the numerator of which shall be the average of the number of shares
42 owned by the investment company's fund shareholders resided in this
43 state at the beginning of and at the end of the investment company's

1 taxable year that ends with or within the investment funds service
2 corporation's taxable year, and the denominator of which shall be the
3 average of the number of shares owned by the investment company's fund
4 shareholders everywhere at the beginning of and at the end of the
5 investment company's taxable year that ends with or within the investment
6 funds service corporation's taxable year.

7 (B) A separate computation shall be made to determine the qualifying
8 business income from each fund of each investment company. The
9 qualifying business income from each investment company shall be
10 multiplied by the fraction calculated pursuant to paragraph (A) for each
11 fund of such investment company.

12 (C) The qualifying portion of total business income of an investment
13 funds service corporation shall be determined by multiplying such total
14 business income by a fraction, the numerator of which is the gross receipts
15 from the provision of management, distribution and administration
16 services to or on behalf of an investment company, and the denominator of
17 which is the gross receipts of the investment funds service company. To
18 the extent an investment funds service corporation has business income
19 that is not qualifying business income, such business income shall be
20 apportioned to this state pursuant to subsection (b)(1).

21 (D) For tax year 2002, the tax liability of an investment funds service
22 corporation that has elected to apportion its business income pursuant to
23 paragraph (5) shall be increased by an amount equal to 50% of the
24 difference of the amount of such tax liability if determined pursuant to
25 subsection (b)(1) less the amount of such tax liability determined with
26 regard to paragraph (5).

27 (E) When an investment funds service corporation is part of a unitary
28 group, the business income of the unitary group attributable to the
29 investment funds service corporation shall be determined by multiplying
30 the business income of the unitary group by a fraction, the numerator of
31 which is the property factor plus the payroll factor plus the sales factor,
32 and the denominator of which is three. The property factor is a fraction,
33 the numerator of which is the average value of the investment funds
34 service corporation's real and tangible personal property owned or rented
35 and used during the tax period and the denominator of which is the
36 average value of the unitary group's real and tangible personal property
37 owned or rented and used during the tax period. The payroll factor is a
38 fraction, the numerator of which is the total amount paid during the tax
39 period by the investment funds service corporation for compensation, and
40 the denominator of which is the total compensation paid by the unitary
41 group during the tax period. The sales factor is a fraction, the numerator of
42 which is the total sales of the investment funds service corporation during
43 the tax period, and the denominator of which is the total sales of the

1 unitary group during the tax period.

2 (F) A taxpayer seeking to make the election available pursuant to
3 ~~subsection (b)(5)~~ of K.S.A. 79-3279(b)(5), and amendments thereto, shall
4 only be eligible to continue to make such election if the taxpayer maintains
5 at least 95% of the Kansas employees in existence at the time the taxpayer
6 first makes such an election.

7 (6) At the election of a qualifying taxpayer, by multiplying such
8 taxpayer's business income by the sales factor. The election shall be made
9 by including a statement with the original tax return indicating that the
10 taxpayer elects to apply this apportionment method. The election may be
11 made only once and must be made on or before the last day of the taxable
12 year during which the investment described in paragraph (A) is placed in
13 service, but not later than December 31, 2009, and it shall be effective for
14 the taxable year of the election and the following nine taxable years or for
15 so long as the taxpayer maintains the wage requirements set forth in
16 paragraph (A). If the qualifying taxpayer is a member of a unitary group of
17 corporations, all other members of the unitary group doing business within
18 this state shall apportion their business income to this state pursuant to
19 subsection (b)(1).

20 (A) For purposes of this subsection, a qualifying taxpayer is any
21 taxpayer making an investment of \$100,000,000 for construction in
22 Kansas of a new business facility identified under the North American
23 industry classification system (NAICS) subsectors of 31-33, as assigned
24 by the secretary of the department of labor, employing 100 or more new
25 employees at such facility after July 1, 2007, and prior to December 31,
26 2009, and meeting the following requirements for paying such employees
27 higher-than-average wages within the wage region for such facility:

28 (i) The taxpayer's new Kansas business facility with 500 or fewer
29 full-time equivalent employees will provide an average wage that is above
30 the average wage paid by all Kansas business facilities that share the same
31 assigned NAICS category used to develop wage thresholds and that have
32 reported 500 or fewer employees to the Kansas department of labor on the
33 quarterly wage reports;

34 (ii) the taxpayer's new Kansas business facility with 500 or fewer
35 full-time equivalent employees is the sole facility within its assigned
36 NAICS category that has reported wages for 500 or fewer employees to
37 the Kansas department of labor on the quarterly wage reports;

38 (iii) the taxpayer's new Kansas business facility with more than 500
39 full-time equivalent employees will provide an average wage that is above
40 the average wage paid by all Kansas business facilities that share the same
41 assigned NAICS category used to develop wage thresholds and that have
42 reported more than 500 employees to the Kansas department of labor on
43 the quarterly wage reports;

1 (iv) the taxpayer's new Kansas business facility with more than 500
2 full-time equivalent employees is the sole facility within its assigned
3 NAICS category that has reported wages for more than 500 employees to
4 the Kansas department of labor on the quarterly wage reports, in which
5 event it shall either provide an average wage that is above the average
6 wage paid by all Kansas business facilities that share the same assigned
7 NAICS category and that have reported wages for 500 or fewer employees
8 to the Kansas department of labor on the quarterly wage reports, or be the
9 sole Kansas business facility within its assigned NAICS category that has
10 reported wages to the Kansas department of labor on the quarterly wage
11 reports;

12 (v) the number of NAICS digits to use in developing each set of wage
13 thresholds for comparison purposes shall be determined by the secretary of
14 commerce;

15 (vi) the composition of wage regions used in connection with each set
16 of wage thresholds shall be determined by the secretary of commerce; and

17 (vii) alternatively, a taxpayer may wage-qualify its new Kansas
18 business facility if, after excluding the headcount and wages reported on
19 the quarterly wage reports to the Kansas department of labor for
20 employees at that new Kansas business facility who own five percent or
21 more equity in the taxpayer, the average wage calculated for the taxpayer's
22 new Kansas business facility is greater than or equal to 1.5 times the
23 aggregate state-wide average wage paid by industries covered by the
24 employment security law based on data maintained by the secretary of
25 labor.

26 (B) For the purposes of the wage requirements in paragraph (A), the
27 number of full-time equivalent employees shall be determined by dividing
28 the number of hours worked by part-time employees during the pertinent
29 measurement interval by an amount equal to the corresponding multiple of
30 a 40-hour work week and adding the quotient to the average number of
31 full-time employees.

32 (C) When the qualifying taxpayer is part of a unitary group, the
33 business income of the unitary group attributable to the qualifying
34 taxpayer shall be determined by multiplying the business income of the
35 unitary group by a fraction, the numerator of which is the property factor
36 plus the payroll factor plus the sales factor, and the denominator of which
37 is three. The property factor is a fraction, the numerator of which is the
38 average value of the qualifying taxpayer's real and tangible personal
39 property owned or rented and used during the tax period and the
40 denominator of which is the average value of the unitary group's real and
41 tangible personal property owned or rented and used during the tax period.
42 The payroll factor is a fraction, the numerator of which is the total amount
43 paid during the tax period by the qualifying taxpayer for compensation,

1 and the denominator of which is the total compensation paid by the unitary
2 group during the tax period. The sales factor is a fraction, the numerator of
3 which is the total sales of the qualifying taxpayer during the tax period,
4 and the denominator of which is the total sales of the unitary group during
5 the tax period.

6 (D) For purposes of this subsection, the secretary of revenue, upon a
7 showing of good cause and after receiving a certification by the secretary
8 of commerce of substantial compliance with provisions of this subsection
9 (b)(6), may extend any required performance date provided in this
10 subsection (b)(6) for a period not to exceed six months.

11 (7) *At the election of a qualifying taxpayer, by multiplying such*
12 *taxpayer's business income by the sales factor.*

13 (A) *For purposes of this subsection (b)(7), a qualifying taxpayer is*
14 *any taxpayer whose principal business activity in the state is:*

15 (i) *Manufacturing as defined in K.S.A. 79-3271(m)(2), and*
16 *amendments thereto;*

17 (ii) *production of electricity or storage of electricity as defined in*
18 *K.S.A. 79-3271(m)(3) and (4), and amendments thereto;*~~or~~

19 (iii) *certain agricultural activities as defined in K.S.A. 79-3271(m)*
20 *(1), and amendments thereto;*

21 (iv) **scientific and technical consulting services for biofuel facility**
22 **identified as defined in K.S.A. 79-3271(m)(5);**

23 (v) **wholesale distribution of petroleum products as defined in**
24 **K.S.A. 79-3271(m)(6); or**

25 (vi) **wholesale trade as defined in K.S.A. 79-3271(m)(7).**

26 (B) *An election under this subsection (b)(7) shall be made by*
27 *including a statement with the original tax return for which the election is*
28 *made, indicating that the taxpayer elects to apply this apportionment*
29 *method. The election shall be effective and irrevocable for the taxable*
30 *year of the election and the following nine taxable years. The election*
31 *shall be binding on all members of a unitary group of corporations.*
32 *Notwithstanding the above, the secretary of revenue may upon the request*
33 *of the taxpayer, grant permission to terminate the election under this*
34 *subsection (b)(7) prior to expiration of the 10-year period.*

35 (c) **The secretary of revenue shall submit a written report to the**
36 **house of representatives committee on taxation and the senate**
37 **committee on assessment and taxation on or before March 1, 2026,**
38 **concerning the use of the election pursuant to subsection (b)(7) and**
39 **the number of taxpayers that have elected the sales factor**
40 **apportionment in lieu of the standard apportionment provided by law.**

41 Sec. 3. K.S.A. 79-3271 and 79-3279 are hereby repealed.

42 Sec. 4. This act shall take effect and be in force from and after its
43 publication in the statute book.