

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.
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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 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.

(c) The secretary of revenue shall submit a written report to the house of representatives committee on taxation and the senate committee on assessment and taxation on or before March 1, 2026, concerning the use of the election pursuant to subsection (b)(7) and the number of taxpayers that have elected the sales factor apportionment in lieu of the standard apportionment provided by law.