

HOUSE BILL No. 2061

By Committee on Taxation

1-18

AN ACT relating to income taxation; concerning the taxation of certain investment funds service companies; amending K.S.A. 79-3271 and 79-3279 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 79-3271 is hereby amended to read as follows: 79-3271. As used in this act, unless the context otherwise requires: (a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations, except that for taxable years commencing after December 31, 1995, a taxpayer may elect that all income derived from the acquisition, management, use or disposition of tangible or intangible property constitutes business income. The election shall be effective and irrevocable for the taxable year of the election and the following nine taxable years. The election shall be binding on all members of a unitary group of corporations.

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

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

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

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

(f) "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of

1 electricity, water, steam, oil, oil products or gas.

2 (g) "Sales" means all gross receipts of the taxpayer not allocated un-
3 der K.S.A. 79-3274 through 79-3278, and amendments thereto.

4 (h) "State" means any state of the United States, the District of Co-
5 lumbia, the Commonwealth of Puerto Rico, any territory or possession
6 of the United States, and any foreign country or political subdivision
7 thereof.

8 (i) "Telecommunications company" means any business entity or uni-
9 tary group of entities whose primary business activity is the transmission
10 of communications in the form of voice, data, signals or facsimile com-
11 munications by wire or fiber optic cable.

12 (j) "Distressed area taxpayer" means a corporation which: (1) Is lo-
13 cated in a county which has a population of not more than 45,000 persons
14 and which, as certified by the department of commerce *and housing*, has
15 sustained an adverse economic impact due to the closure of a state hos-
16 pital in such county pursuant to the recommendations of the hospital
17 closure commission; and (2) which has a total annual payroll of
18 \$20,000,000 or more for employees employed within such county.

19 (k) *"Investment funds service company" means any entity or group*
20 *of entities conducting a unitary business in the state of providing man-*
21 *agement, distribution, advisement or administration services to or on be-*
22 *half of an investment company registered under and defined by the federal*
23 *investment company act of 1940, as in effect on the effective date of this*
24 *act.*

25 Sec. 2. K.S.A. 79-3279 is hereby amended to read as follows: 79-
26 3279. (a) All business income of railroads and interstate motor carriers of
27 persons or property for-hire shall be apportioned to this state by multi-
28 plying the business income by a fraction, in the case of railroads, the
29 numerator of which is the freight car miles in this state and the denom-
30 inator of which is the freight car miles everywhere, and, in the case of
31 interstate motor carriers, the numerator of which is the total number of
32 miles operated in this state and the denominator of which is the total
33 number of miles operated everywhere.

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

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

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

42 (A) For purposes of this subsection (b)(2), a qualifying taxpayer is any
43 taxpayer whose payroll factor for a taxable year exceeds 200% of the

1 average of the property factor and the sales factor. Whenever two or more
2 corporations are engaged in a unitary business and required to file a com-
3 bined report, the percentage comparison provided by this subsection
4 (b)(2) shall be calculated by using the payroll factor, property factor and
5 sales factor of the combined group of unitary corporations.

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

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

21 (A) For purposes of this subsection (b)(3), a qualifying telecommu-
22 nications company is a telecommunications company that is a qualifying
23 taxpayer under paragraph (A) of subsection (b)(2).

24 (B) A qualifying telecommunications company shall make the elec-
25 tion under this subsection (b)(3) in the same manner as provided under
26 paragraph (B) of subsection (b)(2).

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

35 (5) *At the election of a qualifying investment funds service company*
36 *by multiplying the business income by a fraction, the numerator of which*
37 *is the number of shares owned by the investment fund service company's*
38 *fund shareholders that are residents of this state at the end of the year*
39 *and the denominator of which is the number of shares owned by the*
40 *investment fund service company's fund shareholders that are everywhere*
41 *at the end of the year. This election shall be binding on all members of*
42 *the unitary group.*

43 New Sec. 3. The provisions of this act shall be applicable to all tax-

1 able years commencing after December 31, 2000.

2 Sec. 4. K.S.A. 79-3271 and 79-3279 are hereby repealed.

3 Sec. 5. This act shall take effect and be in force from and after its
4 publication in the statute book.

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