

## Senate Substitute for HOUSE BILL No. 2157

By Committee on Assessment and Taxation

3-15

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1 AN ACT concerning income taxation; relating to apportionment of  
2 business income by certain taxpayers; election thereof; requirements;  
3 amending K.S.A. 2011 Supp. 79-3279 and repealing the existing  
4 section.  
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2011 Supp. 79-3279 is hereby amended to read as  
8 follows: 79-3279. (a) All business income of railroads and interstate motor  
9 carriers of persons or property for-hire shall be apportioned to this state by  
10 multiplying the business income by a fraction, in the case of railroads, the  
11 numerator of which is the freight car miles in this state and the  
12 denominator of which is the freight car miles everywhere, and, in the case  
13 of interstate motor carriers, the numerator of which is the total number of  
14 miles operated in this state and the denominator of which is the total  
15 number of miles operated everywhere.

16 (b) All business income of any other taxpayer shall be apportioned to  
17 this state by one of the following methods:

18 (1) By multiplying the business income by a fraction, the numerator  
19 of which is the property factor plus the payroll factor plus the sales factor,  
20 and the denominator of which is three; or

21 (2) at the election of a qualifying taxpayer, by multiplying the  
22 business income by a fraction, the numerator of which is the property  
23 factor plus the sales factor, and the denominator of which is two.

24 (A) For purposes of this subsection (b)(2), a qualifying taxpayer is  
25 any taxpayer whose payroll factor for a taxable year exceeds 200% of the  
26 average of the property factor and the sales factor. Whenever two or more  
27 corporations are engaged in a unitary business and required to file a  
28 combined report, the fraction comparison provided by this subsection (b)  
29 (2) shall be calculated by using the payroll factor, property factor and sales  
30 factor of the combined group of unitary corporations.

31 (B) An election under this subsection (b)(2) shall be made by  
32 including a statement with the original tax return indicating that the  
33 taxpayer elects to apply the apportionment method under this subsection  
34 (b)(2). The election shall be effective and irrevocable for the taxable year  
35 of the election and the following nine taxable years. The election shall be  
36 binding on all members of a unitary group of corporations.

1 Notwithstanding the above, the secretary of revenue may upon the request  
2 of the taxpayer, grant permission to terminate the election under this  
3 subsection (b)(2) prior to expiration of the ten-year period.

4 (3) At the election of a qualifying telecommunications company, by  
5 multiplying the business income by a fraction, the numerator of which is  
6 the information carrying capacity of wire and fiber optic cable available  
7 for use in this state, and the denominator of which is the information  
8 carrying capacity of wire and fiber optic cable available for use  
9 everywhere during the tax year.

10 (A) For purposes of this subsection (b)(3), a qualifying  
11 telecommunications company is a telecommunications company that is a  
12 qualifying taxpayer under paragraph (A) of subsection (b)(2).

13 (B) A qualifying telecommunications company shall make the  
14 election under this subsection (b)(3) in the same manner as provided under  
15 paragraph (B) of subsection (b)(2).

16 (4) At the election of a distressed area taxpayer, by multiplying the  
17 business income by the sales factor. The election shall be made by  
18 including a statement with the original tax return indicating that the  
19 taxpayer elects to apply this apportionment method. The election may be  
20 made only once, it must be made on or before December 31, 1999 and it  
21 shall be effective for the taxable year of the election and the following nine  
22 taxable years for so long as the taxpayer maintains the payroll amount  
23 prescribed by subsection (j) of K.S.A. 79-3271, and amendments thereto.

24 (5) At the election of the taxpayer made at the time of filing of the  
25 original return, the qualifying business income of any investment funds  
26 service corporation organized as a corporation or S corporation which  
27 maintains its primary headquarters and operations or is a branch facility  
28 that employs at least 100 individuals on a full-time equivalent basis in this  
29 state and has any investment company fund shareholders resided in this  
30 state shall be apportioned to this state as provided in this subsection, as  
31 follows:

32 (A) By multiplying the investment funds service corporation's  
33 qualifying business income from administration, distribution and  
34 management services provided to each investment company by a fraction,  
35 the numerator of which shall be the average of the number of shares  
36 owned by the investment company's fund shareholders resided in this  
37 state at the beginning of and at the end of the investment company's  
38 taxable year that ends with or within the investment funds service  
39 corporation's taxable year, and the denominator of which shall be the  
40 average of the number of shares owned by the investment company's fund  
41 shareholders everywhere at the beginning of and at the end of the  
42 investment company's taxable year that ends with or within the investment  
43 funds service corporation's taxable year.

1 (B) A separate computation shall be made to determine the qualifying  
2 business income from each fund of each investment company. The  
3 qualifying business income from each investment company shall be  
4 multiplied by the fraction calculated pursuant to paragraph (A) for each  
5 fund of such investment company.

6 (C) The qualifying portion of total business income of an investment  
7 funds service corporation shall be determined by multiplying such total  
8 business income by a fraction, the numerator of which is the gross receipts  
9 from the provision of management, distribution and administration  
10 services to or on behalf of an investment company, and the denominator of  
11 which is the gross receipts of the investment funds service company. To  
12 the extent an investment funds service corporation has business income  
13 that is not qualifying business income, such business income shall be  
14 apportioned to this state pursuant to subsection (b)(1).

15 (D) For tax year 2002, the tax liability of an investment funds service  
16 corporation that has elected to apportion its business income pursuant to  
17 paragraph (5) shall be increased by an amount equal to 50% of the  
18 difference of the amount of such tax liability if determined pursuant to  
19 subsection (b)(1) less the amount of such tax liability determined with  
20 regard to paragraph (5).

21 (E) When an investment funds service corporation is part of a unitary  
22 group, the business income of the unitary group attributable to the  
23 investment funds service corporation shall be determined by multiplying  
24 the business income of the unitary group by a fraction, the numerator of  
25 which is the property factor plus the payroll factor plus the sales factor,  
26 and the denominator of which is three. The property factor is a fraction,  
27 the numerator of which is the average value of the investment funds  
28 service corporation's real and tangible personal property owned or rented  
29 and used during the tax period and the denominator of which is the  
30 average value of the unitary group's real and tangible personal property  
31 owned or rented and used during the tax period. The payroll factor is a  
32 fraction, the numerator of which is the total amount paid during the tax  
33 period by the investment funds service corporation for compensation, and  
34 the denominator of which is the total compensation paid by the unitary  
35 group during the tax period. The sales factor is a fraction, the numerator of  
36 which is the total sales of the investment funds service corporation during  
37 the tax period, and the denominator of which is the total sales of the  
38 unitary group during the tax period.

39 (F) A taxpayer seeking to make the election available pursuant to  
40 subsection (b)(5) of K.S.A. 79-3279, and amendments thereto, shall only  
41 be eligible to continue to make such election if the taxpayer maintains at  
42 least 95% of the Kansas employees in existence at the time the taxpayer  
43 first makes such an election.

1 (6) At the election of a qualifying taxpayer, by multiplying such  
2 taxpayer's business income by the sales factor. The election shall be made  
3 by including a statement with the original tax return indicating that the  
4 taxpayer elects to apply this apportionment method. The election may be  
5 made only once and must be made on or before the last day of the taxable  
6 year during which the investment described in paragraph (A) is placed in  
7 service, but not later than December 31, 2009, and it shall be effective for  
8 the taxable year of the election and the following nine taxable years or for  
9 so long as the taxpayer maintains the wage requirements set forth in  
10 paragraph (A). If the qualifying taxpayer is a member of a unitary group of  
11 corporations, all other members of the unitary group doing business within  
12 this state shall apportion their business income to this state pursuant to  
13 subsection (b)(1).

14 (A) For purposes of this subsection, a qualifying taxpayer is any  
15 taxpayer making an investment of \$100,000,000 for construction in  
16 Kansas of a new business facility identified under the North American  
17 industry classification system (NAICS) subsectors of 31-33, as assigned  
18 by the secretary of the department of labor, employing 100 or more new  
19 employees at such facility after July 1, 2007, and prior to December 31,  
20 2009, and meeting the following requirements for paying such employees  
21 higher-than-average wages within the wage region for such facility:

22 (i) The taxpayer's new Kansas business facility with 500 or fewer  
23 full-time equivalent employees will provide an average wage that is above  
24 the average wage paid by all Kansas business facilities that share the same  
25 assigned NAICS category used to develop wage thresholds and that have  
26 reported 500 or fewer employees to the Kansas department of labor on the  
27 quarterly wage reports;

28 (ii) the taxpayer's new Kansas business facility with 500 or fewer  
29 full-time equivalent employees is the sole facility within its assigned  
30 NAICS category that has reported wages for 500 or fewer employees to  
31 the Kansas department of labor on the quarterly wage reports;

32 (iii) the taxpayer's new Kansas business facility with more than 500  
33 full-time equivalent employees will provide an average wage that is above  
34 the average wage paid by all Kansas business facilities that share the same  
35 assigned NAICS category used to develop wage thresholds and that have  
36 reported more than 500 employees to the Kansas department of labor on  
37 the quarterly wage reports;

38 (iv) the taxpayer's new Kansas business facility with more than 500  
39 full-time equivalent employees is the sole facility within its assigned  
40 NAICS category that has reported wages for more than 500 employees to  
41 the Kansas department of labor on the quarterly wage reports, in which  
42 event it shall either provide an average wage that is above the average  
43 wage paid by all Kansas business facilities that share the same assigned

1 NAICS category and that have reported wages for 500 or fewer employees  
2 to the Kansas department of labor on the quarterly wage reports, or be the  
3 sole Kansas business facility within its assigned NAICS category that has  
4 reported wages to the Kansas department of labor on the quarterly wage  
5 reports;

6 (v) the number of NAICS digits to use in developing each set of wage  
7 thresholds for comparison purposes shall be determined by the secretary of  
8 commerce;

9 (vi) the composition of wage regions used in connection with each set  
10 of wage thresholds shall be determined by the secretary of commerce; and

11 (vii) alternatively, a taxpayer may wage-qualify its new Kansas  
12 business facility if, after excluding the headcount and wages reported on  
13 the quarterly wage reports to the Kansas department of labor for  
14 employees at that new Kansas business facility who own ~~five percent~~ 5%  
15 or more equity in the taxpayer, the average wage calculated for the  
16 taxpayer's new Kansas business facility is greater than or equal to 1.5  
17 times the aggregate state-wide average wage paid by industries covered by  
18 the employment security law based on data maintained by the secretary of  
19 labor.

20 (B) For the purposes of the wage requirements in paragraph (A), the  
21 number of full-time equivalent employees shall be determined by dividing  
22 the number of hours worked by part-time employees during the pertinent  
23 measurement interval by an amount equal to the corresponding multiple of  
24 a 40-hour work week and adding the quotient to the average number of  
25 full-time employees.

26 (C) When the qualifying taxpayer is part of a unitary group, the  
27 business income of the unitary group attributable to the qualifying  
28 taxpayer shall be determined by multiplying the business income of the  
29 unitary group by a fraction, the numerator of which is the property factor  
30 plus the payroll factor plus the sales factor, and the denominator of which  
31 is three. The property factor is a fraction, the numerator of which is the  
32 average value of the qualifying taxpayer's real and tangible personal  
33 property owned or rented and used during the tax period and the  
34 denominator of which is the average value of the unitary group's real and  
35 tangible personal property owned or rented and used during the tax period.  
36 The payroll factor is a fraction, the numerator of which is the total amount  
37 paid during the tax period by the qualifying taxpayer for compensation,  
38 and the denominator of which is the total compensation paid by the unitary  
39 group during the tax period. The sales factor is a fraction, the numerator of  
40 which is the total sales of the qualifying taxpayer during the tax period,  
41 and the denominator of which is the total sales of the unitary group during  
42 the tax period.

43 (D) For purposes of this subsection, the secretary of revenue, upon a

1 showing of good cause and after receiving a certification by the secretary  
2 of commerce of substantial compliance with provisions of this subsection  
3 (b)(6), may extend any required performance date provided in this  
4 subsection (b)(6) for a period not to exceed six months.

5 (7) (A) *For taxable years commencing after December 31, 2012, at*  
6 *the election of a taxpayer who relocates such taxpayer's business activities*  
7 *and at least 10 or more full-time equivalent employees to a facility, office*  
8 *or other operation in Kansas by multiplying such taxpayer's business*  
9 *income by the sales factor. For purposes of this subsection, a taxpayer*  
10 *eligible for such election had no employees nor owned or rented real or*  
11 *tangible personal property in Kansas before January 1, 2013. Such*  
12 *election shall be available for the year the election is made and for each of*  
13 *the following nine taxable years, provided the number of full-time*  
14 *equivalent employees engaged or maintained in employment at the Kansas*  
15 *facility, office or operation equals or exceeds 10 during each taxable year*  
16 *in which the election is in effect. The election shall no longer be in effect*  
17 *in the event the number of full-time equivalent employees engaged or*  
18 *maintained in employment at the Kansas facility, office or operation does*  
19 *not equal or exceed 10 during any taxable year of the election period.*

20 (B) *As used in this subsection, "full-time equivalent employee" means*  
21 *a person employed by the taxpayer at the Kansas facility, office or*  
22 *operation during the taxable year when the election is in effect. A person*  
23 *shall be deemed to be so engaged if such person performs duties in*  
24 *connection with the Kansas facility, office or operation on a: (i) Regular;*  
25 *full-time basis; (ii) part-time basis, if such person is customarily*  
26 *performing such duties at least 20 hours per week throughout the taxable*  
27 *year; or (iii) a seasonal basis, if such person performs such duties for*  
28 *substantially all of the season customary for the position in which such*  
29 *person is employed. The number of full-time equivalent employees during*  
30 *any taxable year shall be determined by dividing by 12 the sum of the*  
31 *number of full-time equivalent employees on the last business day of each*  
32 *month of such taxable year. If the Kansas facility, office or operation is in*  
33 *operation for less than the entire taxable year, the number of full-time*  
34 *equivalent employees shall be determined by dividing the sum of the*  
35 *number of full-time equivalent employees on the last business day of each*  
36 *full calendar month during the portion of such taxable year during which*  
37 *the Kansas facility, office or operation was in operation by the number of*  
38 *full calendar months during such period.*

39 (C) *The election shall be made by including a statement with the*  
40 *original tax return indicating that the taxpayer elects to apply this*  
41 *apportionment method. The election may be made only once and shall be*  
42 *effective for the taxable year of the election and the following nine taxable*  
43 *years. A taxpayer who makes an election pursuant to this subsection shall*

1 *not be eligible to claim an income tax credit pursuant to the provisions of*  
2 *subsection (e) of K.S.A. 79-32,160a nor 79-32,266, and amendments*  
3 *thereto, nor any benefit pursuant to the provisions of K.S.A. 74-50,210 et*  
4 *seq., and amendments thereto. A taxpayer that relocates such taxpayer's*  
5 *business activities to Kansas through a merger or acquisition with a*  
6 *company which employed employees or owned or rented real and tangible*  
7 *personal property in Kansas before January 1, 2013 is not eligible for*  
8 *election.*

9 *(D) The department shall have authority to promulgate rules and*  
10 *regulations necessary to implement the provisions of this act.*

11 Sec. 2. K.S.A. 2011 Supp. 79-3279 is hereby repealed.

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