



January 31, 2023

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Kansas Action for Children  
Written testimony in opposition to HB 2110  
House Committee on Taxation

Chairperson Smith and members of the Committee:

Thank you for the opportunity to provide testimony in opposition to HB 2110, which would allow a single sales factor (SSF) apportionment of business income for certain individuals. Kansas Action for Children is a nonprofit advocacy organization working to make Kansas a place where every child has the opportunity to grow up healthy and thrive. We work across the political spectrum to improve the lives of Kansas children through bipartisan advocacy, partnership, and information-sharing on key issues, including early learning and education, health, and economic security for families.

KAC believes the answers to practical questions about taxes – like how high or low should they be, who should pay and how much, and what should be taxed – flow from strong and equitable principles. These are broadly recognized as the foundation of a system that works. KAC opposes HB 2110 because the bill would not ensure:

- **Adequacy:** An SSF formula usually results in a significant drop in state revenue, which could challenge the state’s ability to maintain adequate funding to meet the state’s needs.
- **Fairness:** An SSF formula would disproportionately favor businesses that have property and employees in Kansas, but little sales.<sup>1</sup> In addition, the bill only allows certain types of industry to elect to use the SSF formula. It picks winners and losers on an inconsistent basis for tax responsibility.
- **Simplicity:** Organizations like the Tax Foundation have made clear the complications of shifting to an SSF method. This proposal creates more taxpayer loopholes when Kansas should work to *close* loopholes. The current three-factor apportionment formula balances property, sales, and payroll in the state as the determinants of a multistate corporation’s tax obligations to Kansas. The current method is consistent with the fundamental objective of the corporate income tax, which is to ensure that companies support the state services from which they benefit.

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<sup>1</sup> Institute on Taxation and Economic Policy. “Corporate Income Tax Apportionment and the ‘Single Sales Factor.’” August 1, 2012. <https://itep.org/corporate-income-tax-apportionment-and-the-single-sales-factor/>



The implementation of an elective SSF formula for certain industries would be a step back from fair tax policy for Kansas businesses. Corporations with a substantial physical footprint in the state benefit from Kansas-taxpayer-provided infrastructure, yet SSF ignores that footprint in determining their tax liability. An SSF formula would disproportionately favor businesses that have property and employees in Kansas, but little sales.<sup>2</sup>

A change to an SSF formula does not motivate the creation of jobs. Research<sup>3</sup> has found an SSF formula will not attract manufacturing jobs (one of the industries that would be eligible to use the SSF formula) disproving previous research<sup>4</sup> arguing the opposite. It should not be surprising that the latest statistical research and the actual experience of SSF states does not support the claim that the adoption of this formula boosts in-state investment and job creation. The formula simply provides a tax cut for certain corporations that happen to have a disproportionate share of their property and personnel in a state relative to the share of their sales. The reduced tax responsibility is in no way contingent on their future job-creation behavior. Corporations can benefit from the tax change in perpetuity even if they never create a single new job in Kansas. To create jobs, Kansas needs “a more educated workforce, higher quality infrastructure, and other building blocks of a healthy economy.”<sup>5</sup>

Even within the Tax Foundation’s report to the legislative tax committees in 2020, they consider the merits of the traditional three-factor apportionment to the SSF:

“However, lawmakers should bear in mind the potential revenue consequences of any change in the apportionment formula. (States have undisputed authority to tax businesses with property and payroll in their states, but *under federal law, states lack nexus to tax companies that sell into a state but have no other connections to that state. Therefore, an exclusive focus on sales may generate less revenue, since some companies otherwise captured by that apportionment formula are not, in fact,*

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<sup>2</sup> Institute on Taxation and Economic Policy. “Corporate Income Tax Apportionment and the ‘Single Sales Factor.’” August 1, 2012. <https://itcp.org/corporate-income-tax-apportionment-and-the-single-sales-factor/>

<sup>3</sup> Merriman, David. “A Replication of ‘Coveting Thy Neighbor’s Manufacturing: The Dilemma of State Income Apportionment’ (Journal of Public Economics 2000).” Public Finance Review 43, no. 2 (March 2015): 185–205. <https://doi.org/10.1177/1091142114537892>.

<sup>4</sup> Goolsbee, Austan and Maydew, Edward L., Coveting Thy Neighbor’s Manufacturing: The Dilemma of State Income Apportionment (February 1999). Available at SSRN: <https://ssrn.com/abstract=160535> or <http://dx.doi.org/10.2139/ssrn.160535>

<sup>5</sup> Mazerov, Michael. Center on Budget and Policy Priorities. “Case for ‘Single Sales Factor’ Tax Cut Now Much Weaker.” April 1, 2015. <https://www.cbpp.org/blog/case-for-single-sales-factor-tax-cut-now-much-weaker>



*subject to taxation.)*<sup>6</sup> (italics and bold added)

The Tax Foundation report made clear the complications of shifting to an SSF method. More consideration of corporate income tax aspects like the base rate, surtax rate, and other corporate provisions seemed more pressing. Of all the choices to improve corporate income tax, is the SSF the right choice right now?

While KAC opposes this bill and the use of the SSF formula to determine taxable business income, if the committee decides to move forward with this bill, KAC urges you to consider two amendments.

- **First, this committee should make SSF apportionment mandatory for the industries named in the current bill, not elective.** The elective option is the worst possible choice, which would sharply cut and potentially even eliminate (for manufacturers with only out-of-state customers) tax liability for corporations based here while allowing out-of-state businesses to continue using the current three-factor formula that minimizes their Kansas tax liability.

Elective SSF for manufacturers proved so costly to California that voters approved a ballot measure in 2013 to repeal it two years after it took effect.<sup>7</sup> Out-of-state manufacturing businesses already benefit from a federal law (Public Law 86-272) that exempt them from taxes unless they have a physical presence in the state. If the goal of this bill is to incentivize Kansas job creation, why would we give a tax break to out-of-state businesses that create few (if any) jobs here by allowing them to choose the formula that enable them to pay the lowest tax?

- **Second, the committee should enact provisions to ensure businesses that benefit from SSF are investing in the state, like what Kansas had in place previously.** As you can read in the bill language, businesses were previously only eligible to make an SSF election if they could demonstrate investment like, for example, through construction and paying employees above average wages (starting on pg. 6 of the bill). If the goal of this legislation is to create jobs, the bill language should clarify this expectation as a condition of using SSF. The businesses should only be eligible if they create measurable and significant in-state jobs and investment in the state. While KAC generally does not support tax incentives, we believe targeted tax incentives would be more accountable

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<sup>6</sup> Tax Foundation Report on Kansas Tax Modernization from December 2019: <https://taxfoundation.org/kansas-tax-reform/>

<sup>7</sup> Alan Prohosky, "Revenue Estimates of California's Apportionment Changes," State Tax Notes, August 13, 2018.



and cost-effective than this proposed legislation.

Again, KAC does not support this legislation or the use of an SSF formula. As the bill stands, it serves as an ineffective reduction in corporate tax liability under the belief that corporate tax cuts increase jobs. We urge you to oppose HB 2110. We look forward to working with you to identify better ways to retain and attract jobs and businesses to Kansas, but HB 2110 would fail to do that.

Thank you for the opportunity to share information with you today. Feel free to reach me if you have any questions at [emily@kac.org](mailto:emily@kac.org).