

**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 (e) "Nonbusiness income" means all income other than business  
2 income.

3 (f) "Public utility" means any business entity which owns or operates  
4 for public use any plant, equipment, property, franchise, or license for the  
5 transmission of communications, transportation of goods or persons, or the  
6 production, storage, transmission, sale, delivery, or furnishing of  
7 electricity, water, steam, oil, oil products or gas.

8 (g) "Original return" means the first return filed to report the income  
9 of a taxpayer for a taxable year or period, irrespective of whether such  
10 return is filed on a single entity basis or a combined basis.

11 (h) "Sales" means, except as otherwise provided in K.S.A. 79-3285,  
12 and amendments thereto, all gross receipts of the taxpayer not allocated  
13 under K.S.A. 79-3274 through 79-3278, and amendments thereto.

14 (i) "State" means any state of the United States, the District of  
15 Columbia, the Commonwealth of Puerto Rico, any territory or possession  
16 of the United States, and any foreign country or political subdivision  
17 thereof.

18 (j) "Telecommunications company" means any business entity or  
19 unitary group of entities whose primary business activity is the  
20 transmission of communications in the form of voice, data, signals or  
21 facsimile communications by wire or fiber optic cable.

22 (k) "Distressed area taxpayer" means a corporation which: (1) Is  
23 located in a county which has a population of not more than 45,000  
24 persons and which, as certified by the department of commerce, has  
25 sustained an adverse economic impact due to the closure of a state hospital  
26 in such county pursuant to the recommendations of the hospital closure  
27 commission; and (2) which has a total annual payroll of \$20,000,000 or  
28 more for employees employed within such county.

29 (l) For the purposes of this subsection and ~~subsection (b)(5) of K.S.A.~~  
30 79-3279(b)(5), and amendments thereto, the following terms are defined:

31 (1) "Administration services" include clerical, fund or shareholder  
32 accounting, participant record keeping, transfer agency, bookkeeping, data  
33 processing, custodial, internal auditing, legal and tax services performed  
34 for an investment company;

35 (2) "distribution services" include the services of advertising,  
36 servicing, marketing, underwriting or selling shares of an investment  
37 company, but, in the case of advertising, servicing or marketing shares,  
38 only where such service is performed by a person who is, or in the case of  
39 a closed end company, was, either engaged in the services of underwriting  
40 or selling investment company shares or affiliated with a person who is  
41 engaged in the service of underwriting or selling investment company  
42 shares. In the case of an open end company, such service of underwriting  
43 or selling shares must be performed pursuant to a contract entered into

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;*

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

1 the information carrying capacity of wire and fiber optic cable available  
2 for use in this state, and the denominator of which is the information  
3 carrying capacity of wire and fiber optic cable available for use  
4 everywhere during the tax year.

5 (A) For purposes of this subsection (b)(3), a qualifying  
6 telecommunications company is a telecommunications company that is a  
7 qualifying taxpayer under paragraph (A) of subsection (b)(2).

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

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

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

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

39 (B) A separate computation shall be made to determine the qualifying  
40 business income from each fund of each investment company. The  
41 qualifying business income from each investment company shall be  
42 multiplied by the fraction calculated pursuant to paragraph (A) for each  
43 fund of such investment company.

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

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

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

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

39 (6) At the election of a qualifying taxpayer, by multiplying such  
40 taxpayer's business income by the sales factor. The election shall be made  
41 by including a statement with the original tax return indicating that the  
42 taxpayer elects to apply this apportionment method. The election may be  
43 made only once and must be made on or before the last day of the taxable

1 year during which the investment described in paragraph (A) is placed in  
2 service, but not later than December 31, 2009, and it shall be effective for  
3 the taxable year of the election and the following nine taxable years or for  
4 so long as the taxpayer maintains the wage requirements set forth in  
5 paragraph (A). If the qualifying taxpayer is a member of a unitary group of  
6 corporations, all other members of the unitary group doing business within  
7 this state shall apportion their business income to this state pursuant to  
8 subsection (b)(1).

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

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

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

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

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

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

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

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

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

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

38 (D) For purposes of this subsection, the secretary of revenue, upon a  
39 showing of good cause and after receiving a certification by the secretary  
40 of commerce of substantial compliance with provisions of this subsection  
41 (b)(6), may extend any required performance date provided in this  
42 subsection (b)(6) for a period not to exceed six months.

43 (7) *At the election of a qualifying taxpayer, by multiplying such*



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.*