

HOUSE BILL No. 2773

By Committee on Taxation

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

2-11

1 AN ACT concerning taxation; relating to income tax; providing for the
2 apportionment of business income for manufacturers of alcoholic liquor
3 depending on whether the taxpayer is a qualifying Kansas investor or a
4 general manufacturer; amending K.S.A. 2025 Supp. 79-3279 and
5 repealing the existing section.
6

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

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

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

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

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

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

34 (B) An election under this subsection (b)(2) shall be made by
35 including a statement with the original tax return indicating that the

1 taxpayer elects to apply the apportionment method under this subsection
2 (b)(2). The election shall be effective and irrevocable for the taxable year
3 of the election and the following nine taxable years. The election shall be
4 binding on all members of a unitary group of corporations.
5 Notwithstanding the above, the secretary of revenue may upon the request
6 of the taxpayer, grant permission to terminate the election under this
7 subsection (b)(2) prior to expiration of the ~~ten-year~~ 10-year period.

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

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

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

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

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

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

1 average of the number of shares owned by the investment company's fund
2 shareholders everywhere at the beginning of and at the end of the
3 investment company's taxable year that ends with or within the investment
4 funds service corporation's taxable year.

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

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

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

25 (E) When an investment funds service corporation is part of a unitary
26 group, the business income of the unitary group attributable to the
27 investment funds service corporation shall be determined by multiplying
28 the business income of the unitary group by a fraction, the numerator of
29 which is the property factor plus the payroll factor plus the sales factor,
30 and the denominator of which is three. The property factor is a fraction,
31 the numerator of which is the average value of the investment funds
32 service corporation's real and tangible personal property owned or rented
33 and used during the tax period and the denominator of which is the
34 average value of the unitary group's real and tangible personal property
35 owned or rented and used during the tax period. The payroll factor is a
36 fraction, the numerator of which is the total amount paid during the tax
37 period by the investment funds service corporation for compensation, and
38 the denominator of which is the total compensation paid by the unitary
39 group during the tax period. The sales factor is a fraction, the numerator of
40 which is the total sales of the investment funds service corporation during
41 the tax period, and the denominator of which is the total sales of the
42 unitary group during the tax period.

43 (F) A taxpayer seeking to make the election available pursuant to

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

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

18 (A) For purposes of this subsection, a qualifying taxpayer is any
19 taxpayer making an investment of \$100,000,000 for construction in
20 Kansas of a new business facility identified under the North American
21 industry classification system (NAICS) subsectors of 31-33, as assigned
22 by the secretary of the department of labor, employing 100 or more new
23 employees at such facility after July 1, 2007, and prior to December 31,
24 2009, and meeting the following requirements for paying such employees
25 higher-than-average wages within the wage region for such facility:

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

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

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

42 (iv) the taxpayer's new Kansas business facility with more than 500
43 full-time equivalent employees is the sole facility within its assigned

1 NAICS category that has reported wages for more than 500 employees to
2 the Kansas department of labor on the quarterly wage reports, in which
3 event-~~it~~, *the taxpayer* shall either provide an average wage that is above
4 the average wage paid by all Kansas business facilities that share the same
5 assigned NAICS category and that have reported wages for 500 or fewer
6 employees to the Kansas department of labor on the quarterly wage
7 reports, or be the sole Kansas business facility within-~~its~~ *the taxpayer's*
8 assigned NAICS category that has reported wages to the Kansas
9 department of labor on the quarterly wage reports;

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

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

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

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

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

1 which is the total sales of the qualifying taxpayer during the tax period,
2 and the denominator of which is the total sales of the unitary group during
3 the tax period.

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

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

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

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

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

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

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

1 (5) The annual deferred tax deduction amount shall be calculated as
2 follows:

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

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

10 (C) the result multiplied by $\frac{1}{10}$ shall represent the total net deferred
11 tax deduction available for the first tax year beginning on or after January
12 1, 2035, and the next nine successive tax years.

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

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

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

34 (9) For purposes of this subsection:

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

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

41 ~~(f) Any manufacturer of alcoholic liquor as defined in K.S.A. 41-102,~~
42 ~~and amendments thereto, who sells to a distributor as defined in K.S.A.~~
43 ~~41-102, and amendments thereto, shall be apportioned to this state by~~

1 ~~multiplying the business income by a fraction, the numerator of which is~~
2 ~~the property factor plus the payroll factor and the sales factor, and the~~
3 ~~denominator of which is three.~~

4 *(f) (1) Notwithstanding any other provision of this section, for all tax*
5 *years commencing on or after January 1, 2027, any taxpayer classified as*
6 *a manufacturer of alcoholic liquor, as defined in K.S.A. 41-102, and*
7 *amendments thereto, shall apportion business income to this state as*
8 *follows:*

9 *(A) Qualifying Kansas investors shall apportion business income*
10 *using the single sales factor method if such taxpayer maintains both:*

11 *(i) An average value of real and tangible personal property owned or*
12 *rented that exceeds \$5,000,000 and such property is used in this state*
13 *during the tax year; and*

14 *(ii) the total amount of compensation paid in this state during the tax*
15 *year exceeded \$2,000,000; or*

16 *(B) general manufacturers, including all other manufacturers of*
17 *alcoholic liquor besides qualifying Kansas investors, shall apportion*
18 *business income using the three-factor formula provided in subsection (b)*
19 *(1).*

20 *(2) The secretary of revenue may adopt rules and regulations*
21 *necessary to administer the provisions of this subsection.*

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

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