

SENATE Substitute for HOUSE BILL No. 2037

By Committee on Assessment and Taxation

3-24

9 AN ACT concerning apportionment of business income; amending
10 K.S.A. 2007 Supp. 79-3279 and repealing the existing section.

11

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

13 Section 1. K.S.A. 2007 Supp. 79-3279 is hereby amended to read as
14 follows: 79-3279. (a) All business income of railroads and interstate motor
15 carriers of persons or property for-hire shall be apportioned to this state
16 by multiplying the business income by a fraction, in the case of railroads,
17 the numerator of which is the freight car miles in this state and the de-
18 nominator of which is the freight car miles everywhere, and, in the case
19 of interstate motor carriers, the numerator of which is the total number
20 of miles operated in this state and the denominator of which is the total
21 number of miles operated everywhere.

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

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

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

30 (A) For purposes of this subsection (b)(2), a qualifying taxpayer is any
31 taxpayer whose payroll factor for a taxable year exceeds 200% of the
32 average of the property factor and the sales factor. Whenever two or more
33 corporations are engaged in a unitary business and required to file a com-
34 bined report, the fraction comparison provided by this subsection (b)(2)
35 shall be calculated by using the payroll factor, property factor and sales
36 factor of the combined group of unitary corporations.

37 (B) An election under this subsection (b)(2) shall be made by includ-
38 ing a statement with the original tax return indicating that the taxpayer
39 elects to apply the apportionment method under this subsection (b)(2).
40 The election shall be effective and irrevocable for the taxable year of the
41 election and the following nine taxable years. The election shall be bind-
42 ing on all members of a unitary group of corporations. Notwithstanding
43 the above, the secretary of revenue may upon the request of the taxpayer,

1 grant permission to terminate the election under this subsection (b)(2)
2 prior to expiration of the ten-year period.

3 (3) At the election of a qualifying telecommunications company, by
4 multiplying the business income by a fraction, the numerator of which is
5 the information carrying capacity of wire and fiber optic cable available
6 for use in this state, and the denominator of which is the information
7 carrying capacity of wire and fiber optic cable available for use everywhere
8 during the tax year.

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

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

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

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

31 (A) By multiplying the investment funds service corporation's quali-
32 fying business income from administration, distribution and management
33 services provided to each investment company by a fraction, the numer-
34 ator of which shall be the average of the number of shares owned by the
35 investment company's fund shareholders resided in this state at the
36 beginning of and at the end of the investment company's taxable year
37 that ends with or within the investment funds service corporation's taxable
38 year, and the denominator of which shall be the average of the number
39 of shares owned by the investment company's fund shareholders every-
40 where at the beginning of and at the end of the investment company's
41 taxable year that ends with or within the investment funds service cor-
42 poration's taxable year.

43 (B) A separate computation shall be made to determine the qualifying

1 business income from each fund of each investment company. The qual-
2 ifying business income from each investment company shall be multiplied
3 by the fraction calculated pursuant to paragraph (A) for each fund of such
4 investment company.

5 (C) The qualifying portion of total business income of an investment
6 funds service corporation shall be determined by multiplying such total
7 business income by a fraction, the numerator of which is the gross receipts
8 from the provision of management, distribution and administration serv-
9 ices to or on behalf of an investment company, and the denominator of
10 which is the gross receipts of the investment funds service company. To
11 the extent an investment funds service corporation has business income
12 that is not qualifying business income, such business income shall be
13 apportioned to this state pursuant to subsection (b)(1).

14 (D) For tax year 2002, the tax liability of an investment funds service
15 corporation that has elected to apportion its business income pursuant to
16 paragraph (5) shall be increased by an amount equal to 50% of the dif-
17 ference of the amount of such tax liability if determined pursuant to
18 subsection (b)(1) less the amount of such tax liability determined with
19 regard to paragraph (5).

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

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

43 (6) At the election of a qualifying taxpayer, by multiplying such tax-

1 payer's business income by the sales factor. The election shall be made
2 by including a statement with the original tax return indicating that the
3 taxpayer elects to apply this apportionment method. The election may be
4 made only once and must be made on or before the last day of the taxable
5 year during which the investment described in paragraph (A) is placed in
6 service, but not later than December 31, ~~2009~~ 2014, and it shall be ef-
7 fective for the taxable year of the election and the following nine taxable
8 years or for so long as the taxpayer maintains the wage requirements set
9 forth in paragraph (A). If the qualifying taxpayer is a member of a unitary
10 group of corporations, all other members of the unitary group doing busi-
11 ness within this state shall apportion their business income to this state
12 pursuant to subsection (b)(1).

13 (A) For purposes of this subsection, a qualifying taxpayer is any tax-
14 payer making an investment of \$100,000,000 for construction in Kansas
15 of a new business facility identified under the North American industry
16 classification system (NAICS) subsectors of 31-33, as assigned by the sec-
17 retary of the department of labor, employing 100 or more new employees
18 at such facility after July 1, 2007, and prior to December 31, ~~2009~~ 2014,
19 and meeting the following requirements for paying such employees
20 higher-than-average wages within the wage region for such facility:

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

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

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

37 (iv) the taxpayer's new Kansas business facility with more than 500
38 full-time equivalent employees is the sole facility within its assigned
39 NAICS category that has reported wages for more than 500 employees
40 to the Kansas department of labor on the quarterly wage reports, in which
41 event it shall either provide an average wage that is above the average
42 wage paid by all Kansas business facilities that share the same assigned
43 NAICS category and that have reported wages for 500 or fewer employees

1 to the Kansas department of labor on the quarterly wage reports, or be
2 the sole Kansas business facility within its assigned NAICS category that
3 has reported wages to the Kansas department of labor on the quarterly
4 wage reports;

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

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

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

19 (B) For the purposes of the wage requirements in paragraph (A), the
20 number of full-time equivalent employees shall be determined by dividing
21 the number of hours worked by part-time employees during the pertinent
22 measurement interval by an amount equal to the corresponding multiple
23 of a 40-hour work week and adding the quotient to the average number
24 of full-time employees.

25 (C) When the qualifying taxpayer is part of a unitary group, the busi-
26 ness income of the unitary group attributable to the qualifying taxpayer
27 shall be determined by multiplying the business income of the unitary
28 group by a fraction, the numerator of which is the property factor plus
29 the payroll factor plus the sales factor, and the denominator of which is
30 three. The property factor is a fraction, the numerator of which is the
31 average value of the qualifying taxpayer's real and tangible personal prop-
32 erty owned or rented and used during the tax period and the denominator
33 of which is the average value of the unitary group's real and tangible
34 personal property owned or rented and used during the tax period. The
35 payroll factor is a fraction, the numerator of which is the total amount
36 paid during the tax period by the qualifying taxpayer for compensation,
37 and the denominator of which is the total compensation paid by the uni-
38 tary group during the tax period. The sales factor is a fraction, the nu-
39 merator of which is the total sales of the qualifying taxpayer during the
40 tax period, and the denominator of which is the total sales of the unitary
41 group during the tax period.

42 Sec. 2. K.S.A. 2007 Supp. 79-3279 is hereby repealed.

43

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