

1 [As Amended by Senate Committee of the Whole]

2 As Further Amended by Senate Committee

3 As Amended by Senate Committee

4 [As Amended by House Committee of the Whole]

5 As Amended by House Committee

6 *Session of 2001*

7 **HOUSE BILL No. 2091**

8 By Committee on Taxation

9 1-22

10 AN ACT relating to ~~property taxation; concerning the exemption for ma-~~
11 ~~chinery, equipment, materials and supplies; amending K.S.A. 79-301~~
12 ~~and K.S.A. 2000 Supp. 79-201w and repealing the existing section~~
13 ~~sections: income taxation; allowing credits therefrom for prop-~~
14 ~~erty tax paid on certain machinery and equipment; concerning~~
15 ~~the apportionment of business income of certain investment~~
16 ~~funds service companies; amending K.S.A. 2001 Supp. 79-32,206~~
17 ~~and repealing the existing section. 79-3271 and 79-3279 and re-~~
18 ~~pealing the existing sections.~~

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

20 ~~Section 1. K.S.A. 2000 Supp. 79-201w is hereby amended to read as~~
21 ~~follows: 79-201w. The following described property, to the extent speci-~~
22 ~~fied by this section, shall be exempt from all property or ad valorem taxes~~
23 ~~levied under the laws of the state of Kansas:~~

24 ~~— (a) Any item of machinery, equipment, materials and supplies which,~~
25 ~~except for the operation of the provisions of this section, would be re-~~
26 ~~quired to be listed for the purpose of taxation pursuant to K.S.A. 79-306,~~
27 ~~and amendments thereto, and which is used or to be used in the conduct~~
28 ~~of the owner's business, or in the conduct of activities by an entity not~~
29 ~~subject to Kansas income taxation pursuant to K.S.A. 79-32,113, and~~
30 ~~amendments thereto, whose original retail cost when new is \$250 \$1,000~~
31 ~~or less \$500 or less with respect to tax years 2001 and 2002 [2002~~
32 ~~and 2003], and \$1,000 or less with respect to tax year 2003 [2004],~~
33 ~~and all tax years thereafter.~~

34 ~~— (b) The provisions of this section shall apply to all taxable years com-~~

1 ~~encing after December 31, 1995-2000.~~

2 ~~— Sec. 2. K.S.A. 79-301 is hereby amended to read as follows: 79-~~
3 ~~301. All tangible personal property subject to taxation shall be~~
4 ~~listed and assessed as of the first day of January each year in the~~
5 ~~name of the owner thereof. Such listing and assessment shall be~~
6 ~~made as hereinafter provided by law. A county or district appraiser~~
7 ~~may request the listing of any property not subject to taxation, but no~~
8 ~~taxpayer shall be required to comply with such request.~~

9 ~~— Sec. 2 3. K.S.A. 79-301 and K.S.A. 2000 Supp. 79-201w is are~~
10 ~~hereby repealed.~~

11 ~~Section 1. K.S.A. 2001 Supp. 79-32,206 is hereby amended to~~
12 ~~read as follows: 79-32,206. For all taxable years commencing after~~
13 ~~December 31, 1997-2001, there shall be allowed as a credit against~~
14 ~~the tax liability of a taxpayer imposed under the Kansas income tax~~
15 ~~act, the premiums tax upon insurance companies imposed pursuant~~
16 ~~to K.S.A. 40-252, and amendments thereto, and the privilege tax as~~
17 ~~measured by net income of financial institutions imposed pursuant~~
18 ~~to article 11 of chapter 79 of the Kansas Statutes Annotated, an~~
19 ~~amount equal to 15% of the property tax levied for property tax~~
20 ~~year 1998-2002, and 20% of the property tax levied for property tax year~~
21 ~~2003, and all such years thereafter, actually and timely paid during~~
22 ~~an income or privilege taxable year upon commercial and industrial~~
23 ~~machinery and equipment classified for property taxation purposes~~
24 ~~pursuant to section 1 of article 11 of the Kansas constitution in~~
25 ~~subclass (5) or (6) of class 2 and machinery and equipment classi-~~
26 ~~fied for such purposes in subclass (2) of class 2. If the amount of~~
27 ~~such tax credit exceeds the taxpayer's income tax liability for the~~
28 ~~taxable year, the amount thereof which exceeds such tax liability~~
29 ~~shall be refunded to the taxpayer. If the taxpayer is a corporation~~
30 ~~having an election in effect under subchapter S of the federal inter-~~
31 ~~nal revenue code, a partnership or a limited liability company, the~~
32 ~~credit provided by this section shall be claimed by the shareholders~~
33 ~~of such corporation, the partners of such partnership or the mem-~~
34 ~~bers of such limited liability company in the same manner as such~~
35 ~~shareholders, partners or members account for their proportionate~~
36 ~~shares of the income or loss of the corporation, partnership or lim-~~
37 ~~ited liability company.~~

38 ~~— New Sec. 2. For all taxable years commencing after December~~
39 ~~31, 2003, there shall be allowed as a credit against the tax liability~~
40 ~~of a taxpayer imposed under the Kansas income tax act who is en-~~
41 ~~gaged in a manufacturing business listed in sectors 31 through 33~~
42 ~~and 5111 of the North American Industry Classification System,~~
43 ~~United States 2002 edition as in effect on January 1, 2002, an~~

~~amount equal to 25% of the property tax levied for property tax year 2004, 30% of the property tax levied for property tax year 2005, 35% of the property tax levied for property tax year 2006, and 40% of the property tax levied for property tax year 2007, and all such years thereafter, actually and timely paid during an income taxable year upon commercial and industrial machinery and equipment classified for property taxation purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (5) of class 2. If the amount of such tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company. Any taxpayer claiming a credit pursuant to this section shall not be allowed a credit pursuant to K.S.A. 2001 Supp. 79-32,206, and amendments thereto.~~

~~— Sec. 3. K.S.A. 2001 Supp. 79-32,206 is hereby repealed.~~

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,

1 *private banker, savings and loan association, credit union, coop-*
2 *erative bank, investment company, or any type of insurance com-*
3 *pany, but such term shall not be deemed to include any business*
4 *entity, other than those hereinbefore enumerated, whose primary*
5 *business activity is making consumer loans or purchasing retail in-*
6 *stallment contracts from one or more sellers.*

7 (e) *“Nonbusiness income” means all income other than business*
8 *income.*

9 (f) *“Public utility” means any business entity which owns or*
10 *operates for public use any plant, equipment, property, franchise,*
11 *or license for the transmission of communications, transportation*
12 *of goods or persons, or the production, storage, transmission, sale,*
13 *delivery, or furnishing of electricity, water, steam, oil, oil products*
14 *or gas.*

15 (g) *“Original return” means the first return filed to report the income*
16 *of a taxpayer for a taxable year or period, irrespective of whether such*
17 *return is filed on a single entity basis or a combined basis.*

18 ~~(g)~~ (h) *“Sales” means all gross receipts of the taxpayer not al-*
19 *located under K.S.A. 79-3274 through 79-3278, and amendments*
20 *thereto.*

21 ~~(h)~~ (i) *“State” means any state of the United States, the District*
22 *of Columbia, the Commonwealth of Puerto Rico, any territory or*
23 *possession of the United States, and any foreign country or political*
24 *subdivision thereof.*

25 ~~(i)~~ (j) *“Telecommunications company” means any business en-*
26 *tity or unitary group of entities whose primary business activity is*
27 *the transmission of communications in the form of voice, data, sig-*
28 *nals or facsimile communications by wire or fiber optic cable.*

29 ~~(j)~~ (k) *“Distressed area taxpayer” means a corporation which:*
30 *(1) Is located in a county which has a population of not more than*
31 *45,000 persons and which, as certified by the department of com-*
32 *merce and housing, has sustained an adverse economic impact due*
33 *to the closure of a state hospital in such county pursuant to the*
34 *recommendations of the hospital closure commission; and (2) which*
35 *has a total annual payroll of \$20,000,000 or more for employees*
36 *employed within such county.*

37 (l) *For the purposes of this subsection and subsection (b)(5) of K.S.A.*
38 *79-3279, and amendments thereto, the following terms are defined:*

39 (1) *“Administration services” include clerical, fund or shareholder ac-*
40 *counting, participant record keeping, transfer agency, bookkeeping, data*
41 *processing, custodial, internal auditing, legal and tax services performed*
42 *for an investment company;*

43 (2) *“distribution services” include the services of advertising, servic-*

1 *ing, marketing, underwriting or selling shares of an investment company,*
2 *but, in the case of advertising, servicing or marketing shares, only where*
3 *such service is performed by a person who is, or in the case of a closed*
4 *end company, was, either engaged in the services of underwriting or sell-*
5 *ing investment company shares or affiliated with a person who is engaged*
6 *in the service of underwriting or selling investment company shares. In*
7 *the case of an open end company, such service of underwriting or selling*
8 *shares must be performed pursuant to a contract entered into pursuant*
9 *to 15 U.S.C. §80a-15(b), as in effect on the effective date this act;*

10 (3) *“Investment company”, means any person registered under the*
11 *federal Investment Company Act of 1940, as in effect on the effective date*
12 *of this act, or a company which would be required to register as an in-*
13 *vestment company under such act except that such person is exempt to*
14 *such registration pursuant to §80a-3(c)(1) of such act;*

15 (4) *“investment funds service corporation” includes any corporation*
16 *or S corporation headquartered in and doing business in this state which*
17 *derives more than 50% of its gross income from the provision of manage-*
18 *ment, distribution or administration services to or on behalf of an invest-*
19 *ment company or from trustees, sponsors and participants of employee*
20 *benefit plans which have accounts in an investment company;*

21 (5) *“management services” include the rendering of investment advice*
22 *to an investment company making determinations as to when sales and*
23 *purchases of securities are to be made on behalf of the investment com-*
24 *pany, or the selling or purchasing of securities constituting assets of an*
25 *investment company, and related activities, but only where such activity*
26 *or activities are performed:*

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

30 (B) *for a person that has entered into such contract with the invest-*
31 *ment company;*

32 (6) *“qualifying business income” is business income derived from the*
33 *provision of management, distribution or administration services to or on*
34 *behalf of an investment company or from trustees, sponsors and partici-*
35 *pants of employee benefit plans which have accounts in an investment*
36 *company; and*

37 (7) *“residence” is the fund shareholder’s primary residence or prin-*
38 *cipal place of business.*

39 **Sec. 2. K.S.A. 79-3279 is hereby amended to read as follows:**
40 **79-3279. (a) All business income of railroads and interstate motor**
41 **carriers of persons or property for-hire shall be apportioned to this**
42 **state by multiplying the business income by a fraction, in the case**
43 **of railroads, the numerator of which is the freight car miles in this**

1 *state and the denominator of which is the freight car miles every-*
2 *where, and, in the case of interstate motor carriers, the numerator*
3 *of which is the total number of miles operated in this state and the*
4 *denominator of which is the total number of miles operated*
5 *everywhere.*

6 *(b) All business income of any other taxpayer shall be appor-*
7 *tioned to this state by one of the following methods:*

8 *(1) By multiplying the business income by a fraction, the nu-*
9 *merator of which is the property factor plus the payroll factor plus*
10 *the sales factor, and the denominator of which is three; or*

11 *(2) at the election of a qualifying taxpayer, by multiplying the*
12 *business income by a fraction, the numerator of which is the prop-*
13 *erty factor plus the sales factor, and the denominator of which is*
14 *two.*

15 *(A) For purposes of this subsection (b)(2), a qualifying taxpayer*
16 *is any taxpayer whose payroll factor for a taxable year exceeds*
17 *200% of the average of the property factor and the sales factor.*
18 *Whenever two or more corporations are engaged in a unitary busi-*
19 *ness and required to file a combined report, the percentage fraction*
20 *comparison provided by this subsection (b)(2) shall be calculated*
21 *by using the payroll factor, property factor and sales factor of the*
22 *combined group of unitary corporations.*

23 *(B) An election under this subsection (b)(2) shall be made by*
24 *including a statement with the original tax return indicating that*
25 *the taxpayer elects to apply the apportionment method under this*
26 *subsection (b)(2). The election shall be effective and irrevocable for*
27 *the taxable year of the election and the following nine taxable years.*
28 *The election shall be binding on all members of a unitary group of*
29 *corporations. Notwithstanding the above, the secretary of revenue*
30 *may upon the request of the taxpayer, grant permission to terminate*
31 *the election under this subsection (b)(2) prior to expiration of the*
32 *ten-year period.*

33 *(3) At the election of a qualifying telecommunications company,*
34 *by multiplying the business income by a fraction, the numerator of*
35 *which is the information carrying capacity of wire and fiber optic*
36 *cable available for use in this state, and the denominator of which*
37 *is the information carrying capacity of wire and fiber optic cable*
38 *available for use everywhere during the tax year.*

39 *(A) For purposes of this subsection (b)(3), a qualifying telecom-*
40 *munications company is a telecommunications company that is a*
41 *qualifying taxpayer under paragraph (A) of subsection (b)(2).*

42 *(B) A qualifying telecommunications company shall make the*
43 *election under this subsection (b)(3) in the same manner as pro-*

1 *vided under paragraph (B) of subsection (b)(2).*

2 *(4) At the election of a distressed area taxpayer, by multiplying*
3 *the business income by the sales factor. The election shall be made*
4 *by including a statement with the original tax return indicating that*
5 *the taxpayer elects to apply this apportionment method. The elec-*
6 *tion may be made only once, it must be made on or before December*
7 *31, 1999 and it shall be effective for the taxable year of the election*
8 *and the following nine taxable years for so long as the taxpayer*
9 *maintains the payroll amount prescribed by subsection (j) of K.S.A.*
10 *79-3271.*

11 *(5) At the election of the taxpayer made at the time of filing of the*
12 *original return, the qualifying business income of any investment funds*
13 *service corporation organized as a corporation or S corporation which*
14 *maintains its primary headquarters and operations or is a branch facility*
15 *that employs at least 100 individuals in this state and has any investment*
16 *company fund shareholders resided in this state shall be apportioned*
17 *to this state as provided in this subsection, as follows:*

18 *(A) By multiplying the investment funds service corporation's quali-*
19 *fying business income from administration, distribution and management*
20 *services provided to each investment company by a fraction, the numer-*
21 *ator of which shall be the average of the number of shares owned by the*
22 *investment company's fund shareholders resided in this state at the*
23 *beginning of and at the end of the investment company's taxable year that*
24 *ends with or within the investment funds service corporation's taxable*
25 *year, and the denominator of which shall be the average of the number*
26 *of shares owned by the investment company's fund shareholders every-*
27 *where at the beginning of and at the end of the investment company's*
28 *taxable year that ends with or within the investment funds service cor-*
29 *poration's taxable year.*

30 *(B) A separate computation shall be made to determine the qualifying*
31 *business income from each fund of each investment company. The qual-*
32 *ifying business income from each investment company shall be multiplied*
33 *by the fraction calculated pursuant to paragraph (A) for each fund of such*
34 *investment company.*

35 *(C) The qualifying portion of total business income of an investment*
36 *funds service corporation shall be determined by multiplying such total*
37 *business income by a fraction, the numerator of which is the gross receipts*
38 *from the provision of management, distribution and administration serv-*
39 *ices to or on behalf of an investment company, and the denominator of*
40 *which is the gross receipts of the investment funds service company. To*
41 *the extent an investment funds service corporation has business income*
42 *that is not qualifying business income, such business income shall be ap-*
43 *portioned to this state pursuant to subsection (b)(1).*

1 (D) For tax year 2002, the tax liability of an investment funds service
2 corporation that has elected to apportion its business income pursuant to
3 paragraph (5) shall be increased by an amount equal to 50% of the dif-
4 ference of the amount of such tax liability if determined pursuant to sub-
5 section (b)(1) less the amount of such tax liability determined with regard
6 to paragraph (5).

7 (E) When an investment funds service corporation is part of a unitary
8 group, the business income of the unitary group attributable to the in-
9 vestment funds service corporation shall be determined by multiplying
10 the business income of the unitary group by a fraction, the numerator of
11 which is the property factor plus the payroll factor plus the sales factor,
12 and the denominator of which is three. The property factor is a fraction,
13 the numerator of which is the average value of the investment funds serv-
14 ice corporation's real and tangible personal property owned or rented and
15 used during the tax period and the denominator of which is the average
16 value of the unitary group's real and tangible personal property owned
17 or rented and used during the tax period. The payroll factor is a fraction,
18 the numerator of which is the total amount paid during the tax period by
19 the investment funds service corporation for compensation, and the de-
20 nominator of which is the total compensation paid by the unitary group
21 during the tax period. The sales factor is a fraction, the numerator of
22 which is the total sales of the investment funds service corporation during
23 the tax period, and the denominator of which is the total sales of the
24 unitary group during the tax period.

25 **New Sec. 3. A taxpayer seeking to make the election available**
26 **pursuant to subsection (b)(5) of K.S.A. 79-3279, and amendments**
27 **thereto, shall only be eligible to make such election if the taxpayer**
28 **maintains or exceeds the number of employees in existence at the**
29 **time the taxpayer first makes such an election.**

30 **New Sec. 4. For all taxable years commencing after December**
31 **31, 2002, there shall be allowed as a credit against the tax liability**
32 **of a taxpayer imposed under the Kansas income tax act who is en-**
33 **gaged in a manufacturing business listed in sector 32621 of the**
34 **North American Industry Classification System, United States 2002**
35 **edition as in effect on January 1, 2002, an amount equal to 20% of**
36 **the property tax levied for property tax year 2003₂ [and] 25% of**
37 **the property tax levied for property tax year 2004, ~~30% of the prop-~~**
38 **~~erty tax levied for property tax year 2005, 35% of the property tax~~**
39 **~~levied for property tax year 2006, and 40% of the property tax lev-~~**
40 **~~ied for property tax year 2007, and all such years thereafter, ac-~~**
41 **~~tually and timely paid during an income taxable year upon com-~~**
42 **~~mmercial and industrial machinery and equipment classified for~~**
43 **~~property taxation purposes pursuant to section 1 of article 11 of the~~**

1 *Kansas constitution in subclass (5) of class 2. [For all taxable years*
2 *commencing after December 31, 2004, in the event any such man-*
3 *ufacturing business has made an investment after July 1, 2002, in*
4 *new machinery and equipment in an amount exceeding*
5 *\$10,000,000, the amount of such credit shall be equal to 30% of the*
6 *property tax levied for property tax year 2005, 35% of the property*
7 *tax levied for property tax year 2006, and 40% of the property tax*
8 *levied for property tax year 2007, and all such years thereafter,*
9 *actually and timely paid during an income taxable year upon com-*
10 *mercial and industrial machinery and equipment classified for*
11 *property taxation purposes pursuant to section 1 of article 11 of the*
12 *Kansas constitution in subclass (5) of class 2.] If the amount of such*
13 *tax credit exceeds the taxpayer's income tax liability for the taxable*
14 *year, the amount thereof which exceeds such tax liability shall be*
15 *refunded to the taxpayer. If the taxpayer is a corporation having an*
16 *election in effect under subchapter S of the federal internal revenue*
17 *code, a partnership or a limited liability company, the credit pro-*
18 *vided by this section shall be claimed by the shareholders of such*
19 *corporation, the partners of such partnership or the members of*
20 *such limited liability company in the same manner as such share-*
21 *holders, partners or members account for their proportionate*
22 *shares of the income or loss of the corporation, partnership or lim-*
23 *ited liability company. ~~No taxpayer shall be eligible to claim a~~*
24 *~~credit pursuant to this section for any taxable year to which this~~*
25 *~~section applies unless the taxpayer as of December 31 of the taxable~~*
26 *~~year for which a credit is claimed has maintained or exceeded the~~*
27 *~~number of employees in existence on January 1, 2002.~~ Any taxpayer*
28 *claiming a credit pursuant to this section shall not be allowed a*
29 *credit pursuant to K.S.A. 2001 Supp. 79-32,206, and amendments*
30 *thereto.*

31 *New Sec. 5. The provisions of sections 1 through 3 of this act*
32 *shall be applicable to all taxable years commencing after December*
33 *31, 2001.*

34 *Sec. 6. K.S.A. 79-3271 and 79-3279 are hereby repealed.*

35 *Sec. ~~4~~ 7. This act shall take effect and be in force from and after*
36 *its publication in the statute book.*

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