

HOUSE BILL No. 2579

By Committee on Taxation

3-14

9 AN ACT concerning income taxation; relating to apportionment of net
10 income; business income; corporations, surtax; allocation of income
11 and deductions; amending K.S.A. 79-3285 and 79-32,141 and K.S.A.
12 2006 Supp. 79-3271 and 79-32,110 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 2006 Supp. 79-3271 is hereby amended to read as
16 follows: 79-3271. As used in this act, unless the context otherwise re-
17 quires: (a) “Business income” means income arising from transactions and
18 activity in the regular course of the taxpayer’s trade or business and in-
19 cludes income from tangible and intangible property if the acquisition,
20 management, and disposition of the property constitute integral parts of
21 the taxpayer’s regular trade or business operations, except that ~~for taxable~~
22 ~~years commencing after December 31, 1995,~~ a taxpayer may elect that
23 all income constitutes business income *and except that for taxable years*
24 *commencing after December 31, 2008, “business income” includes: (1)*
25 *Income arising from transactions and activities in the regular course of*
26 *the taxpayer’s trade or business; (2) income arising from transactions and*
27 *activities involving property or assets used in the operation of the tax-*
28 *payer’s trade or business; and (3) income of the taxpayer that may be*
29 *apportioned to this state under the provisions of the Constitution of the*
30 *United States and laws thereof. All income of the taxpayer shall be pre-*
31 *sumed to be business income unless the contrary is established by clear*
32 *and convincing evidence. The election shall be effective and irrevocable*
33 *for the taxable year of the election and the following nine taxable years.*
34 The election shall be binding on all members of a unitary group of
35 corporations.

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

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

40 (d) “Financial organization” means any bank, trust company, savings
41 bank, industrial bank, land bank, safe deposit company, private banker,
42 savings and loan association, credit union, cooperative bank, or any type
43 of insurance company, but such term shall not be deemed to include any

1 business entity, other than those hereinbefore enumerated, whose pri-
2 mary business activity is making consumer loans or purchasing retail in-
3 stallment contracts from one or more sellers.

4 (e) “Nonbusiness income” means all income other than business
5 income.

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

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

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

17 (i) “State” means any state of the United States, the District of Co-
18 lumbia, the Commonwealth of Puerto Rico, any territory or possession
19 of the United States, and any foreign country or political subdivision
20 thereof.

21 (j) “Telecommunications company” means any business entity or uni-
22 tary group of entities whose primary business activity is the transmission
23 of communications in the form of voice, data, signals or facsimile com-
24 munications by wire or fiber optic cable.

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

32 (l) For the purposes of this subsection and subsection (b)(5) of K.S.A.
33 79-3279, and amendments thereto, the following terms are defined:

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

38 (2) “distribution services” include the services of advertising, servic-
39 ing, marketing, underwriting or selling shares of an investment company,
40 but, in the case of advertising, servicing or marketing shares, only where
41 such service is performed by a person who is, or in the case of a closed
42 end company, was, either engaged in the services of underwriting or sell-
43 ing investment company shares or affiliated with a person who is engaged

1 in the service of underwriting or selling investment company shares. In
2 the case of an open end company, such service of underwriting or selling
3 shares must be performed pursuant to a contract entered into pursuant
4 to 15 U.S.C. §80a-15(b), as in effect on the effective date of this act;

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

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

16 (5) “management services” include the rendering of investment ad-
17 vice to an investment company making determinations as to when sales
18 and purchases of securities are to be made on behalf of the investment
19 company, or the selling or purchasing of securities constituting assets of
20 an investment company, and related activities, but only where such activ-
21 ity or activities are performed:

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

25 (B) for a person that has entered into such contract with the invest-
26 ment company;

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

32 (7) “residence” is the fund shareholder’s primary residence address.

33 Sec. 2. K.S.A. 79-3285 is hereby amended to read as follows: 79-
34 3285. The sales factor is a fraction, the numerator of which is the total
35 sales of the taxpayer in this state during the tax period, and the denomi-
36 nator of which is the total sales of the taxpayer everywhere during the tax
37 period. *Commencing with the taxable year commencing after December*
38 *31, 2008, and all taxable years thereafter, in the case of sales of business*
39 *assets, other than sales of tangible personal property sold in the ordinary*
40 *course of the taxpayer’s trade or business, only the net gain from such*
41 *sales shall be included in the sales factor.*

42 Sec. 3. K.S.A. 2006 Supp. 79-32,110 is hereby amended to read as
43 follows: 79-32,110. (a) *Resident Individuals*. Except as otherwise provided

1 by subsection (a) of K.S.A. 79-3220, and amendments thereto, a tax is
2 hereby imposed upon the Kansas taxable income of every resident indi-
3 vidual, which tax shall be computed in accordance with the following tax
4 schedules:

5 (1) *Married individuals filing joint returns.*

6 If the taxable income is:	The tax is:
7 Not over \$30,000	3.5% of Kansas taxable income
8 Over \$30,000 but not over \$60,000	\$1,050 plus 6.25% of excess over \$30,000
9 Over \$60,000	\$2,925 plus 6.45% of excess over \$60,000

10 (2) *All other individuals.*

11 (A) For tax year 1997:

12 If the taxable income is:	The tax is:
13 Not over \$20,000	4.1% of Kansas taxable income
14 Over \$20,000 but not over \$30,000	\$820 plus 7.5% of excess over \$20,000
15 Over \$30,000	\$1,570 plus 7.75% of excess over \$30,000

16 (B) For tax year 1998, and all tax years thereafter:

17 If the taxable income is:	The tax is:
18 Not over \$15,000	3.5% of Kansas taxable income
19 Over \$15,000 but not over \$30,000	\$525 plus 6.25% of excess over \$15,000
20 Over \$30,000	\$1,462.50 plus 6.45% of excess over \$30,000

21 (b) *Nonresident Individuals.* A tax is hereby imposed upon the Kansas
22 taxable income of every nonresident individual, which tax shall be an
23 amount equal to the tax computed under subsection (a) as if the nonres-
24 ident were a resident multiplied by the ratio of modified Kansas source
25 income to Kansas adjusted gross income.

26 (c) *Corporations.* A tax is hereby imposed upon the Kansas taxable
27 income of every corporation doing business within this state or deriving
28 income from sources within this state. Such tax shall consist of a normal
29 tax and a surtax and shall be computed as follows:

30 (1) The normal tax shall be in an amount equal to 4% of the Kansas
31 taxable income of such corporation; and

32 (2) (A) *for tax years 2007 and 2008*, the surtax shall be in an amount
33 equal to 3.35% of the Kansas taxable income of such corporation in excess
34 of \$50,000; or

35 (B) *for the tax year 2009, and all tax years thereafter, the surtax shall*
36 *be in an amount equal to 2.85% of the Kansas taxable income of such*
37 *corporation in excess of \$50,000.*

38 (d) *Fiduciaries.* A tax is hereby imposed upon the Kansas taxable
39 income of estates and trusts at the rates provided in paragraph (2) of
40 subsection (a) hereof.

41 Sec. 4. K.S.A. 79-32,141 is hereby amended to read as follows: 79-
42 32,141. (a) The director may allocate gross income, deductions, credits,
43 or allowances between two or more organizations, trades or businesses

1 {whether or not incorporated, or organized in the United States or affil-
2 iated}, owned or controlled directly or indirectly by the same interests, if
3 the director determines such allocation is necessary to prevent evasion of
4 taxes or to clearly reflect income of the organizations, trades or businesses.

5 *(b) Commencing with the taxable year that commences after Decem-*
6 *ber 31, 2008, and all taxable years thereafter, the authority of the director*
7 *to allocate gross income, deductions, credits or allowances between two*
8 *or more organizations, trades or businesses as set forth in this section*
9 *shall include the authority to require the filing of a combined report. The*
10 *fact that an organization, trade or business may be a financial organiza-*
11 *tion as defined in subsection (d) of K.S.A. 79-3271, and amendments*
12 *thereto, an exempted organization described in K.S.A. 79-32,113, and*
13 *amendments thereto, or a person or entity that would not be subject to*
14 *the provisions of the Kansas income tax act if doing business in this state*
15 *shall not prohibit the inclusion of such organization, trade or business in*
16 *a combined report, as long as such organization, trade or business is*
17 *conducting a unitary business with the other members of the combined*
18 *group.*

19 Sec. 5. K.S.A. 79-3285 and 79-32,141 and K.S.A. 2006 Supp. 79-3271
20 and 79-32,110 are hereby repealed.

21 Sec. 6. This act shall take effect and be in force from and after its
22 publication in the statute book.