

**HOUSE BILL No. 2212**

By Committee on Taxation

2-8

1 AN ACT concerning the multistate tax compact; relating to the  
2 apportionment of corporate income; election; amending K.S.A. 79-  
3 4301 and 79-4302 and repealing the existing sections.  
4

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

6 New Section 1. No taxpayer may file an amended return for any  
7 taxable year commencing after December 31, 2007, and ending before  
8 January 1, 2019, that: (1) Claims an election under Article III of the  
9 multistate tax compact; (2) treats sales in a manner that is inconsistent with  
10 K.S.A. 79-3271(h) and 79-3285, as amended by chapter 182 of the 2008  
11 Session Laws of Kansas; or (3) treats business income in a manner that is  
12 inconsistent with K.S.A. 79-3271(a), as amended by chapter 182 of the  
13 2008 Session Laws of Kansas.

14 Sec. 2. K.S.A. 79-4301 is hereby amended to read as follows: 79-  
15 4301. "The multistate tax compact" is hereby enacted into law and entered  
16 into with all jurisdictions legally joining therein, in the form substantially  
17 as follows:

18 **MULTISTATE TAX COMPACT**

19 **ARTICLE I.—Purposes**

20 The purposes of this compact are to:

21 (1) Facilitate proper determination of state and local tax liability of  
22 multistate taxpayers, including the equitable apportionment of tax bases  
23 and settlement of apportionment disputes.

24 (2) Promote uniformity or compatibility in significant components of  
25 tax systems.

26 (3) Facilitate taxpayer convenience and compliance in the filing of  
27 tax returns and in other phases of tax administration.

28 (4) Avoid duplicative taxation.

29 **ARTICLE II.—Definitions**

30 As used in this compact:

31 (1) "State" means a state of the United States, the District of  
32 Columbia, the Commonwealth of Puerto Rico, or any territory or  
33 possession of the United States.

34 (2) "Subdivision" means any governmental unit or special district of a  
35 state.

36 (3) "Taxpayer" means any corporation, partnership, firm, association,

1 governmental unit or agency or person acting as a business entity in more  
2 than one state.

3 (4) "Income tax" means a tax imposed on or measured by net income  
4 including any tax imposed on or measured by an amount arrived at by  
5 deducting expenses from gross income, one or more forms of which  
6 expenses are not specifically and directly related to particular transactions.

7 (5) "Capital stock tax" means a tax measured in any way by the  
8 capital of a corporation considered in its entirety.

9 (6) "Gross receipts tax" means a tax, other than a sales tax, which is  
10 imposed on or measured by the gross volume of business, in terms of gross  
11 receipts or in other terms, and in the determination of which no deduction  
12 is allowed which would constitute the tax an income tax.

13 (7) "Sales tax" means a tax imposed with respect to the transfer for a  
14 consideration of ownership, possession or custody of tangible personal  
15 property or the rendering of services measured by the price of the tangible  
16 personal property transferred or services rendered and which is required by  
17 state or local law to be separately stated from the sales price by the seller,  
18 or which is customarily separately stated from the sales price, but does not  
19 include a tax imposed exclusively on the sale of a specifically identified  
20 commodity or article or class of commodities or articles.

21 (8) "Use tax" means a nonrecurring tax, other than a sales tax, which  
22 (a) is imposed on or with respect to the exercise or enjoyment of any right  
23 or power over tangible personal property incident to the ownership,  
24 possession or custody of that property or the leasing of that property from  
25 another including any consumption, keeping, retention, or other use of  
26 tangible personal property and (b) is complimentary to a sales tax.

27 (9) "Tax" means an income tax, capital stock tax, gross receipts tax,  
28 sales tax, use tax, and any other tax which has a multistate impact, except  
29 that the provisions of articles III, IV and V of this compact shall apply only  
30 to the taxes specifically designated therein and the provisions of article IX  
31 of this compact shall apply only in respect to determinations pursuant to  
32 article IV.

### 33 ARTICLE III.—Elements of Income Tax Laws

34 (1) ~~*Taxpayer option, state and local taxes.* Any taxpayer subject to an~~  
35 ~~income tax whose income is subject to apportionment and allocation for~~  
36 ~~tax purposes pursuant to the laws of a party state or pursuant to the laws of~~  
37 ~~subdivisions in two or more party states may elect to apportion and~~  
38 ~~allocate his income in the manner provided by the laws of such state or by~~  
39 ~~the laws of such states and subdivisions without reference to this compact,~~  
40 ~~or may elect to apportion and allocate in accordance with article IV. This~~  
41 ~~election for any tax year may be made in all party states or subdivisions~~  
42 ~~thereof or in any one or more of the party states or subdivisions thereof~~  
43 ~~without reference to the election made in the others. For the purposes of~~

1 ~~this paragraph, taxes imposed by subdivisions shall be considered~~  
 2 ~~separately from state taxes and the apportionment and allocation also may~~  
 3 ~~be applied to the entire tax base. In no instance wherein article IV is~~  
 4 ~~employed for all subdivisions of a state may the sum of all apportionments~~  
 5 ~~and allocations to subdivisions within a state be greater than the~~  
 6 ~~apportionment and allocation that would be assignable to that state if the~~  
 7 ~~apportionment or allocation were being made with respect to a state~~  
 8 ~~income tax.~~

9 ~~(2)~~—*Taxpayer option, short form.* Each party state or any subdivision  
 10 thereof which imposes an income tax shall provide by law that any  
 11 taxpayer required to file a return, whose only activities within the taxing  
 12 jurisdiction consist of sales and do not include owning or renting real  
 13 estate or tangible personal property, and whose dollar volume of gross  
 14 sales made during the tax year within the state or subdivision, as the case  
 15 may be, is not in excess of \$100,000 may elect to report and pay any tax  
 16 due on the basis of a percentage of such volume, and shall adopt rates  
 17 which shall produce a tax which reasonably approximates the tax  
 18 otherwise due. The multistate tax commission, not more than once in five  
 19 years, may adjust the \$100,000 figure in order to reflect such changes as  
 20 may occur in the real value of the dollar, and such adjusted figure, upon  
 21 adoption by the commission, shall replace the \$100,000 figure specifically  
 22 provided herein. Each party state and subdivision thereof may make the  
 23 same election available to taxpayers additional to those specified in this  
 24 paragraph.

25 ~~(3)~~(2) *Coverage.* Nothing in this article relates to the reporting or  
 26 payment of any tax other than in income tax.

#### 27 ARTICLE IV.—Division of Income

28 (1) As used in this article, unless the context otherwise requires:

29 (a) ~~"Business income" means income arising from transactions and~~  
 30 ~~activity in the regular course of the taxpayer's trade or business and~~  
 31 ~~includes income from tangible and intangible property if the acquisition,~~  
 32 ~~management, and disposition of the property constitute integral parts of the~~  
 33 ~~taxpayer's regular trade or business operations"~~*Business income" means:*  
 34 *(1) Income arising from transactions and activity in the regular course of*  
 35 *the taxpayer's trade or business; (2) income arising from transactions and*  
 36 *activity involving tangible and intangible property or assets used in the*  
 37 *operation of the taxpayer's trade or business; or (3) income of the*  
 38 *taxpayer that may be apportioned to this state under the provisions of the*  
 39 *constitution of the United States and laws thereof, except that a taxpayer*  
 40 *may elect that all income constitutes business income. Any election made*  
 41 *under this subsection shall be effective and irrevocable for the tax year in*  
 42 *which the election is made and the following nine tax years and shall be*  
 43 *binding on all members of a unitary group of corporations.*

1 (b) "Commercial domicile" means the principal place from which the  
2 trade or business of the taxpayer is directed or managed.

3 (c) "Compensation" means wages, salaries, commissions and any  
4 other form of remuneration paid to employees for personal services.

5 (d) "Financial organization" means any bank, trust company, savings  
6 bank, industrial bank, land bank, safe deposit company, private banker,  
7 savings and loan association, credit union, cooperative bank, small loan  
8 company, sales finance company, investment company, or any type of  
9 insurance company.

10 (e) "Nonbusiness income" means all income other than business  
11 income.

12 (f) "Public utility" means any business entity (1) which owns or  
13 operates any plant, equipment, property, franchise, or license for the  
14 transmission of communications, transportation of goods or persons,  
15 except by pipeline, or the production, transmission, sale, delivery, or  
16 furnishing of electricity, water or steam; and (2) whose rates of charges for  
17 goods or services have been established or approved by a federal, state or  
18 local government or governmental agency.

19 (g) "Sales" means all gross receipts of the taxpayer not allocated  
20 under paragraphs of this article. *In the case of sales of business assets,*  
21 *other than sales of tangible personal property sold in the ordinary course*  
22 *of the taxpayer's trade or business, only the net gain from such sales shall*  
23 *be included in the sales factor.*

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

28 (i) "This state" means the state in which the relevant tax return is filed  
29 or, in the case of application of this article to the apportionment and  
30 allocation of income for local tax purposes, the subdivision or local taxing  
31 district in which the relevant tax return is filed.

32 (2) Any taxpayer having income from business activity which is  
33 taxable both within and without this state, other than activity as a financial  
34 organization or public utility or the rendering of purely personal services  
35 by an individual, shall allocate and apportion his net income as provided in  
36 this article. If a taxpayer has income from business activity as a public  
37 utility but derives the greater percentage of his income from activities  
38 subject to this article, the taxpayer may elect to allocate and apportion his  
39 entire net income as provided in this article.

40 (3) For purposes of allocation and apportionment of income under  
41 this article, a taxpayer is taxable in another state if (1) in that state he is  
42 subject to a net income tax, a franchise tax measured by net income, a  
43 franchise tax for the privilege of doing business, or a corporate stock tax,

1 or (2) that state has jurisdiction to subject the taxpayer to a net income tax  
2 regardless of whether, in fact, the state does or does not.

3 (4) Rents and royalties from real or tangible personal property, capital  
4 gains, interest, dividends or patent or copyright royalties, to the extent that  
5 they constitute nonbusiness income, shall be allocated as provided in  
6 paragraphs 5 through 8 of this article. *Allocable nonbusiness income shall*  
7 *be limited to the total nonbusiness income received that is in excess of any*  
8 *related expenses that have been allowed as a deduction during the income*  
9 *year.*

10 (5) (a) Net rents and royalties from real property located in this state  
11 are allocable to this state.

12 (b) Net rents and royalties from tangible personal property are  
13 allocable to this state: (1) If and to the extent that the property is utilized in  
14 this state, or (2) in their entirety if the taxpayer's commercial domicile is in  
15 this state and the taxpayer is not organized under the laws of or taxable in  
16 the state in which the property is utilized.

17 (c) The extent of utilization of tangible personal property in a state is  
18 determined by multiplying the rents and royalties by a fraction, the  
19 numerator of which is the number of days of physical location of the  
20 property in the state during the rental or royalty period in the taxable year  
21 and the denominator of which is the number of days of physical location of  
22 the property everywhere during all rental or royalty periods in the taxable  
23 year. If the physical location of the property during the rental or royalty  
24 period is unknown or unascertainable by the taxpayer, tangible personal  
25 property is utilized in the state in which the property was located at the  
26 time the rental or royalty payer obtained possession.

27 (6) (a) Capital gains and losses from sales of real property located in  
28 this state are allocable to this state.

29 (b) Capital gains and losses from sales of tangible personal property  
30 are allocable to this state if (1) the property had a situs in this state at the  
31 time of the sale, or (2) the taxpayer's commercial domicile is in this state  
32 and the taxpayer is not taxable in the state in which the property had a  
33 situs.

34 (c) Capital gains and losses from sales of intangible personal property  
35 are allocable to this state if the taxpayer's commercial domicile is in this  
36 state.

37 (7) Interest and dividends are allocable to this state if the taxpayer's  
38 commercial domicile is in this state.

39 (8) (a) Patent and copyright royalties are allocable to this state: (1) If  
40 and to the extent that the patent or copyright is utilized by the payer in this  
41 state, or (2) if and to the extent that the patent copyright is utilized by the  
42 payer in a state in which the taxpayer is not taxable and the taxpayer's  
43 commercial domicile is in this state.

1 (b) A patent is utilized in a state to the extent that it is employed in  
2 production, fabrication, manufacturing, or other processing in the state or  
3 to the extent that a patented product is produced in the state. If the basis of  
4 receipts from patent royalties does not permit allocation to states or if the  
5 accounting procedures do not reflect states of utilization, the patent is  
6 utilized in the state in which the taxpayer's commercial domicile is located.

7 (c) A copyright is utilized in a state to the extent that printing or other  
8 publication originates in the state. If the basis of receipts from copyright  
9 royalties does not permit allocation to states or if the accounting  
10 procedures do not reflect states of utilization, the copyright is utilized in  
11 the state in which the taxpayer's commercial domicile is located.

12 (9) All business income shall be apportioned to this state by  
13 multiplying the income by a fraction, the numerator of which is the  
14 property factor plus the payroll factor plus the sales factor, and the  
15 denominator of which is three.

16 (10) The property factor is a fraction, the numerator of which is the  
17 average value of the taxpayer's real and tangible personal property owned  
18 or rented and used in this state during the tax period and the denominator  
19 of which is the average value of all the taxpayer's real and tangible  
20 personal property owned or rented and used during the tax period.

21 (11) Property owned by the taxpayer is valued at its original cost.  
22 Property rented by the taxpayer is valued at eight times the net annual  
23 rental rate. Net annual rental rate is the annual rental rate paid by the  
24 taxpayer less any annual rental rate received by the taxpayer from  
25 subrentals.

26 (12) The average value of property shall be determined by averaging  
27 the values at the beginning and ending of the tax period but the tax  
28 administrator may require the averaging of monthly values during the tax  
29 period if reasonably required to reflect properly the average value of the  
30 taxpayer's property.

31 (13) The payroll factor is a fraction, the numerator of which is the  
32 total amount paid in this state during the tax period by the taxpayer for  
33 compensation and the denominator of which is the total compensation paid  
34 everywhere during the tax period.

35 (14) Compensation is paid in this state if:

36 (a) The individual's service is performed entirely within the state;

37 (b) The individual's service is performed both within and without the  
38 state, but the service performed without the state is incidental to the  
39 individual's service within the state; or

40 (c) Some of the service is performed in the state and (1) the base of  
41 operations or, if there is no base of operations, the place from which the  
42 service is directed or controlled is in the state, or (2) the base of operations  
43 or the place from which the service is directed or controlled is not in any

1 state in which some part of the service is performed, but the individual's  
2 residence is in this state.

3 (15) The sales factor is a fraction, the numerator of which is the total  
4 sales of the taxpayer in this state during the tax period, and the  
5 denominator of which is the total sales of the taxpayer everywhere during  
6 the tax period.

7 (16) Sales of tangible personal property are in this state if:

8 (a) The property is delivered or shipped to a purchaser, other than the  
9 United States government, within this state regardless of the f.o.b. point or  
10 other conditions of the sale; or

11 (b) The property is shipped from an office, store, warehouse, factory,  
12 or other place of storage in this state and (1) the purchaser is the United  
13 States government or (2) the taxpayer is not taxable in the state of the  
14 purchaser.

15 (17) Sales, other than sales of tangible personal property, are in this  
16 state if:

17 (a) The income-producing activity is performed in this state; or

18 (b) The income-producing activity is performed both in and outside  
19 this state and a greater proportion of the income-producing activity is  
20 performed in this state than in any other state, based on costs of  
21 performance.

22 (18) If the allocation and apportionment provisions of this article do  
23 not fairly represent the extent of the taxpayer's business activity in this  
24 state, the taxpayer may petition for or the tax administrator may require, in  
25 respect to all or any part of the taxpayer's business activity, if reasonable:

26 (a) Separate accounting;

27 (b) The exclusion of any one or more of the factors;

28 (c) The inclusion of one or more additional factors which will fairly  
29 represent the taxpayer's business activity in this state; or

30 (d) The employment of any other method to effectuate an equitable  
31 allocation and apportionment of the taxpayer's income.

#### 32 ARTICLE V.—Elements of Sales and Use Tax Laws

33 (1) *Tax credit.* Each purchaser liable for a use tax on tangible personal  
34 property shall be entitled to full credit for the combined amount or  
35 amounts of legally imposed sales or use taxes paid by him with respect to  
36 the same property to another state and any subdivision thereof. The credit  
37 shall be applied first against the amount of any use tax due the state, and  
38 any unused portion of the credit shall then be applied against the amount  
39 of any use tax due a subdivision.

40 (2) *Exemption certificates, vendors may rely.* Whenever a vendor  
41 receives and accepts in good faith from a purchaser a resale or other  
42 exemption certificate or other written evidence of exemption authorized by  
43 the appropriate state or subdivision taxing authority, the vendor shall be

1 relieved of liability for a sales or use tax with respect to the transaction.

2 ARTICLE VI.—The Commission

3 (1) *Organization and management.* (a) The multistate tax commission  
4 is hereby established. It shall be composed of one "member" from each  
5 party state who shall be the head of the state agency charged with the  
6 administration of the types of taxes to which this compact applies. If there  
7 is more than one such agency the state shall provide by law for the  
8 selection of the commission member from the heads of the relevant  
9 agencies. State law may provide that a member of the commission be  
10 represented by an alternate but only if there is on file with the commission  
11 written notification of the designation and identity of the alternate. The  
12 attorney general of each party state or his designee, or other counsel if the  
13 laws of the party state specifically provide, shall be entitled to attend the  
14 meetings of the commission, but shall not vote. Such attorneys general,  
15 designees, or other counsel shall receive all notices of meetings required  
16 under paragraph (1) (e) of this article.

17 (b) Each party state shall provide by law for the selection of  
18 representatives from its subdivisions affected by this compact to consult  
19 with the commission member from that state.

20 (c) Each member shall be entitled to one vote. The commission shall  
21 not act unless a majority of the members are present, and no action shall be  
22 binding unless approved by a majority of the total number of members.

23 (d) The commission shall adopt an official seal to be used as it may  
24 provide.

25 (e) The commission shall hold an annual meeting and such other  
26 regular meetings as its bylaws may provide and such special meetings as  
27 its executive committee may determine. The commission bylaws shall  
28 specify the dates of the annual and any other regular meetings, and shall  
29 provide for the giving of notice of annual, regular and special meetings.  
30 Notices of special meetings shall include the reasons therefor and an  
31 agenda of the items to be considered.

32 (f) The commission shall elect annually, from among its members, a  
33 chairman, a vice-chairman and a treasurer. The commission shall appoint  
34 an executive director who shall serve at its pleasure, and it shall fix his  
35 duties and compensation. The executive director shall be secretary of the  
36 commission. The commission shall make provision for the bonding of  
37 such of its officers and employees as it may deem appropriate.

38 (g) Irrespective of the civil service, personnel or other merit system  
39 laws of any party state, the executive director shall appoint or discharge  
40 such personnel as may be necessary for the performance of the functions  
41 of the commission and shall fix their duties and compensation. The  
42 commission bylaws shall provide for personnel policies and programs.

43 (h) The commission may borrow, accept or contract for the services



1 of personnel from any state, the United States, or any other governmental  
2 entity.

3 (i) The commission may accept for any of its purposes and functions  
4 any and all donations and grants of money, equipment, supplies, materials  
5 and services, conditional or otherwise, from any governmental entity, and  
6 may utilize and dispose of the same.

7 (j) The commission may establish one or more offices for the  
8 transacting of its business.

9 (k) The commission shall adopt bylaws for the conduct of its  
10 business. The commission shall publish its bylaws in convenient form, and  
11 shall file a copy of the bylaws and any amendments thereto with the  
12 appropriate agency or officer in each of the party states.

13 (l) The commission annually shall make to the governor and  
14 legislature of each party state a report covering its activities for the  
15 preceding year. Any donation or grant accepted by the commission or  
16 services borrowed shall be reported in the annual report of the  
17 commission, and shall include the nature, amount and conditions, if any, of  
18 the donation, gift, grant or services borrowed and the identity of the donor  
19 or lender. The commission may make additional reports as it may deem  
20 desirable.

21 (2) *Committees.* (a) To assist in the conduct of its business when the  
22 full commission is not meeting, the commission shall have an executive  
23 committee of seven members, including the chairman, vice-chairman,  
24 treasurer and four other members elected annually by the commission. The  
25 executive committee, subject to the provisions of this compact and  
26 consistent with the policies of the commission, shall function as provided  
27 in the laws of the commission.

28 (b) The commission may establish advisory and technical  
29 committees, membership on which may include private persons and public  
30 officials, in furthering any of its activities. Such committees may consider  
31 any matter of concern to the commission, including problems of special  
32 interest to any party state and problems dealing with particular types of  
33 taxes.

34 (c) The commission may establish such additional committees as its  
35 bylaws may provide.

36 (3) *Powers.* In addition to powers conferred elsewhere in this  
37 compact, the commission shall have power to:

38 (a) Study state and local tax systems and particular types of state and  
39 local taxes.

40 (b) Develop and recommend proposals for an increase in uniformity  
41 or compatibility of state and local tax laws with a view toward  
42 encouraging the simplification and improvement of state and local tax law  
43 and administration.

1 (c) Compile and publish information as in its judgment would assist  
2 the party states in implementation of the compact and taxpayers in  
3 complying with state and local tax laws.

4 (d) Do all things necessary and incidental to the administration of its  
5 functions pursuant to this compact.

6 (4) *Finance.* (a) The commission shall submit to the governor or  
7 designated officer or officers of each party state a budget of its estimated  
8 expenditures for such period as may be required by the laws of that state  
9 for presentation to the legislature thereof.

10 (b) Each of the commission's budget of estimated expenditures shall  
11 contain specific recommendations of the amounts to be appropriated by  
12 each of the party states. The total amount of appropriations requested  
13 under any such budget shall be apportioned among the party states as  
14 follows: One-tenth in equal shares; and the remainder in proportion of the  
15 amount of revenue collected by each party state and its subdivisions from  
16 income taxes, capital stock taxes, gross receipts taxes, sales and use taxes.  
17 In determining such amounts, the commission shall employ such available  
18 public sources of information as, in its judgment, present the most  
19 equitable and accurate comparisons among the party states. Each of the  
20 commission's budgets of estimated expenditures and requests for  
21 appropriations shall indicate the sources used in obtaining information  
22 employed in applying the formula contained in this paragraph.

23 (c) The commission shall not pledge the credit of any party state. The  
24 commission may meet any of its obligations in whole or in part with funds  
25 available to it under paragraph (1) (i) of this article: *Provided*, That the  
26 commission takes specific action setting aside such funds prior to  
27 incurring any obligation to be met in whole or in part in such manner.  
28 Except where the commission makes use of funds available to it under  
29 paragraph (1) (i), the commission shall not incur any obligation prior to the  
30 allotment of funds by the party states adequate to meet the same.

31 (d) The commission shall keep accurate accounts of all receipts and  
32 disbursements. The receipts and disbursements of the commission shall be  
33 subject to the audit and accounting procedures established under its  
34 bylaws. All receipts and disbursements of funds handled by the  
35 commission shall be audited yearly by a certified or licensed public  
36 accountant and the report of the audit shall be included in and become part  
37 of the annual report of the commission.

38 (e) The accounts of the commission shall be open at any reasonable  
39 time for inspection by duly constituted officers of the party states and by  
40 any persons authorized by the commission.

41 (f) Nothing contained in this article shall be construed to prevent  
42 commission compliance with laws relating to audit or inspection of  
43 accounts by or on behalf of any government contributing to the support of

1 the commission.

2 ARTICLE VII.—Uniform Regulations and Forms

3 (1) Whenever any two or more party states, or subdivisions of party  
4 states, have uniform or similar provisions of law relating to an income tax,  
5 capital stock tax, gross receipts tax, sales or use tax, the commission may  
6 adopt uniform regulations for any phase of the administration of such law,  
7 including assertion of jurisdiction to tax, or prescribing uniform tax forms.  
8 The commission may also act with respect to the provisions of article IV  
9 of this compact.

10 (2) Prior to the adoption of any regulation, the commission shall:

11 (a) As provided in its bylaws, hold at least one public hearing on due  
12 notice to all affected party states and subdivisions thereof and to all  
13 taxpayers and other persons who have made timely request of the  
14 commission for advance notice of its regulation-making proceedings.

15 (b) Afford all affected party states and subdivisions and interested  
16 persons an opportunity to submit relevant written data and views, which  
17 shall be considered fully by the commission.

18 (3) The commission shall submit any regulations adopted by it to the  
19 appropriate officials of all party states and subdivisions to which they  
20 might apply. Each such state and subdivision shall consider any such  
21 regulation for adoption in accordance with its own laws and procedures.

22 ARTICLE VIII.—Interstate Audits

23 (1) This article shall be in force only in those party states that  
24 specifically provide therefor by statute.

25 (2) Any party state or subdivision thereof desiring to make or  
26 participate in an audit of any accounts, books, papers, records or other  
27 documents may request the commission to perform the audit on its behalf.  
28 In responding to the request, the commission shall have access to and may  
29 examine, at any reasonable time, such accounts, books, papers, records,  
30 and other documents and any relevant property or stock of merchandise.  
31 The commission may enter into agreements with party states or their  
32 subdivisions for assistance in performance of the audit. The commission  
33 shall make charges, to be paid by the state or local government or  
34 governments for which it performs the service, for any audits performed  
35 by it in order to reimburse itself for the actual costs incurred in making the  
36 audit.

37 (3) The commission may require the attendance of any person within  
38 the state where it is conducting an audit or part thereof at a time and place  
39 fixed by it within such state for the purpose of giving testimony with  
40 respect to any account, book, paper, document, other record, property or  
41 stock of merchandise being examined in connection with the audit. If the  
42 person is not within the jurisdiction, he may be required to attend for such  
43 purpose at any time and place fixed by the commission within the state of

1 which he is a resident: *Provided*, That such state has adopted this article.

2 (4) The commission may apply to any court having power to issue  
3 compulsory process for orders in aid of its powers and responsibilities  
4 pursuant to this article and any and all such courts shall have jurisdiction  
5 to issue such orders. Failure of any person to obey any such order shall be  
6 punishable as contempt of the issuing court. If the party or subject matter  
7 on account of which the commission seeks an order is within the  
8 jurisdiction of the court to which application is made, such application  
9 may be to a court in the state or subdivision on behalf of which the audit is  
10 being made or a court in the state in which the object of the order being  
11 sought is situated. The provisions of this paragraph apply only to courts in  
12 a state that has adopted this article.

13 (5) The commission may decline to perform any audit requested if it  
14 finds that its available personnel or other resources are insufficient for the  
15 purpose or that, in the terms requested, the audit is impracticable of  
16 satisfactory performance. If the commission, on the basis of its experience,  
17 has reason to believe that an audit of a particular taxpayer, either at a  
18 particular time or on a particular schedule, would be of interest to a  
19 number of party states or their subdivisions, it may offer to make the audit  
20 or audits, the offer to be contingent on sufficient participation therein as  
21 determined by the commission.

22 (6) Information obtained by any audit pursuant to this article shall be  
23 confidential and available only for tax purposes to party states, their  
24 subdivisions or the United States. Availability of information shall be in  
25 accordance with the laws of the states or subdivisions on whose account  
26 the commission performs the audit, and only through the appropriate  
27 agencies or officers of such states or subdivisions. Nothing in this article  
28 shall be construed to require any taxpayer to keep records for any period  
29 not otherwise required by law.

30 (7) Other arrangements made or authorized pursuant to law for  
31 cooperative audit by or on behalf of the party states or any of their  
32 subdivisions are not superseded or invalidated by this article.

33 (8) In no event shall the commission make any charge against a  
34 taxpayer for an audit.

35 (9) As used in this article, "tax," in addition to the meaning ascribed  
36 to it in article II, means any tax or license fee imposed in whole or in part  
37 for revenue purposes.

#### 38 ARTICLE IX.—Arbitration

39 (1) Whenever the commission finds a need for settling disputes  
40 concerning apportionments and allocations by arbitration, it may adopt a  
41 regulation placing this article in effect, notwithstanding the provisions of  
42 article VII.

43 (2) The commission shall select and maintain an arbitration panel

1 composed of officers and employees of state and local governments and  
2 private persons who shall be knowledgeable and experienced in matters of  
3 tax law and administration.

4 (3) Whenever a taxpayer who has elected to employ article IV, or  
5 whenever the laws of the party state or subdivision thereof are  
6 substantially identical with the relevant provisions of article IV, the  
7 taxpayer, by written notice to the commission and to each party state or  
8 subdivision thereof that would be affected, may secure arbitration of an  
9 apportionment or allocation, if he is dissatisfied with the final  
10 administrative determination of the tax agency of the state or subdivision  
11 with respect thereto on the ground that it would subject him to double or  
12 multiple taxation by two or more party states or subdivisions thereof. Each  
13 party state and subdivision thereof hereby consents to the arbitration as  
14 provided herein, and agrees to be bound thereby.

15 (4) The arbitration board shall be composed of one person selected by  
16 the taxpayer, one by the agency or agencies involved, and one member of  
17 the commission's arbitration panel. If the agencies involved are unable to  
18 agree on the person to be selected by them, such person shall be selected  
19 by lot from the total membership of the arbitration panel. The two persons  
20 selected for the board in the manner provided by the foregoing provisions  
21 of this paragraph shall jointly select the third member of the board. If they  
22 are unable to agree on the selection, the third member shall be selected by  
23 lot from among the total membership of the arbitration panel. No member  
24 of a board selected by lot shall be qualified to serve if he is an officer or  
25 employee or is otherwise affiliated with any party to the arbitration  
26 proceeding. Residence within the jurisdiction of a party to the arbitration  
27 proceeding shall not constitute affiliation within the meaning of this  
28 paragraph.

29 (5) The board may sit in any state or subdivision party to the  
30 proceeding, in the state of the taxpayer's incorporation, residence or  
31 domicile, in any state where the taxpayer does business, or in any place  
32 that it finds most appropriate for gaining access to evidence relevant to the  
33 matter before it.

34 (6) The board shall give due notice of the times and places of its  
35 hearings. The parties shall be entitled to be heard, to present evidence, and  
36 to examine and cross-examine witnesses. The board shall act by majority  
37 vote.

38 (7) The board shall have power to administer oaths, take testimony,  
39 subpoena and require the attendance of witnesses and the production of  
40 accounts, books, papers, records, and other documents, and issue  
41 commissions to take testimony. Subpoenas may be signed by any member  
42 of the board. In case of failure to obey a subpoena, and upon application  
43 by the board, any judge of a court of competent jurisdiction of the state in

1 which the board is sitting or in which the person to whom the subpoena is  
2 directed may be found may make an order requiring compliance with the  
3 subpoena, and the court may punish failure to obey the order as a  
4 contempt. The provisions of this paragraph apply only in states that have  
5 adopted this article.

6 (8) Unless the parties otherwise agree the expenses and other costs of  
7 the arbitration shall be assessed and allocated among the parties by the  
8 board in such manner as it may determine. The commission shall fix a  
9 schedule of compensation for members of arbitration boards and of other  
10 allowable expenses and costs. No officer or employee of a state or local  
11 government who serves as a member of a board shall be entitled to  
12 compensation therefor unless he is required on account of his service to  
13 forego the regular compensation attaching to his public employment, but  
14 any such board member shall be entitled to expenses.

15 (9) The board shall determine the disputed apportionment or  
16 allocation and any matters necessary thereto. The determinations of the  
17 board shall be final for purposes of making the apportionment or  
18 allocation, but for no other purpose.

19 (10) The board shall file with the commission and with each tax  
20 agency represented in the proceeding: The determination of the board; the  
21 board's written statement of its reasons therefor; the record of the board's  
22 proceedings; and any other documents required by the arbitration rules of  
23 the commission to be filed.

24 (11) The commission shall publish the determinations of boards  
25 together with the statements of the reasons therefor.

26 (12) The commission shall adopt and publish rules of procedure and  
27 practice and shall file a copy of such rules and of any amendment thereto  
28 with the appropriate agency or officer in each of the party states.

29 (13) Nothing contained herein shall prevent at any time a written  
30 compromise of any matter or matters in dispute, if otherwise lawful, by the  
31 parties to the arbitration proceeding.

#### 32 ARTICLE X.—Entry Into Force and Withdrawal

33 (1) This compact shall enter into force when enacted into law by any  
34 seven states. Thereafter, this compact shall become effective as to any  
35 other state upon its enactment thereof. The commission shall arrange for  
36 notification of all party states whenever there is a new enactment of the  
37 compact.

38 (2) Any party state may withdraw from this compact by enacting a  
39 statute repealing the same. No withdrawal shall affect any liability already  
40 incurred by or chargeable to a party state prior to the time of such  
41 withdrawal.

42 (3) No proceeding commenced before an arbitration board prior to the  
43 withdrawal of a state and to which the withdrawing state or any

1 subdivision thereof is a party shall be discontinued or terminated by the  
 2 withdrawal, nor shall the board thereby lose jurisdiction over any of the  
 3 parties to the proceeding necessary to make a binding determination  
 4 therein.

5 ARTICLE XI.—Effect on Other Laws and Jurisdiction

6 Nothing in this compact shall be construed to:

7 (a) Affect the power of any state or subdivision thereof to fix rates of  
 8 taxation, except that a party state shall be obligated to implement article III  
 9 (2) of this compact.

10 (b) Apply to any tax or fixed fee imposed for the registration of a  
 11 motor vehicle or any tax on motor fuel, other than a sales tax: *Provided,*  
 12 That the definition of "tax" in article VIII (9) may apply for the purposes  
 13 of that article and the commission's powers of study and recommendation  
 14 pursuant to article VI (3) may apply.

15 (c) Withdraw or limit the jurisdiction of any state or local court or  
 16 administrative officer or body with respect to any person, corporation or  
 17 other entity or subject matter, except to the extent that such jurisdiction is  
 18 expressly conferred by or pursuant to this compact upon another agency or  
 19 body.

20 (d) Supersede or limit the jurisdiction of any court of the United  
 21 States.

22 ARTICLE XII.—Construction and Severability

23 This compact shall be liberally construed so as to effectuate the  
 24 purposes thereof. The provisions of this compact shall be severable and if  
 25 any phrase, clause, sentence or provision of this compact is declared to be  
 26 contrary to the constitution of any state or of the United States or the  
 27 applicability thereof to any government, agency, person or circumstance is  
 28 held invalid, the validity of the remainder of this compact and the  
 29 applicability thereof to any government, agency, person or circumstance  
 30 shall not be affected thereby. If this compact shall be held contrary to the  
 31 constitution of any state participating therein, the compact shall remain in  
 32 full force and effect as to the remaining party states and in full force and  
 33 effect as to the state affected as to all severable matters.

34 Sec. 3. K.S.A. 79-4302 is hereby amended to read as follows: 79-  
 35 4302. ~~The provisions of article III (2) of the multistate tax compact shall~~  
 36 ~~apply to the Kansas income tax act and to every income tax hereafter~~  
 37 ~~adopted by any taxing subdivision of this state~~ *It is hereby declared, as a*  
 38 *matter of legislative intent that: (a) The provisions of articles III and IV of*  
 39 *the multistate tax compact are intended to supplement the Kansas income*  
 40 *tax act and any income tax hereafter adopted by any taxing subdivision of*  
 41 *this state; (b) the multistate tax compact is intended to supplement the*  
 42 *Kansas income tax act and any income tax hereafter adopted by any*  
 43 *taxing subdivision of this state, and not as an alternative method of*

1 *allocating and apportioning income, or classifying income in a manner*  
2 *other than as specified in the Kansas income tax act or any income tax*  
3 *hereafter adopted by any taxing subdivisions of this state; (c) any*  
4 *amendments to the Kansas income tax act or any income tax hereafter*  
5 *adopted by any taxing subdivision of this state shall, where applicable, be*  
6 *deemed to have repealed, with retroactive effect, any provisions of the*  
7 *multistate tax compact that are inconsistent with such amendments; and*  
8 *(d) in the event of a conflict between the Kansas income tax act or any*  
9 *income tax hereafter adopted by any taxing subdivision of this state and*  
10 *the provisions contained in the multistate tax compact, the Kansas income*  
11 *tax act or income tax hereafter adopted by any taxing subdivision of this*  
12 *state shall apply.*

13 *The provisions of this section shall apply from and after taxable years*  
14 *commencing after December 31, 2018.*

15 Sec. 4. K.S.A. 79-4301 and 79-4302 are hereby repealed.

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