HOUSE BILL No. 2442

By Committee on Taxation

Requested by Eric Stafford on behalf of the Kansas Chamber of Commerce

1-14

AN ACT concerning taxation; relating to income tax; providing for the apportionment of business income by a manufacturer of alcoholic liquor by the single sales factor; amending K.S.A. 2025 Supp. 79-3279 and repealing the existing section.

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

Section 1. K.S.A. 2025 Supp. 79-3279 is hereby amended to read as follows: 79-3279. (a) For tax years commencing before January 1, 2027, all business income of railroads and interstate motor carriers of persons or property for hire shall be apportioned to this state by multiplying the business income by a fraction, in the case of railroads, the numerator of which is the freight car miles in this state and the denominator of which is the freight car miles everywhere, and, in the case of interstate motor carriers, the numerator of which is the total number of miles operated in this state and the denominator of which is the total number of miles operated everywhere.

(b) For tax years commencing before January 1, 2027, all business income of any other taxpayer shall be apportioned to this state by one of the following methods:

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) When an investment funds service corporation is part of a unitary group, the business income of the unitary group attributable to the investment funds service corporation shall be determined by multiplying the business income of the unitary group by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. The property factor is a fraction, the numerator of which is the average value of the investment funds service corporation's real and tangible personal property owned or rented and used during the tax period and the denominator of which is the average value of the unitary group's real and tangible personal property owned or rented and used during the tax period. The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the investment funds service corporation for compensation, and the denominator of which is the total compensation paid by the unitary group during the tax period. The sales factor is a fraction, the numerator of which is the total sales of the investment funds service corporation during the tax period, and the denominator of which is the total sales of the unitary group during the tax period.

(F) A taxpayer seeking to make the election available pursuant to ~~subsection (b)(5)~~ *this paragraph* shall only be eligible to continue to make such election if the taxpayer maintains at least 95% of the Kansas employees in existence at the time the taxpayer first makes such an election.

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

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

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

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

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

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

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

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

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

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

(C) When the qualifying taxpayer is part of a unitary group, the business income of the unitary group attributable to the qualifying taxpayer shall be determined by multiplying the business income of the unitary group by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. The property factor is a fraction, the numerator of which is the average value of the qualifying taxpayer's real and tangible personal property owned or rented and used during the tax period and the denominator of which is the average value of the unitary group's real and tangible personal property owned or rented and used during the tax period. The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the qualifying taxpayer for compensation, and the denominator of which is the total compensation paid by the unitary group during the tax period. The sales factor is a fraction, the numerator of which is the total sales of the qualifying taxpayer during the tax period, and the denominator of which is the total sales of the unitary group during the tax period.

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

(c) For tax years commencing on or after January 1, 2027, all business income shall be apportioned to this state by multiplying the business income by the sales factor.

(d) Any taxpayer having previously made an election pursuant to subsection (b)(2) shall be permitted to apportion income through the use of the single sales factor.

(e) (1) There shall be allowed as a deduction an amount computed in accordance with this subsection.

(2) As of July 1, 2025, only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with generally accepted accounting principles, shall be eligible for this deduction.

(3) If the provisions of this section result in an aggregate increase in the taxpayer's net deferred tax liability or an aggregate decrease in the taxpayer's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the taxpayer shall be entitled to a deduction, as determined in this subsection. For the purposes of this section, the term "taxpayer" includes a unitary group of businesses that is required to file a combined report. The deferred tax impact deduction provided under this section for a unitary group of businesses that is required to file a combined report shall be calculated using unitary net deferred tax assets and liabilities and deducted against unitary group income.

(4) A taxpayer shall be entitled to a deferred tax impact deduction from the taxpayer's net business income before apportionment equal to the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability. Such increase in the net deferred tax liability, decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the single sales factor requirements pursuant to this section, excluding the deduction provided under this paragraph, as of the end of the tax year prior to tax year 2025. The amount of the deduction shall equal the annual deferred tax deduction amount set forth in paragraph (5).

(5) The annual deferred tax deduction amount shall be calculated as

follows:

(A) The deferred tax impact determined in paragraph (4) shall be divided by the income tax rate for corporations in effect for the tax year pursuant to K.S.A. 79-32,110, and amendments thereto;

(B) the resulting amount shall be further divided by the Kansas apportionment factor that was used by the taxpayer in the calculation of the deferred tax assets and deferred tax liabilities as provided in this subsection; and

(C) the result multiplied by $^{1}/_{10}$ shall represent the total net deferred tax deduction available for the first tax year beginning on or after January 1, 2035, and the next nine successive tax years.

(6) The deduction calculated under paragraph (5) shall not be adjusted as a result of any events subsequent to such calculation, including, but not limited to, any disposition or abandonment of assets. Such deduction shall be calculated without regard to any tax liabilities under the federal internal revenue code and shall not alter the tax basis of any asset. If the deduction under this section is greater than the taxpayer's net business income before apportionment, any excess deduction shall be carried forward and applied as a deduction for future tax years until fully utilized.

(7) At the discretion of the taxpayer, the taxpayer shall be allowed to claim other available tax credits before claiming the deferred tax deduction calculated under this section. Any deferred tax deduction calculated under this section not claimed on a return shall be carried forward and applied as a deduction for future tax years until fully utilized.

(8) Any taxpayer intending to claim a deduction under this subsection shall file a statement with the secretary on or before July 1, 2027, specifying the total amount of the deduction that the taxpayer claims on such form and in such manner as prescribed by the secretary and shall contain such information or calculations as the secretary may specify. No deduction shall be allowed under this section for any taxable year except to the extent claimed in the manner prescribed on or before July 1, 2027.

(9) For purposes of this subsection:

(A) "Net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of the taxpayer, as computed in accordance with generally accepted accounting principles.

(B) "Net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the taxpayer, as computed in accordance with generally accepted accounting principles.

~~(f) Any manufacturer of alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, who sells to a distributor as defined in K.S.A. 41-102, and amendments thereto, shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is~~

~~the property factor plus the payroll factor and the sales factor, and the denominator of which is three.~~

Sec. 2. K.S.A. 2025 Supp. 79-3279 is hereby repealed.

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