

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on March 1, 2007 in Room 519-S of the Capitol.

All members were present except:

Representative Tom Holland- E

Committee staff present:

Chris Courtwright, Legislative Research Department

Martha Dorsey, Legislative Research Department

Gordon Self, Office of Revisor of Statutes

Richard Cram, Department of Revenue

Kathy Beavers, Office Assistant

Conferees appearing before the Committee:

Secretary Wagnon, KDOR

Mike Boekhaus, KDOR Audit Services

Others attending:

See attached list.

In Representative Holland's absence, Representative Stan Frownfelter sat in on the committee.

HB 2264 - Exclusion of social security benefits from Kansas adjusted gross income for income tax liability purposes.

Chris Courtwright, Legislative Research Department, reviewed **HB 2264**. If passed, the fiscal note will be \$18.9 million. Mr. Courtwright stated the average tax relief for persons affected by this bill would be approximately \$164/per person. At this time there is no estimate available of how many recipients would be affected by the passage of the bill.

Chairman Wilk stated that there are sixty-seven names on **HB 2264** and it will receive a good debate on the floor.

Representative Tim Owens made a motion that **HB 2264** be passed out in its current status. The motion was seconded by Representative Richard Carlson. The motion carried.

HB 2495 - Decrease in the income tax surtax on corporations.

Chris Courtwright reviewed **HB 2495**. He explained that, if passed, the bill would broaden the tax base and lower the tax rate to 6.25% for corporations in Kansas. This would be more in line with tax rates of neighboring states and, will hopefully, bring more corporations to Kansas. It would also allow revenue to be neutral instead of increasing.

Secretary Joan Wagnon described the loophole in Kansas law that allows businesses to depreciate equipment, charge off the depreciation, sell off the equipment and the law does not allow the revenue to be charged back to Kansas (No written testimony).

Mike Boekhaus, Audit Services, explained the three components for figuring corporate taxable income. Income earned, apportionment and tax rate (No written testimony).

Representative Nile Dillmore made a motion that the Committee recommend **HB 2495** favorable for passage. The motion was seconded by Representative Arlen Siegfried.

Representative Nile Dillmore made a Substitute motion to amend **HB 2495**. Representative Julie Menghini seconded the motion. A balloon was distributed (Attachment 1). Gordon Self reviewed the changes to the amendment including: apportionment of net income; elimination of opportunities for churning of income and options for captive insurance companies to purchase product liability insurance.

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on March 1, 2007 in Room 519-S of the Capitol.

The fiscal note was discussed. The Chairman declined a request to divide the question. Representative Nile Dillmore closed his Substitute motion to amend The motion passed 13- 9.

Due to time constraints the meeting was adjourned at 10:30 a.m. Chairman Wilk reminded the committee members they would continue to discuss **HB 2430**, **HB 2514**, and **HB 2264**. The next meeting will be held March 2, 2007, Room 519-S.

HOUSE BILL No. 2495

By Committee on Taxation

2-9

9 AN ACT concerning income taxation; relating to corporations; surtax;
10 amending K.S.A. 2006 Supp. 79-32,110 and repealing the existing
11 section.

apportionment of net income;

K.S.A. 79-3285 and 79-32,141 and

79-3271 and

sections

12
13 *Be it enacted by the Legislature of the State of Kansas:*
14 Section 1. K.S.A. 2006 Supp. 79-32,110 is hereby amended to read
15 as follows: 79-32,110. (a) *Resident Individuals.* Except as otherwise provided
16 by subsection (a) of K.S.A. 79-3220, and amendments thereto, a
17 tax is hereby imposed upon the Kansas taxable income of every resident
18 individual, which tax shall be computed in accordance with the following
19 tax schedules:

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

25 (2) *All other individuals.*
26 (A) For tax year 1997:
27 If the taxable income is: The tax is:
28 Not over \$20,000 4.1% of Kansas taxable income
29 Over \$20,000 but not over \$30,000 \$820 plus 7.5% of excess over \$20,000
30 Over \$30,000 \$1,570 plus 7.75% of excess over \$30,000

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

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

41 (c) *Corporations.* A tax is hereby imposed upon the Kansas taxable
42 income of every corporation doing business within this state or deriving
43 income from sources within this state. Such tax shall consist of a normal

1 tax and a surtax and shall be computed as follows:

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

4 (2) (A) *for the tax year 2007*, the surtax shall be in an amount equal
5 to 3.35% of the Kansas taxable income of such corporation in excess of
6 \$50,000;

7 (B) *for the tax year 2008*, the surtax shall be in an amount equal to
8 2.95% of the Kansas taxable income of such corporation in excess of
9 \$50,000; or

10 (C) *for the tax year 2009, and all tax years thereafter*, the surtax shall
11 be in an amount equal to 2.75% of the Kansas taxable income of such
12 corporation in excess of \$50,000.

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

16 Sec. 2. ~~K.S.A. 2006 Supp. 79-32,110 is hereby repealed.~~

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

2.25%

See attachment

And renumber the remaining sections accordingly

K.S.A. 79-3285 and 79-32,141 and

are

79-3271 and

Sec. 2. K.S.A. 2006 Supp. 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 constitutes business income and except that for taxable years commencing after December 31, 2008, "business income" includes: (1) Income arising from transactions and activities in the regular course of the taxpayer's trade or business; (2) income arising from transactions and activities involving property or assets used in the operation of the taxpayer's trade or business; and (3) income of the taxpayer that may be apportioned to this state under the provisions of the Constitution of the United States and laws thereof. All income of the taxpayer shall be presumed to be business income unless the contrary is established by clear and convincing evidence. 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, 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 electricity, water, steam, oil, oil products or gas.

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

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

(i) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(j) "Telecommunications company" means any business entity or unitary group of entities whose primary business activity is the transmission of communications in the form of voice, data, signals or facsimile communications by wire or fiber optic cable.

(k) "Distressed area taxpayer" means a corporation which: (1) Is located in a county

which has a population of not more than 10,000 persons and which, as certified by the department of commerce, has sustained an adverse economic impact due to the closure of a state hospital in such county pursuant to the recommendations of the hospital closure commission; and (2) which has a total annual payroll of \$20,000,000 or more for employees employed within such county.

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

(1) "Administration services" include clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for an investment company;

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

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

(4) "investment funds service corporation" includes any corporation or S corporation headquartered in and doing business in this state which derives more than 50% of its gross income from the provision of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company;

(5) "management services" include the rendering of investment advice to an investment company making determinations as to when sales and purchases of securities are to be made on behalf of the investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed:

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

(B) for a person that has entered into such contract with the investment company;

(6) "qualifying business income" is business income derived from the provision of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company; and

(7) "residence" is the fund shareholder's primary residence address.

Sec. 3. K.S.A. 79-3285 is hereby amended to read as follows: 79-3285. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. Commencing with the taxable year commencing after December 31, 2008, and all taxable years thereafter, in the case of sales of business

assets, other than sales of tangible personal property sold in the ordinary course of the taxpayer's trade or business, only the net gain from such sales shall be included in the sales factor.

Sec. 4. K.S.A. 79-32,141 is hereby amended to read as follows: 79-32,141. (a) The director may allocate gross income, deductions, credits, or allowances between two or more organizations, trades or businesses (whether or not incorporated, or organized in the United States or affiliated), owned or controlled directly or indirectly by the same interests, if the director determines such allocation is necessary to prevent evasion of taxes or to clearly reflect income of the organizations, trades or businesses.

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