

Session of 2021

HOUSE BILL No. 2186

By Committee on Taxation

2-1

1 AN ACT concerning income taxation; relating to apportionment of
2 business income; sales factor for certain taxpayers; election; amending
3 K.S.A. 79-3271 and 79-3279 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 79-3271 is hereby amended to read as follows: 79-
7 3271. As used in this act, unless the context otherwise requires: (a) For tax
8 years commencing prior to January 1, 2008, "business income" means
9 income arising from transactions and activity in the regular course of the
10 taxpayer's trade or business and includes income from tangible and
11 intangible property if the acquisition, management, and disposition of the
12 property constitute integral parts of the taxpayer's regular trade or business
13 operations, except that a taxpayer may elect that all income constitutes
14 business income. For tax years commencing after December 31, 2007,
15 "business income" means: (1) Income arising from transactions and
16 activity in the regular course of the taxpayer's trade or business; (2)
17 income arising from transactions and activity involving tangible and
18 intangible property or assets used in the operation of the taxpayer's trade or
19 business; or (3) income of the taxpayer that may be apportioned to this
20 state under the provisions of the Constitution of the United States and laws
21 thereof, except that a taxpayer may elect that all income constitutes
22 business income. Any election made under this subsection shall be
23 effective and irrevocable for the tax year in which the election is made and
24 the following nine tax years and shall be binding on all members of a
25 unitary group of corporations.

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

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

30 (d) "Financial organization" means any bank, trust company, savings
31 bank, industrial bank, land bank, safe deposit company, private banker,
32 savings and loan association, credit union, cooperative bank, or any type
33 of insurance company, but such term shall not be deemed to include any
34 business entity, other than those hereinbefore enumerated, whose primary
35 business activity is making consumer loans or purchasing retail installment
36 contracts from one or more sellers.

1 pursuant to 15 U.S.C. § 80a-15(b), as in effect on the effective date of this
2 act;

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

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

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

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

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

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

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

31 (m) *For the purposes of this subsection and K.S.A. 79-3279(b)(7),
32 and amendments thereto, the following terms are defined:*

33 (1) *"Agricultural activities" means all commercial enterprises
34 identified under the following North American industry classification
35 system (NAICS) codes:*

36 (A) *423820, farm and garden machinery and equipment merchant
37 wholesalers;*

38 (B) *4245, farm product raw material merchant wholesalers;*

39 (C) *424910, farm supplies merchant wholesalers; ~~or~~*

40 (D) *493130, farm product warehousing and storage;*

41 (2) *"manufacturing" means all commercial enterprises identified
42 under the North American industry classification system (NAICS) sectors
43 31-33, as assigned by the secretary of the department of labor;*

; or
(E) 112210, hog and pig farming

1 (3) "production of electricity" means all commercial enterprises
 2 identified under the North American industry classification system
 3 (NAICS) industry codes 221114 and 221115, ~~as assigned by the secretary~~
 4 ~~of the department of labor; and~~

5 (4) "storage of electricity" means storing electric energy for a period
 6 of time using commercially available technology that is capable of storing
 7 electric energy by chemical, thermal, mechanical or other means and then
 8 returning the energy in the form of electricity after storage.

9 Sec. 2. K.S.A. 79-3279 is hereby amended to read as follows: 79-
 10 3279. (a) All business income of railroads and interstate motor carriers of
 11 persons or property for-hire shall be apportioned to this state by
 12 multiplying the business income by a fraction, in the case of railroads, the
 13 numerator of which is the freight car miles in this state and the
 14 denominator of which is the freight car miles everywhere, and, in the case
 15 of interstate motor carriers, the numerator of which is the total number of
 16 miles operated in this state and the denominator of which is the total
 17 number of miles operated everywhere.

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

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

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

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

33 (B) An election under this subsection (b)(2) shall be made by
 34 including a statement with the original tax return indicating that the
 35 taxpayer elects to apply the apportionment method under this subsection
 36 (b)(2). The election shall be effective and irrevocable for the taxable year
 37 of the election and the following nine taxable years. The election shall be
 38 binding on all members of a unitary group of corporations.
 39 Notwithstanding the above, the secretary of revenue may upon the request
 40 of the taxpayer, grant permission to terminate the election under this
 41 subsection (b)(2) prior to expiration of the ~~ten-year~~ 10-year period.

42 (3) At the election of a qualifying telecommunications company, by
 43 multiplying the business income by a fraction, the numerator of which is

- (5) other scientific and technical consulting services for biofuel facility identified under the North American industry classification system (NAICS) industry code 541690;
- (6) petroleum and petroleum products merchants wholesalers identified under the North American industry classification system (NAICS) industry code 424720; and
- (7) paper and paper product merchant wholesalers identified under the North American industry classification system (NAICS) industry codes 4241

1 taxpayer's business income by the sales factor.
 2 (A) For purposes of this subsection (b)(7), a qualifying taxpayer is
 3 any taxpayer whose principal business activity in the state is:
 4 (i) Manufacturing as defined in K.S.A. 79-3271(m)(2), and
 5 amendments thereto;
 6 (ii) production of electricity or storage of electricity as defined in
 7 K.S.A. 79-3271(m)(3) and (4), and amendments thereto; ~~or~~
 8 (iii) certain agricultural activities as defined in K.S.A. 79-3271(m)
 9 (1), and amendments thereto.
 10 (B) An election under this subsection (b)(7) shall be made by
 11 including a statement with the original tax return for which the election is
 12 made, indicating that the taxpayer elects to apply this apportionment
 13 method. The election shall be effective and irrevocable for the taxable
 14 year of the election and the following nine taxable years. The election
 15 shall be binding on all members of a unitary group of corporations.
 16 Notwithstanding the above, the secretary of revenue may upon the request
 17 of the taxpayer, grant permission to terminate the election under this
 18 subsection (b)(7) prior to expiration of the 10-year period.
 19 Sec. 3. K.S.A. 79-3271 and 79-3279 are hereby repealed.
 20 Sec. 4. This act shall take effect and be in force from and after its
 21 publication in the statute book.

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(iv) scientific and technical consulting services for biofuel facility identified as defined in K.S.A. 79-3271(m)(5);

(v) wholesale distribution of petroleum products as defined in K.S.A. 79-3271(m)(6); or

(vi) wholesale trade as defined in K.S.A. 79-3271(m)(7)