

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on February 20, 2008 in Room 519-S of the Capitol.

All members were present except: Representative Holland - Excused  
Representative Menghini - Excused

Committee staff present:

Chris Courtwright, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Ryan Hoffman, Legislative Research Department  
Scott Wells, Office of Revisor of Statutes  
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Mr. Mark Burghart, Attorney, Specialist in state and local taxes  
Mr. Jim Bartle, General Counsel, Kansas Department of Revenue

Others attending:

See attached list.

Representative Wilk welcomed Representative Frownfelter, as an "Ad Hoc" member of the Taxation Committee. He replaced Representative Dillmore, who replaced Representative Holland, the acting Minority member of the leadership team.

Representative Crum requested a bill introduction concerning a sales tax exemption for the Douglas Senior Center. Representative Goyle seconded the motion. The motion carried.

Representative Wilk, on behalf of Representative Deanna Horst, moved a bill request concerning sales tax exemptions for the Kansas Art Education Association. Representative Frownfelter seconded. The motion carried.

**HB 2640 - Income tax credit for capital investments in businesses located in a city substantially damaged by disaster.** The bill would allow a 10.0 percent non-refundable tax credit for capital investment by any taxpayer who makes a capital investment in a business which is located in a city substantially damaged by disaster. The bill defines such city, as one located in a county where the President and Governor have declared a disaster emergency, and the Governor determines the city has suffered major damage to real and personal property, displacement or dislocation of residents of the city, significant economic disruption in the city, and significant cost to taxpayers of the city, all of which was the result of the disaster.

Representative King distributed a memorandum regarding language for the substitute bill. (Attachment 1) He thanked the members of the sub-committee: Representatives Schroeder, Worley, Menghini and Lukert for their hard work. Gordon Self distributed the official **Substitute for House Bill No 2640** (Attachment 2).

Representative King briefed the Committee on the report and outlined three major changes in the bill:  
1. Section 1.(a) specified the nine cities that were affected by the Greensburg tornado and the southeast Kansas flooding were: Chanute, Coffeyville, Erie, Fredonia, Greensburg, Independence, Iola, Neodesha and Osawatomie.

2. To address Committee concerns regarding whether they were getting the cash quickly enough to the people that need it, they offered a choice. They may make an initial choice, whether they want a full, 10.0 percent non-refundable credit or half the amount immediately as a refundable tax credit, as stated in Section 1. (b) (1). For tax years 2007, 2008, 2009 and 2010, a taxpayer may receive a refund of tax liability in lieu of the credit provided in this act. The refund shall be in an amount up to 50% of the credits earned by the taxpayer.

3. Section 3 (d) defines "capital investment" to mean an investment in the construction, equipment, reconstruction, maintenance, repair, enlargement, furnishing or remodeling of real property, and the purchase, lease or repair, enlargement, furnishing or remodeling of real property, and the purchase, lease or repair of tangible personal property.

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on February 20, 2008 in Room 519-S of the Capitol.

Representative King made a motion to amend **Substitute for HB 2640** into **HB 2640**. Representative Whitham seconded. The motion carried.

Representative King made a conceptual motion to subtract any grant money earned by investors from previous grants given to Greensburg and SE Kansas. This change would decrease the fiscal note from \$14 million to \$4 million. Representative Worley seconded. The motion carried.

Representative Peck made a conceptual motion that would amend the bill making it applicable to Kansas only, and would limit coverage to within one mile of the city limit. Representative Lukert seconded the motion. Discussion followed regarding the pros and cons of distance limitation and the fiscal impact. Representative Peck closed his conceptual motion. The motion carried.

Representative Dillmore made a conceptual motion to exclude any entity that may be found liable to contributing to damages caused by a disaster. Representative Goyle seconded the motion.

Discussion followed regarding the definition of "liability" and administration of the law. Representative Dillmore closed his conceptual motion. The motion failed.

Representative King made a motion to pass out **Substitute for HB 2640**, as amended, favorable for passage. Representative Frownfelter seconded. The motion carried.

On behalf of the Committee, the Chairman thanked Representative King and the sub-committee members for their diligence in returning a good work product.

**HB 2762 - Corporate income taxation changes relating to apportionment of net income, business income and surtax on corporations.**

The Chairman turned the Committees attention back to **HB 2762**, a bill discussed during yesterday's meeting. Gordon Self distributed an amendment, which contains the consensus language in balloon form (Attachment 3). Representative Wilk made the motion to adopt the balloon amendment on **HB 2762**. Representative Dillmore seconded the motion. The motion carried.

Discussion followed regarding the pros and cons on the issue of "election" and what it means to businesses and to the state. The Chairman asked Mr. Mark Burghart to brief the Committee on the issue of "election" from the perspective of a working member of the group that negotiated and drafted the consensus language.

Mr. Burghart explained what "election" does from both business and department viewpoints. He said changing it would not harm businesses and would provide more flexibility and planning opportunities, although if the election is changed, it would impact the fiscal note.

Mr. Bartle distributed a memorandum (Attachment 4) on "Business/Nonbusiness Income Scenarios" that included:

1. Two examples, based on the fact of the scenario and what happens under current law and would happen if Kansas adopts the functional test.
2. An outline showing how the election works under current law, and how this would change if the election is made annually without the functional test.

Due to time constraints, the Chairman said they would return to **HB 2762** at a later date.

The meeting was adjourned at 10:30 A.M. The next meeting is February 21, 2008.

JEFF KING

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TOPEKA

HOUSE OF  
REPRESENTATIVES

Thank you Chairman Wilk and fellow members of the House Taxation Committee for the opportunity to appear before you today in support of HB 2640. This bill is part of a comprehensive disaster relief plan designed by the southeast Kansas and Kiowa county legislative delegation. To acquaint you with the entire disaster relief plan, I have included a handout containing that information with my testimony.

### **Why HB2640 is necessary**

Ms. Morgan from the Adjutant General's office yesterday discussed the three stages of disaster planning: mitigation, immediate response, and long-term recovery. Kansas has a mitigation plan. Kansas has an extensive (and very successful) immediate response plan. Kansas lacks, however, any plan or funding source for long-term recovery.

Other parts of the disaster relief package address the crippling effects on single-family housing, community infrastructure, and the local tax base that result from large disasters. Nowhere, however, does Kansas address the need to help local businesses rebuild and reinvest following a disaster.

Instead, the harsh reality is that current law makes it more financially attractive for a business to leave a disaster-stricken community than to rebuild there. The reason is simple: local governments must spend millions of dollars to recover from disasters at the same time that they lose substantial tax revenue from destroyed or damaged properties. This forces cities and counties to: (a) raise taxes and (b) lower tax incentives to retain existing businesses or recruit new ones. Other counties and states do not suffer from these constraints, so they can offer disaster-located businesses lower taxes and greater incentives to relocate. Thus, at the very time we want to encourage businesses to rebuild and grow in disaster-stricken areas, our tax and economic policy encourages the opposite.

### **What HB 2640 would do**

HB 2640 would fix this problem and encourage business to remain and invest in disaster-stricken cities. HB 2640 would provide a 10% investment tax credit for investments in "a city substantially damaged by disaster" made within three years of that disaster. To ensure that these tax credits are spread among numerous businesses (and to control the cost to the state), the credits are capped at \$100,000 per business per disaster.

To best tailor this tax incentive and lower the cost to the state, while providing the Governor with maximum flexibility to address real disaster-related economic needs, HB 2640 carefully defines the eligible cities. Only a "city substantially damaged by disaster" is eligible. It is defined in HB 2640 as one that is: (a) located within a county declared a federal disaster area by the President **and** (b) declared by the Governor to have suffered from the disaster major damage to real and personal property, displacement or dislocation of residents, significant economic disruption, and significant cost to taxpayers. Thus, even within disaster-stricken counties, only those cities that themselves suffered substantial destruction of housing stock, lost economic activity, and significant expense for local taxpayers would qualify.

HB 2640 so defines eligible cities for two reasons. First, this tax incentive is needed most in local communities whose business, residential, and governmental entities suffered from the disaster, either through direct destruction or loss of tax/business revenue. If a disaster causes wide-scale damage (such as the recent ice storm), but does not cause a prolonged loss of local tax revenue or economic activity, then the investment tax credit is not essential to economic recovery.

Second, HB 2640 is about addressing the 2007 disasters **and** having a system in place to quickly help communities that suffer from the next major disaster to hit Kansas. You will hear testimony today about the importance of having an incentive package in place almost immediately after the disaster to ensure the maximum help for affected communities. If we named only specific cities in this bill, we would help those most deeply harmed by the 2007 disasters, but we would do nothing to better prepare Kansas for tomorrow's storms. Both goals are vital, and both are achieved in HB 2640.

Thank you for your consideration of HB 2640. I look forward to answering your questions and urge your support of this important disaster recovery measure.

With many thanks,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized, somewhat abstract shape.

## Proposed long-term recovery legislation for disaster areas

November 10, 2007

Of the funds set aside by the legislature for disaster response on *sine die*, \$17.5 million remains unused. This proposal from the regional legislative delegations representing the flood-affected areas of Southeast Kansas and the tornado-affected area in Kiowa County proposes to use the remaining disaster-relief funds for long-term recover in the regions as follows:

1. **Housing Development Block Grants:** Jump-starting the construction of new housing is the top long-term priority in the tornado and flood-affected disaster areas. This proposed legislation would establish a new state block grant program for local governments to access when developing new housing projects. The program would provide 90 percent of funding for a qualified project, principally for infrastructure development, with a 10 percent local match. The program would be administered by the Kansas Housing Resources Corporation and would be funded at \$4 million per year from excess lottery proceeds. For the first three years, only communities within the flood-affected or tornado-affected areas would be eligible; after that, the program would be available statewide to address the statewide need for housing development. Fiscal note: \$4 million.

2. **Disaster Recovery Investment Zones:** The long-term drain on a regional economy from a major natural disaster is severe. In addition, very little assistance is available to help businesses to recover from a disaster. To help stimulate a region's economy after a disaster and to provide assistance to businesses seeking to rebuild, this proposed legislation would establish "Disaster Recovery Investment Zones" whenever a major natural disaster occurs and causes significant property damage within a city.

The zones would be established in cities that are in a county declared to be both a federal and state natural disaster area and that are further declared by the governor to have suffered substantial economic damage as a result of that disaster. Each zone would commence at the time of the disaster and would last for three years. During that time, business capital investment made in the region would be eligible for a 10 percent Kansas income tax credit. The credits may be carried forward for up to 10 years but are not refundable or transferable. The maximum credit that any single taxpayer could claim during any three-year period for investing in a disaster recovery investment zone would be \$100,000. Fiscal note: \$7.5 million.

3. **Cash flow in disaster-affected cities and counties:** The local units of government most seriously damaged are facing substantial cash-flow problems as a result of the tornadoes and flood. For example, the City Osawatimie and Montgomery County have both pursued no-fund warrants to deal with flood-

related costs. This proposed legislation would allow the state to pay the interest on bonds issued pursuant to no-fund warrants if the bond proceeds are used to pay costs arising from the disaster. Local units that have received authority from BOTA to issue no-fund warrants under current law would be authorized to further apply to the Adjutant General for authority to have the state pay the interest. Fiscal note: \$500,000.

4. **Demolition assistance:** This legislation would authorize cities and counties in the flood-affected disaster area to request assistance from KDOT and/or the Kansas National Guard to help demolish flood-damaged structures. This is necessary because the actual demolition of many flood-damaged structures will occur months or years from now, long after emergency authority for state assistance has expired. The authority would last for five years. Fiscal note: \$500,000.

5. **Green space redevelopment:** The demolition of houses in flood-affected neighborhoods is going to create the need for new land-use decisions by cities. Most of this land is in flood plains and cannot be redeveloped under requirements of the National Flood Insurance Program. Therefore, there is an anticipated increase in demand for green space. An appropriation of \$1.5 million in fiscal year 2009 will be requested to partially fund the popular Local Government Outdoor Recreation Grant Program and to target those new funds to the affected counties. Fiscal note: \$1.5 million.

6. **Kansas Housing Resources Corporation enhancements:** To help deal with long-term housing needs exacerbated by the tornadoes and floods, an additional \$3.5 million will be requested for the Kansas Housing Resources Corporation in fiscal year 2009. The funds would be used as follows:

A. **Housing loan guarantees:** Legislation would establish a new loan guarantee program to incent developers to build housing in the affected areas. The program is modeled on the new loan guarantee program established in 2007 Senate Bill 11.

B. **Senior housing projects:** The program leverages federal funds through federal tax credits. This program will target seniors and those earning at or below 60% of median income for the state. A family of four earning \$29,800 or below qualify for the program.

C. **Single family mortgage revenue bonds:** Explore possibility of making this program available statewide.

D. **Permanent funding source for Housing Trust Fund.** Work to identify a permanent source of funding for the state's Housing Trust Fund.

## Substitute for HOUSE BILL NO. 2640

By

AN ACT concerning income taxation; relating to credits; capital investments in businesses located in certain cities damaged by a disaster; refunds.

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

Section 1. (a) For tax years 2007, 2008, 2009 and 2010, any taxpayer who makes a capital investment in a business which is located in the city of Chanute, Coffeyville, Erie, Fredonia, Greensburg, Independence, Iola, Neodesha or Osawatomie, Kansas, when such investment is made within three years of the date of the disaster shall be allowed a credit not to exceed 10% of such investment against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The total amount of credit allowed pursuant to this section for any one taxpayer shall not exceed \$100,000. If the amount of the tax credit determined under this section exceeds the income, privilege or premium tax liability for the taxpayer for any taxable year in which the qualified investment is made, the amount thereof which exceeds such tax liability may be carried over for deduction from such taxpayer's income, privilege or premium tax liability in the next succeeding year or years until the total amount of the credit has been deducted from tax liability, except that no such credit shall be carried over for deduction after the 10th taxable year succeeding the taxable year in which the qualified investment was made.

(b) (1) For tax years 2007, 2008, 2009 and 2010, a taxpayer may receive a refund of tax liability in lieu of the credit provided in this act. The refund shall be in an amount up to 50% of the

credit earned by the taxpayer.

(2) A claim for refund shall be made prior to the taxpayer claiming any credit on which the refund is based. Should the taxpayer elect to receive the cash in lieu of the credit, the remaining portion of the tax credit shall be lost. Any refund pursuant to this section shall be allowed against the tax liability imposed under the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, and the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated in the tax year the qualified investment is placed into service. The amount of such refund which exceeds such tax liability shall be refunded to the taxpayer.

(3) The secretary of revenue shall submit an annual report to the legislature detailing taxpayers that have made the election to receive a refund in lieu of the credit. The annual report shall provide the aggregate amount of such refunds. Such report shall be due during the legislative session, commencing with the 2009 legislative session.

(c) Notwithstanding any other provision of law, no taxpayer shall claim more than one credit or refund for the same investment as provided in this section.

(d) As used in this section, "capital investment" means an investment in the construction, equipment, reconstruction, maintenance, repair, enlargement, furnishing or remodeling of real property, and the purchase, lease or repair of tangible personal property. A "capital investment" shall not include inventory or property held for sale in the ordinary course of business.

(e) The secretary of revenue shall adopt rules and regulations to carry out the provisions of this act.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas



register.

# HOUSE BILL No. 2762

By Special Committee on Assessment and Taxation

2-5

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. income tax credits; sales tax refunds for  
certain telecommunications equipment  
 13 and 79-32,141  
 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 the taxable year commencing after December 31, 2007,~~ tax years commencing prior to January 1,  
 18 "business income" means income arising from transactions and activity 2008  
 19 in the regular course of the taxpayer's trade or business and includes  
 20 income from tangible and intangible property if the acquisition, manage-  
 21 ment, and disposition of the property constitute integral parts of the tax-  
 22 payer's regular trade or business operations, except that for taxable years tax  
 23 commencing after December 31, 1995, a taxpayer may elect that all in- 2007  
 24 come constitutes business income. ~~For all taxable years commencing after~~  
 25 ~~December 31, 2006,~~ "business income" means: (1) Income arising from activity  
 26 transactions and activities in the regular course of the taxpayer's trade or tangible and intangible  
 27 business; (2) income arising from transactions and activities involving any election made under this subsection  
 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- tax  
 32 come. ~~The election shall be effective and irrevocable for the taxable year~~  
 33 ~~of the election and the following nine taxable years. The election shall be~~  
 34 binding on all members of a unitary group of corporations. in which the election is made and the  
following nine tax years and  
 35 (b) "Commercial domicile" means the principal place from which the  
 36 trade or business of the taxpayer is directed or managed.  
 37 (c) "Compensation" means wages, salaries, commissions and any  
 38 other form of remuneration paid to employees for personal services.  
 39 (d) "Financial organization" means any bank, trust company, savings  
 40 bank, industrial bank, land bank, safe deposit company, private banker,  
 41 savings and loan association, credit union, cooperative bank, or any type  
 42 of insurance company, but such term shall not be deemed to include any  
 43 business entity, other than those hereinbefore enumerated, whose pri-

1 mary business activity is making consumer loans or purchasing retail in-  
2 stallment contracts from one or more sellers.

3 (e) "Nonbusiness income" means all income other than business  
4 income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2007

1 vidual, which tax shall be computed in accordance with the following tax  
2 schedules:

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

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

8 (2) *All other individuals.*

9 (A) For tax year 1997:

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

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

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

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

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

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

30 (2) ~~(A) for tax year 2008,~~ the surtax shall be in an amount equal to 3%  
31 ~~3.35%~~ of the Kansas taxable income of such corporation in excess of  
32 \$50,000; or

33 ~~(B) for the tax year 2000, and all tax years thereafter, the surtax shall~~ Attachments A, B and C  
34 ~~be in an amount equal to 2.85% of the Kansas taxable income of such~~  
35 ~~corporation in excess of \$50,000.~~

36 (d) *Fiduciaries.* A tax is hereby imposed upon the Kansas taxable  
37 income of estates and trusts at the rates provided in paragraph (2) of  
38 subsection (a) hereof. and 79-32,141

39 Sec. ~~4~~ K.S.A. 79-3285 and K.S.A. 2007 Supp. 79-3271 and 79-32,110 and 79-32,154  
40 are hereby repealed.

41 Sec. ~~5~~ This act shall take effect and be in force from and after its 7  
42 publication in the statute book. 8

Section 4. K.S.A. 79-32,141 is hereby amended to read as follows:

79-32,141 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) Credits claimed under subsection (e) of K.S.A. 2007 Supp. 79-32,160a, and amendments thereto, by a taxpayer that is a member of a unitary group filing a combined report shall be allowed to be claimed by other members of the group included in such combined report, to the extent the credits exceed the tax imposed by the Kansas income tax act on the Kansas taxable income of such taxpayer first claiming the credit. The provisions of this subsection shall be applicable to (1) any taxpayer that is a member of a unitary group that has filed or will file an original return for tax years commencing prior to January 1, 2008 claiming a credit under subsection (e) of K.S.A. 2007 Supp. 79-32,160a, and amendments thereto, which credit exceeded the tax imposed by the Kansas income tax act on the Kansas taxable income of the taxpayer in the unitary group first claiming the credit, (2) any taxpayer that is a member of a unitary group that has requested an informal conference or perfected an appeal in order to sustain such filing position set forth in (2) above, and (3) any taxpayer that is a member of a unitary group for tax years commencing on and after January 1, 2008.

(c) Any refund claimed pursuant to subsection (b) of this section shall be subject to the statute of limitations in subsection (c) of K.S.A. 79-3230, and amendments thereto.

Section 5 K.S.A. 2007 Supp. 79-32,154 is hereby amended to read as follows:

79-32,154:

As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Facility" shall mean any factory, mill, plant, refinery, warehouse, feedlot, building, or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word "building" shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.

(b) "Qualified business facility" shall mean a facility which satisfies the requirements of paragraphs (1) and (2) of this subsection.

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical revenue producing enterprise, as defined in subsection (f), at such facility.

(c) "Revenue producing enterprise" shall mean:

(1) The assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(2) the storage, warehousing, distribution or sale of any products of agriculture, aquaculture, mining or manufacturing;

(3) the feeding of livestock at a feedlot;

(4) the operation of laboratories or other facilities for scientific, agricultural, aquacultural, animal husbandry or industrial research, development or testing;

(5) the performance of services of any type;

(6) the feeding of aquatic plants and animals at an aquaculture operation;

(7) the administrative management of any of the foregoing activities; or

(8) any combination of any of the foregoing activities.

"Revenue producing enterprise" shall not mean a swine production facility as defined in K.S.A. 17-5903, and amendments thereto.

(d) "Qualified business facility employee" shall mean a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed:

(1) A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the qualified business facility on: (A) A regular, full-time basis; (B) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (C) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of qualified business facility employees during any taxable year shall be determined by dividing by 12 the sum of the number of qualified business facility employees on the last business day of each month of such taxable year. If the qualified business facility is in operation for less than the entire taxable year, the number of qualified business facility employees shall be determined by dividing the sum of the number of qualified business facility employees on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment, the number of qualified business facility employees employed in the operation of such facility shall be reduced by the average number, computed as provided in this subsection, of



individuals employed in the operation of the facility during the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(2) For taxable years commencing after December 31, 1997, in the case of a taxpayer claiming a credit against the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, "qualified business employee" shall not mean any person who is employed in the operation of a qualified business facility in the state due to the merger, acquisition or other reconfiguration of the taxpayer unless such employee's position represents a net gain of total positions created by the taxpayer and the employee's position was not in existence at the time of the merger acquisition or other reconfiguration of the taxpayer.

(e) "Qualified business facility investment" shall mean the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, which constitutes the qualified business facility, or which is used by the taxpayer in the operation of the qualified business facility, during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. The value of such property during such taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(2) In the event taxpayer is a member of a unitary group filing a combined report, then qualified business facility employee shall include a person employed by any member of the combined group, provided that such employee was engaged or maintained in employment as a direct result of the investment made by a member of the combined group.

(3)

In the event taxpayer is a member of a unitary group filing a combined report, then qualified business facility investment shall include the investment made by any member of the combined group which results in the engagement or maintaining in employment of the required qualified business facility employees by a member of the combined group except that the provisions of this sentence shall not apply to subsection (e) of K.S.A. 79-32,160a, and amendments thereto.

(f) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility.

(g) "Qualified business facility income" shall mean the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility. If a taxpayer has income derived from the operation of a qualified business facility as well as from other activities conducted within this state, the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility shall be determined by multiplying the taxpayer's Kansas taxable income by a fraction, the numerator of which is the property factor, as defined in paragraph (1), plus the payroll factor, as defined in paragraph (2), and the denominator of which is two. In the case of financial institutions, the property and payroll factors shall be computed utilizing the specific provisions of the apportionment method applicable to financial institutions, if enacted, and the qualified business facility income shall be based upon net income.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in connection with the operation of the qualified business facility during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. The average value of all such property shall be determined as provided in K.S.A. 79-3281 and 79-3282, and amendments thereto.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as qualified business facility employees, as determined under subsection (d), at the qualified business facility, and the denominator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in K.S.A. 79-3283, and amendments thereto.

The formula set forth in this subsection (g) shall not be used for any purpose other than determining the qualified business facility income attributable to a qualified business facility.

(h) "Related taxpayer" shall mean (1) a corporation, partnership, trust or association controlled by the taxpayer; (2) an individual, corporation, partnership, trust or association in control of the taxpayer; or (3) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer. For the purposes of this act, "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at

least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation; "control of a partnership or association" shall mean ownership of at least 80% of the capital or profits interest in such partnership or association; and "control of a trust" shall mean ownership, directly or indirectly, of at least 80% of the beneficial interest in the principal or income of such trust.

(i) "Same or substantially identical revenue producing enterprise" shall mean a revenue producing enterprise in which the products produced or sold, services performed or activities conducted are the same in character and use, are produced, sold, performed or conducted in the same manner and to or for the same type of customers as the products, services or activities produced, sold, performed or conducted in another revenue producing enterprise.

Section 6. (a)(1) Sales tax paid pursuant to K.S.A. 79-3603, and amendments thereto, on the sale of telecommunications machinery and equipment by a person providing services taxable pursuant to subsection (b) of K.S.A. 79-3603, and amendments thereto, shall be refunded as follows:

(A)  $\frac{1}{4}$  of said tax paid by such person on the sale of telecommunications machinery and equipment during the period July 1, 2009 through June 30, 2010 shall be refunded;

(B)  $\frac{1}{2}$  of said tax paid by such person on the sale of telecommunications machinery and equipment during the period July 1, 2010 through June 30, 2011 shall be refunded;

(C)  $\frac{3}{4}$  of said tax paid by such person on the sale of telecommunications machinery and equipment during the period July 1, 2011 through June 30, 2012 shall be refunded; and

(D) all of said tax paid by such person on the sale of telecommunications machinery and equipment on and after July 1, 2012 shall be refunded.

(2) Any claim for refund shall be submitted within one year from the date of payment of the tax. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund the amount of sales tax paid as determined under the provisions of this section. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee. No interest shall be paid on refunds granted pursuant to this section. In no event shall any city or county sales tax paid on the sale of telecommunications machinery and equipment be refunded pursuant to this section. The secretary of revenue is hereby authorized to adopt rules and regulations to administer the provisions of this act.

(b) For purposes of this section, "telecommunication machinery and equipment" means machinery, equipment and network software that is used directly and predominantly for the purpose of sending, receiving or storing voice or data communications and all equipment that is used to enable, facilitate, maintain or monitor such machinery, equipment and network software. "Telecommunications machinery and equipment" includes, but is not limited to: antennas, towers, amplifiers, poles, wires, cables, fiber optic cable, rectifiers, duplexers, triplexers, multiplexers, receivers, repeaters, transmitters, power equipment, modems, routers, storage devices, closures, conduits, controllers, filters, input devices, insulators, microwave equipment, output devices, pedestals, power converters, radio channels, terminals, timing units, transformers, bridges, network computers, cross connects, plug in circuitry, oscillators, network software, servers, power transport equipment, test equipment, connectors, attenuators, circuit switches, analog electronic switches, digital electronic switches and switches for operator assistance.

## Business/Nonbusiness Income Scenarios

FACT SITUATION #1 : Corporation has assets in both Kansas and Missouri.

1. Corporation sells a manufacturing facility **located in Missouri** and realizes a capital gain
2. The sale is an extraordinary event, not in the regular course of the corporation's trade or business

### UNDER CURRENT LAW

- √ Missouri applies the functional test to treat the gain as business income and taxes an apportioned share of the gain
- √ Without the functional test, Kansas treats the gain as nonbusiness income and imposes no tax, since the facility is located in Missouri
- √ **Result:** Kansas does not tax the gain; Missouri taxes an apportioned share of the gain; corporation pays tax on less than 100% of the gain and the remainder escapes taxation as "nowhere income"
- √ Unlikely that taxpayer would **elect** to treat as business income.

### IF KANSAS ADOPTS THE FUNCTIONAL TEST

- √ Both Kansas and Missouri treat the gain as business income and each state taxes an apportioned share of the gain
- √ **Result:** Corporation pays tax on 100% of the gain
- √ **Election** would not benefit taxpayer

FACT SITUATION #2 Corporation has assets in both Kansas and Missouri.

1. Corporation sells a manufacturing facility **located in Kansas** and realizes a taxable gain
2. The sale is an extraordinary event, not in the regular course of the corporation's trade or business

### UNDER CURRENT LAW

- √ Missouri applies the functional test to treat the gain as business income and taxes an apportioned share of the gain
- √ Without the functional test, Kansas treats the gain as nonbusiness income and taxes 100% of the gain, since the facility is located in Kansas
- √ **Result:** Kansas taxes all of the gain; Missouri taxes an apportioned share of the gain; corporation pays tax on more than 100% of the gain
- √ **If Corporation makes election to treat all income as business income:** Election would benefit taxpayer but lasts for 10 years. Both Kansas and Missouri treat the gain as business income and each state taxes an apportioned share of the gain. **Result:** Corporation pays tax on 100% of the gain

#### IF KANSAS ADOPTS THE FUNCTIONAL TEST

- √ Both Kansas and Missouri treat the gain as business income and each state taxes an apportioned share of the gain
- √ **Result:** Corporation pays tax on 100% of the gain
- √ **Election** would not benefit taxpayer

#### HOW THE ELECTION WORKS UNDER CURRENT LAW

Corporation elects to treat business sale as business income. The election is in effect for the year of the election and the following nine taxable years

1. In year 5 subsequent to the business income election having been made in year 1, the corporation sells a manufacturing facility **located in Missouri** and realizes a capital gain
2. The sale is an extraordinary event, not in the regular course of the corporation's trade or business
3. Missouri applies the functional test to treat the gain as business income and taxes an apportioned share of the gain
4. Without the functional test, Kansas would treat the gain as nonbusiness income and impose no tax
5. With the business income election in effect, however, the gain on the sale of the Missouri facility is treated as business income
6. Both Kansas and Missouri treat the gain as business income and each state taxes an apportioned share of the gain
7. **Result:** Corporation pays tax on 100% of the gain

#### HOW THIS WOULD CHANGE IF THE ELECTION IS MADE ANNUALLY WITHOUT THE FUNCTIONAL TEST:

1. In year 5 subsequent to the business income election having been made in year 1, the corporation sells a manufacturing facility **located in Missouri** and realizes a capital gain
2. The sale is an extraordinary event, not in the regular course of the corporation's trade or business
3. Missouri applies the functional test to treat the gain as business income and taxes an apportioned share of the gain
4. With neither the functional test nor the business income election in effect, Kansas would treat the gain as nonbusiness income and impose no tax, since the plant is located in Missouri
5. Unlike year 1, the corporation has no incentive to make the Kansas business income election so gain remains classified as nonbusiness income
6. Result: Kansas does not tax the gain; Missouri taxes an apportioned share of the gain; corporation pays tax on less than 100% of the gain and the remainder escapes taxation as "nowhere income"