

## SENATE BILL No. 648

By Committee on Ways and Means

2-21

---

9 AN ACT concerning income taxation; relating to apportionment of net  
10 income; business income; corporations, surtax; amending K.S.A. 79-  
11 3285 and K.S.A. 2007 Supp. 79-3271 and 79-32,110 and repealing the  
12 existing sections.  
13

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

15 Section 1. K.S.A. 2007 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) *For tax years commencing prior to January 1, 2009*, “business  
18 income” means income arising from transactions and activity in the reg-  
19 ular course of the taxpayer’s trade or business and includes income from  
20 tangible and intangible property if the acquisition, management, and dis-  
21 position of the property constitute integral parts of the taxpayer’s regular  
22 trade or business operations, except that ~~for taxable years commencing~~  
23 ~~after December 31, 1995~~, a taxpayer may elect that all income constitutes  
24 business income. *For tax years commencing after December 31, 2008*,  
25 “business income” means: (1) *Income arising from transactions and ac-*  
26 *tivity in the regular course of the taxpayer’s trade or business;* (2) *income*  
27 *arising from transactions and activity involving tangible and intangible*  
28 *property or assets used in the operation of the taxpayer’s trade or business;*  
29 *or (3) income of the taxpayer that may be apportioned to this state under*  
30 *the provisions of the Constitution of the United States and laws thereof,*  
31 *except that a taxpayer may elect that all income constitutes business in-*  
32 *come. The Any election made under this subsection shall be effective and*  
33 *irrevocable for the taxable tax year of in which the election is made and*  
34 *the following nine taxable tax years. The election and shall be binding on*  
35 *all members of a unitary group of 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. *For taxable years commencing after December 31, 2008, in the*  
38 *case of sales of business assets, other than sales of tangible personal prop-*  
39 *erty sold in the ordinary course of the taxpayer’s trade or business, only*  
40 *the net gain from such sales shall be included in the sales factor.*

41 Sec. 3. K.S.A. 2007 Supp. 79-32,110 is hereby amended to read as  
42 follows: 79-32,110. (a) *Resident Individuals*. Except as otherwise provided  
43 by subsection (a) of K.S.A. 79-3220, and amendments thereto, a tax is

1 hereby imposed upon the Kansas taxable income of every resident indi-  
2 vidual, which tax shall be computed in accordance with the following tax  
3 schedules:

4 (1) *Married individuals filing joint returns.*  
5 If the taxable income is: The tax is:  
6 Not over \$30,000 ..... 3.5% of Kansas taxable income  
7 Over \$30,000 but not over \$60,000 ..... \$1,050 plus 6.25% of excess over \$30,000  
8 Over \$60,000 ..... \$2,925 plus 6.45% of excess over \$60,000

9 (2) *All other individuals.*  
10 (A) For tax year 1997:  
11 If the taxable income is: The tax is:  
12 Not over \$20,000 ..... 4.1% of Kansas taxable income  
13 Over \$20,000 but not over \$30,000 ..... \$820 plus 7.5% of excess over \$20,000  
14 Over \$30,000 ..... \$1,570 plus 7.75% of excess over \$30,000

15 (B) For tax year 1998, and all tax years thereafter:  
16 If the taxable income is: The tax is:  
17 Not over \$15,000 ..... 3.5% of Kansas taxable income  
18 Over \$15,000 but not over \$30,000 ..... \$525 plus 6.25% of excess over \$15,000  
19 Over \$30,000 ..... \$1,462.50 plus 6.45% of excess over \$30,000

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

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

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

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

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

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

40 Sec. 4. K.S.A. 79-3285 and K.S.A. 2007 Supp. 79-3271 and 79-32,110  
41 are hereby repealed.

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