

HOUSE BILL No. 2489

By Committee on Taxation

1-17

1 AN ACT concerning the multistate tax compact; relating to the
2 apportionment of corporate income, election; amending K.S.A. 79-
3 4301 and 79-4302 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 79-4301 is hereby amended to read as follows: 79-
7 4301. "The multistate tax compact" is hereby enacted into law and entered
8 into with all jurisdictions legally joining therein, in the form substantially
9 as follows:

10
11 **MULTISTATE TAX COMPACT**

12 **ARTICLE I.—Purposes**

13 The purposes of this compact are to:

14 (1) Facilitate proper determination of state and local tax liability of
15 multistate taxpayers, including the equitable apportionment of tax bases
16 and settlement of apportionment disputes.

17 (2) Promote uniformity or compatibility in significant components of
18 tax systems.

19 (3) Facilitate taxpayer convenience and compliance in the filing of
20 tax returns and in other phases of tax administration.

21 (4) Avoid duplicative taxation.
22

23 **ARTICLE II.—Definitions**

24 As used in this compact:

25 (1) "State" means a state of the United States, the District of
26 Columbia, the Commonwealth of Puerto Rico, or any territory or
27 possession of the United States.

28 (2) "Subdivision" means any governmental unit or special district of a
29 state.

30 (3) "Taxpayer" means any corporation, partnership, firm, association,
31 governmental unit or agency or person acting as a business entity in more
32 than one state.

33 (4) "Income tax" means a tax imposed on or measured by net income
34 including any tax imposed on or measured by an amount arrived at by
35 deducting expenses from gross income, one or more forms of which
36 expenses are not specifically and directly related to particular transactions.

1 (5) "Capital stock tax" means a tax measured in any way by the
2 capital of a corporation considered in its entirety.

3 (6) "Gross receipts tax" means a tax, other than a sales tax, which is
4 imposed on or measured by the gross volume of business, in terms of gross
5 receipts or in other terms, and in the determination of which no deduction
6 is allowed which would constitute the tax an income tax.

7 (7) "Sales tax" means a tax imposed with respect to the transfer for a
8 consideration of ownership, possession or custody of tangible personal
9 property or the rendering of services measured by the price of the tangible
10 personal property transferred or services rendered and which is required by
11 state or local law to be separately stated from the sales price by the seller,
12 or which is customarily separately stated from the sales price, but does not
13 include a tax imposed exclusively on the sale of a specifically identified
14 commodity or article or class of commodities or articles.

15 (8) "Use tax" means a nonrecurring tax, other than a sales tax, which
16 (a) is imposed on or with respect to the exercise or enjoyment of any right
17 or power over tangible personal property incident to the ownership,
18 possession or custody of that property or the leasing of that property from
19 another including any consumption, keeping, retention, or other use of
20 tangible personal property and (b) is complimentary to a sales tax.

21 (9) "Tax" means an income tax, capital stock tax, gross receipts tax,
22 sales tax, use tax, and any other tax which has a multistate impact, except
23 that the provisions of articles III, IV and V of this compact shall apply only
24 to the taxes specifically designated therein and the provisions of article IX
25 of this compact shall apply only in respect to determinations pursuant to
26 article IV.

27 28 ARTICLE III.—Elements of Income Tax Laws

29 (1) ~~*Taxpayer option, state and local taxes.* Any taxpayer subject to an
30 income tax whose income is subject to apportionment and allocation for
31 tax purposes pursuant to the laws of a party state or pursuant to the laws of
32 subdivisions in two or more party states may elect to apportion and
33 allocate his income in the manner provided by the laws of such state or by
34 the laws of such states and subdivisions without reference to this compact,
35 or may elect to apportion and allocate in accordance with article IV. This
36 election for any tax year may be made in all party states or subdivisions
37 thereof or in any one or more of the party states or subdivisions thereof
38 without reference to the election made in the others. For the purposes of
39 this paragraph, taxes imposed by subdivisions shall be considered
40 separately from state taxes and the apportionment and allocation also may
41 be applied to the entire tax base. In no instance wherein article IV is
42 employed for all subdivisions of a state may the sum of all apportionments
43 and allocations to subdivisions within a state be greater than the~~

1 ~~apportionment and allocation that would be assignable to that state if the~~
 2 ~~apportionment or allocation were being made with respect to a state~~
 3 ~~income tax.~~

4 ~~(2)~~—*Taxpayer option, short form.* Each party state or any subdivision
 5 thereof which imposes an income tax shall provide by law that any
 6 taxpayer required to file a return, whose only activities within the taxing
 7 jurisdiction consist of sales and do not include owning or renting real
 8 estate or tangible personal property, and whose dollar volume of gross
 9 sales made during the tax year within the state or subdivision, as the case
 10 may be, is not in excess of \$100,000 may elect to report and pay any tax
 11 due on the basis of a percentage of such volume, and shall adopt rates
 12 which shall produce a tax which reasonably approximates the tax
 13 otherwise due. The multistate tax commission, not more than once in five
 14 years, may adjust the \$100,000 figure in order to reflect such changes as
 15 may occur in the real value of the dollar, and such adjusted figure, upon
 16 adoption by the commission, shall replace the \$100,000 figure specifically
 17 provided herein. Each party state and subdivision thereof may make the
 18 same election available to taxpayers additional to those specified in this
 19 paragraph.

20 ~~(3)~~(2) *Coverage.* Nothing in this article relates to the reporting or
 21 payment of any tax other than in income tax.

22
 23 ARTICLE IV.—Division of Income

24 (1) As used in this article, unless the context otherwise requires:

25 (a) ~~"Business income" means income arising from transactions and~~
 26 ~~activity in the regular course of the taxpayer's trade or business and~~
 27 ~~includes income from tangible and intangible property if the acquisition,~~
 28 ~~management, and disposition of the property constitute integral parts of the~~
 29 ~~taxpayer's regular trade or business operations.~~*For all tax years*
 30 *commencing after December 31, 2007, "business income" means: (1)*
 31 *Income arising from transactions and activity in the regular course of the*
 32 *taxpayer's trade or business; (2) income arising from transactions and*
 33 *activity involving tangible and intangible property or assets used in the*
 34 *operation of the taxpayer's trade or business; or (3) income of the*
 35 *taxpayer that may be apportioned to this state under the provisions of the*
 36 *constitution of the United States and laws thereof, except that a taxpayer*
 37 *may elect that all income constitutes business income. Any election made*
 38 *under this subsection shall be effective and irrevocable for the tax year in*
 39 *which the election is made and the following nine tax years and shall be*
 40 *binding on all members of a unitary group of corporations.*

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

43 (c) "Compensation" means wages, salaries, commissions and any

1 other form of remuneration paid to employees for personal services.

2 (d) "Financial organization" means any bank, trust company, savings
3 bank, industrial bank, land bank, safe deposit company, private banker,
4 savings and loan association, credit union, cooperative bank, small loan
5 company, sales finance company, investment company, or any type of
6 insurance company.

7 (e) "Nonbusiness income" means all income other than business
8 income.

9 (f) "Public utility" means any business entity (1) which owns or
10 operates any plant, equipment, property, franchise, or license for the
11 transmission of communications, transportation of goods or persons,
12 except by pipeline, or the production, transmission, sale, delivery, or
13 furnishing of electricity, water or steam; and (2) whose rates of charges for
14 goods or services have been established or approved by a federal, state or
15 local government or governmental agency.

16 (g) "Sales" means all gross receipts of the taxpayer not allocated
17 under paragraphs of this article.

18 (h) "State" means any state of the United States, the District of
19 Columbia, the Commonwealth of Puerto Rico, any territory or possession
20 of the United States, and any foreign country or political subdivision
21 thereof.

22 (i) "This state" means the state in which the relevant tax return is filed
23 or, in the case of application of this article to the apportionment and
24 allocation of income for local tax purposes, the subdivision or local taxing
25 district in which the relevant tax return is filed.

26 (2) Any taxpayer having income from business activity which is
27 taxable both within and without this state, other than activity as a financial
28 organization or public utility or the rendering of purely personal services
29 by an individual, shall allocate and apportion his net income as provided in
30 this article. If a taxpayer has income from business activity as a public
31 utility but derives the greater percentage of his income from activities
32 subject to this article, the taxpayer may elect to allocate and apportion his
33 entire net income as provided in this article.

34 (3) For purposes of allocation and apportionment of income under
35 this article, a taxpayer is taxable in another state if (1) in that state he is
36 subject to a net income tax, a franchise tax measured by net income, a
37 franchise tax for the privilege of doing business, or a corporate stock tax,
38 or (2) that state has jurisdiction to subject the taxpayer to a net income tax
39 regardless of whether, in fact, the state does or does not.

40 (4) Rents and royalties from real or tangible personal property, capital
41 gains, interest, dividends or patent or copyright royalties, to the extent that
42 they constitute nonbusiness income, shall be allocated as provided in
43 paragraphs 5 through 8 of this article.

1 (5) (a) Net rents and royalties from real property located in this state
2 are allocable to this state.

3 (b) Net rents and royalties from tangible personal property are
4 allocable to this state: (1) If and to the extent that the property is utilized in
5 this state, or (2) in their entirety if the taxpayer's commercial domicile is in
6 this state and the taxpayer is not organized under the laws of or taxable in
7 the state in which the property is utilized.

8 (c) The extent of utilization of tangible personal property in a state is
9 determined by multiplying the rents and royalties by a fraction, the
10 numerator of which is the number of days of physical location of the
11 property in the state during the rental or royalty period in the taxable year
12 and the denominator of which is the number of days of physical location of
13 the property everywhere during all rental or royalty periods in the taxable
14 year. If the physical location of the property during the rental or royalty
15 period is unknown or unascertainable by the taxpayer, tangible personal
16 property is utilized in the state in which the property was located at the
17 time the rental or royalty payer obtained possession.

18 (6) (a) Capital gains and losses from sales of real property located in
19 this state are allocable to this state.

20 (b) Capital gains and losses from sales of tangible personal property
21 are allocable to this state if (1) the property had a situs in this state at the
22 time of the sale, or (2) the taxpayer's commercial domicile is in this state
23 and the taxpayer is not taxable in the state in which the property had a
24 situs.

25 (c) Capital gains and losses from sales of intangible personal property
26 are allocable to this state if the taxpayer's commercial domicile is in this
27 state.

28 (7) Interest and dividends are allocable to this state if the taxpayer's
29 commercial domicile is in this state.

30 (8) (a) Patent and copyright royalties are allocable to this state: (1) If
31 and to the extent that the patent or copyright is utilized by the payer in this
32 state, or (2) if and to the extent that the patent copyright is utilized by the
33 payer in a state in which the taxpayer is not taxable and the taxpayer's
34 commercial domicile is in this state.

35 (b) A patent is utilized in a state to the extent that it is employed in
36 production, fabrication, manufacturing, or other processing in the state or
37 to the extent that a patented product is produced in the state. If the basis of
38 receipts from patent royalties does not permit allocation to states or if the
39 accounting procedures do not reflect states of utilization, the patent is
40 utilized in the state in which the taxpayer's commercial domicile is located.

41 (c) A copyright is utilized in a state to the extent that printing or other
42 publication originates in the state. If the basis of receipts from copyright
43 royalties does not permit allocation to states or if the accounting

1 procedures do not reflect states of utilization, the copyright is utilized in
2 the state in which the taxpayer's commercial domicile is located.

3 (9) All business income shall be apportioned to this state by
4 multiplying the income by a fraction, the numerator of which is the
5 property factor plus the payroll factor plus the sales factor, and the
6 denominator of which is three.

7 (10) The property factor is a fraction, the numerator of which is the
8 average value of the taxpayer's real and tangible personal property owned
9 or rented and used in this state during the tax period and the denominator
10 of which is the average value of all the taxpayer's real and tangible
11 personal property owned or rented and used during the tax period.

12 (11) Property owned by the taxpayer is valued at its original cost.
13 Property rented by the taxpayer is valued at eight times the net annual
14 rental rate. Net annual rental rate is the annual rental rate paid by the
15 taxpayer less any annual rental rate received by the taxpayer from
16 subrentals.

17 (12) The average value of property shall be determined by averaging
18 the values at the beginning and ending of the tax period but the tax
19 administrator may require the averaging of monthly values during the tax
20 period if reasonably required to reflect properly the average value of the
21 taxpayer's property.

22 (13) The payroll factor is a fraction, the numerator of which is the
23 total amount paid in this state during the tax period by the taxpayer for
24 compensation and the denominator of which is the total compensation paid
25 everywhere during the tax period.

26 (14) Compensation is paid in this state if:

27 (a) The individual's service is performed entirely within the state;

28 (b) The individual's service is performed both within and without the
29 state, but the service performed without the state is incidental to the
30 individual's service within the state; or

31 (c) Some of the service is performed in the state and (1) the base of
32 operations or, if there is no base of operations, the place from which the
33 service is directed or controlled is in the state, or (2) the base of operations
34 or the place from which the service is directed or controlled is not in any
35 state in which some part of the service is performed, but the individual's
36 residence is in this state.

37 (15) The sales factor is a fraction, the numerator of which is the total
38 sales of the taxpayer in this state during the tax period, and the
39 denominator of which is the total sales of the taxpayer everywhere during
40 the tax period.

41 (16) Sales of tangible personal property are in this state if:

42 (a) The property is delivered or shipped to a purchaser, other than the
43 United States government, within this state regardless of the f.o.b. point or

1 other conditions of the sale; or

2 (b) The property is shipped from an office, store, warehouse, factory,
 3 or other place of storage in this state and (1) the purchaser is the United
 4 States government or (2) the taxpayer is not taxable in the state of the
 5 purchaser.

6 (17) Sales, other than sales of tangible personal property, are in this
 7 state if:

8 (a) The income-producing activity is performed in this state; or

9 (b) The income-producing activity is performed both in and outside
 10 this state and a greater proportion of the income-producing activity is
 11 performed in this state than in any other state, based on costs of
 12 performance.

13 (18) If the allocation and apportionment provisions of this article do
 14 not fairly represent the extent of the taxpayer's business activity in this
 15 state, the taxpayer may petition for or the tax administrator may require, in
 16 respect to all or any part of the taxpayer's business activity, if reasonable:

17 (a) Separate accounting;

18 (b) The exclusion of any one or more of the factors;

19 (c) The inclusion of one or more additional factors which will fairly
 20 represent the taxpayer's business activity in this state; or

21 (d) The employment of any other method to effectuate an equitable
 22 allocation and apportionment of the taxpayer's income.

23

24 **ARTICLE V.—Elements of Sales and Use Tax Laws**

25 (1) *Tax credit.* Each purchaser liable for a use tax on tangible personal
 26 property shall be entitled to full credit for the combined amount or
 27 amounts of legally imposed sales or use taxes paid by him with respect to
 28 the same property to another state and any subdivision thereof. The credit
 29 shall be applied first against the amount of any use tax due the state, and
 30 any unused portion of the credit shall then be applied against the amount
 31 of any use tax due a subdivision.

32 (2) *Exemption certificates, vendors may rely.* Whenever a vendor
 33 receives and accepts in good faith from a purchaser a resale or other
 34 exemption certificate or other written evidence of exemption authorized by
 35 the appropriate state or subdivision taxing authority, the vendor shall be
 36 relieved of liability for a sales or use tax with respect to the transaction.

37

38 **ARTICLE VI.—The Commission**

39 (1) *Organization and management.* (a) The multistate tax commission
 40 is hereby established. It shall be composed of one "member" from each
 41 party state who shall be the head of the state agency charged with the
 42 administration of the types of taxes to which this compact applies. If there
 43 is more than one such agency the state shall provide by law for the

1 selection of the commission member from the heads of the relevant
2 agencies. State law may provide that a member of the commission be
3 represented by an alternate but only if there is on file with the commission
4 written notification of the designation and identity of the alternate. The
5 attorney general of each party state or his designee, or other counsel if the
6 laws of the party state specifically provide, shall be entitled to attend the
7 meetings of the commission, but shall not vote. Such attorneys general,
8 designees, or other counsel shall receive all notices of meetings required
9 under paragraph (1) (e) of this article.

10 (b) Each party state shall provide by law for the selection of
11 representatives from its subdivisions affected by this compact to consult
12 with the commission member from that state.

13 (c) Each member shall be entitled to one vote. The commission shall
14 not act unless a majority of the members are present, and no action shall be
15 binding unless approved by a majority of the total number of members.

16 (d) The commission shall adopt an official seal to be used as it may
17 provide.

18 (e) The commission shall hold an annual meeting and such other
19 regular meetings as its bylaws may provide and such special meetings as
20 its executive committee may determine. The commission bylaws shall
21 specify the dates of the annual and any other regular meetings, and shall
22 provide for the giving of notice of annual, regular and special meetings.
23 Notices of special meetings shall include the reasons therefor and an
24 agenda of the items to be considered.

25 (f) The commission shall elect annually, (f) among its members, a
26 chairman, a vice-chairman and a treasurer. The commission shall appoint
27 an executive director who shall serve at its pleasure, and it shall fix his
28 duties and compensation. The executive director shall be secretary of the
29 commission. The commission shall make provision for the bonding of
30 such of its officers and employees as it may deem appropriate.

31 (g) Irrespective of the civil service, personnel or other merit system
32 laws of any party state, the executive director shall appoint or discharge
33 such personnel as may be necessary for the performance of the functions
34 of the commission and shall fix their duties and compensation. The
35 commission bylaws shall provide for personnel policies and programs.

36 (h) The commission may borrow, accept or contract for the services
37 of personnel from any state, the United States, or any other governmental
38 entity.

39 (i) The commission may accept for any of its purposes and functions
40 any and all donations and grants of money, equipment, supplies, materials
41 and services, conditional or otherwise, from any governmental entity, and
42 may utilize and dispose of the same.

43 (j) The commission may establish one or more offices for the

1 transacting of its business.

2 (k) The commission shall adopt bylaws for the conduct of its
3 business. The commission shall publish its bylaws in convenient form, and
4 shall file a copy of the bylaws and any amendments thereto with the
5 appropriate agency or officer in each of the party states.

6 (l) The commission annually shall make to the governor and
7 legislature of each party state a report covering its activities for the
8 preceding year. Any donation or grant accepted by the commission or
9 services borrowed shall be reported in the annual report of the
10 commission, and shall include the nature, amount and conditions, if any, of
11 the donation, gift, grant or services borrowed and the identity of the donor
12 or lender. The commission may make additional reports as it may deem
13 desirable.

14 (2) *Committees.* (a) To assist in the conduct of its business when the
15 full commission is not meeting, the commission shall have an executive
16 committee of seven members, including the chairman, vice-chairman,
17 treasurer and four other members elected annually by the commission. The
18 executive committee, subject to the provisions of this compact and
19 consistent with the policies of the commission, shall function as provided
20 in the laws of the commission.

21 (b) The commission may establish advisory and technical
22 committees, membership on which may include private persons and public
23 officials, in furthering any of its activities. Such committees may consider
24 any matter of concern to the commission, including problems of special
25 interest to any party state and problems dealing with particular types of
26 taxes.

27 (c) The commission may establish such additional committees as its
28 bylaws may provide.

29 (3) *Powers.* In addition to powers conferred elsewhere in this
30 compact, the commission shall have power to:

31 (a) Study state and local tax systems and particular types of state and
32 local taxes.

33 (b) Develop and recommend proposals for an increase in uniformity
34 or compatibility of state and local tax laws with a view toward
35 encouraging the simplification and improvement of state and local tax law
36 and administration.

37 (c) Compile and publish information as in its judgment would assist
38 the party states in implementation of the compact and taxpayers in
39 complying with state and local tax laws.

40 (d) Do all things necessary and incidental to the administration of its
41 functions pursuant to this compact.

42 (4) *Finance.* (a) The commission shall submit to the governor or
43 designated officer or officers of each party state a budget of its estimated

1 expenditures for such period as may be required by the laws of that state
2 for presentation to the legislature thereof.

3 (b) Each of the commission's budget of estimated expenditures shall
4 contain specific recommendations of the amounts to be appropriated by
5 each of the party states. The total amount of appropriations requested
6 under any such budget shall be apportioned among the party states as
7 follows: One-tenth in equal shares; and the remainder in proportion of the
8 amount of revenue collected by each party state and its subdivisions from
9 income taxes, capital stock taxes, gross receipts taxes, sales and use taxes.
10 In determining such amounts, the commission shall employ such available
11 public sources of information as, in its judgment, present the most
12 equitable and accurate comparisons among the party states. Each of the
13 commission's budgets of estimated expenditures and requests for
14 appropriations shall indicate the sources used in obtaining information
15 employed in applying the formula contained in this paragraph.

16 (c) The commission shall not pledge the credit of any party state. The
17 commission may meet any of its obligations in whole or in part with funds
18 available to it under paragraph (1) (i) of this article: Provided, That the
19 commission takes specific action setting aside such funds prior to
20 incurring any obligation to be met in whole or in part in such manner.
21 Except where the commission makes use of funds available to it under
22 paragraph (1) (i), the commission shall not incur any obligation prior to the
23 allotment of funds by the party states adequate to meet the same.

24 (d) The commission shall keep accurate accounts of all receipts and
25 disbursements. The receipts and disbursements of the commission shall be
26 subject to the audit and accounting procedures established under its
27 bylaws. All receipts and disbursements of funds handled by the
28 commission shall be audited yearly by a certified or licensed public
29 accountant and the report of the audit shall be included in and become part
30 of the annual report of the commission.

31 (e) The accounts of the commission shall be open at any reasonable
32 time for inspection by duly constituted officers of the party states and by
33 any persons authorized by the commission.

34 (f) Nothing contained in this article shall be construed to prevent
35 commission compliance with laws relating to audit or inspection of
36 accounts by or on behalf of any government contributing to the support of
37 the commission.

38
39 **ARTICLE VII.—Uniform Regulations and Forms**

40 (1) Whenever any two or more party states, or subdivisions of party
41 states, have uniform or similar provisions of law relating to an income tax,
42 capital stock tax, gross receipts tax, sales or use tax, the commission may
43 adopt uniform regulations for any phase of the administration of such law,

1 including assertion of jurisdiction to tax, or prescribing uniform tax forms.
2 The commission may also act with respect to the provisions of article IV
3 of this compact.

4 (2) Prior to the adoption of any regulation, the commission shall:

5 (a) As provided in its bylaws, hold at least one public hearing on due
6 notice to all affected party states and subdivisions thereof and to all
7 taxpayers and other persons who have made timely request of the
8 commission for advance notice of its regulation-making proceedings.

9 (b) Afford all affected party states and subdivisions and interested
10 persons an opportunity to submit relevant written data and views, which
11 shall be considered fully by the commission.

12 (3) The commission shall submit any regulations adopted by it to the
13 appropriate officials of all party states and subdivisions to which they
14 might apply. Each such state and subdivision shall consider any such
15 regulation for adoption in accordance with its own laws and procedures.

16 17 ARTICLE VIII.—Interstate Audits

18 (1) This article shall be in force only in those party states that
19 specifically provide therefor by statute.

20 (2) Any party state or subdivision thereof desiring to make or
21 participate in an audit of any accounts, books, papers, records or other
22 documents may request the commission to perform the audit on its behalf.
23 In responding to the request, the commission shall have access to and may
24 examine, at any reasonable time, such accounts, books, papers, records,
25 and other documents and any relevant property or stock of merchandise.
26 The commission may enter into agreements with party states or their
27 subdivisions for assistance in performance of the audit. The commission
28 shall make charges, to be paid by the state or local government or
29 governments for which it performs the service, for any audits performed
30 by it in order to reimburse itself for the actual costs incurred in making the
31 audit.

32 (3) The commission may require the attendance of any person within
33 the state where it is conducting an audit or part thereof at a time and place
34 fixed by it within such state for the purpose of giving testimony with
35 respect to any account, book, paper, document, other record, property or
36 stock of merchandise being examined in connection with the audit. If the
37 person is not within the jurisdiction, he may be required to attend for such
38 purpose at any time and place fixed by the commission within the state of
39 which he is a resident: Provided, That such state has adopted this article.

40 (4) The commission may apply to any court having power to issue
41 compulsory process for orders in aid of its powers and responsibilities
42 pursuant to this article and any and all such courts shall have jurisdiction
43 to issue such orders. Failure of any person to obey any such order shall be

1 punishable as contempt of the issuing court. If the party or subject matter
2 on account of which the commission seeks an order is within the
3 jurisdiction of the court to which application is made, such application
4 may be to a court in the state or subdivision on behalf of which the audit is
5 being made or a court in the state in which the object of the order being
6 sought is situated. The provisions of this paragraph apply only to courts in
7 a state that has adopted this article.

8 (5) The commission may decline to perform any audit requested if it
9 finds that its available personnel or other resources are insufficient for the
10 purpose or that, in the terms requested, the audit is impracticable of
11 satisfactory performance. If the commission, on the basis of its experience,
12 has reason to believe that an audit of a particular taxpayer, either at a
13 particular time or on a particular schedule, would be of interest to a
14 number of party states or their subdivisions, it may offer to make the audit
15 or audits, the offer to be contingent on sufficient participation therein as
16 determined by the commission.

17 (6) Information obtained by any audit pursuant to this article shall be
18 confidential and available only for tax purposes to party states, their
19 subdivisions or the United States. Availability of information shall be in
20 accordance with the laws of the states or subdivisions on whose account
21 the commission performs the audit, and only through the appropriate
22 agencies or officers of such states or subdivisions. Nothing in this article
23 shall be construed to require any taxpayer to keep records for any period
24 not otherwise required by law.

25 (7) Other arrangements made or authorized pursuant to law for
26 cooperative audit by or on behalf of the party states or any of their
27 subdivisions are not superseded or invalidated by this article.

28 (8) In no event shall the commission make any charge against a
29 taxpayer for an audit.

30 (9) As used in this article, "tax," in addition to the meaning ascribed
31 to it in article II, means any tax or license fee imposed in whole or in part
32 for revenue purposes.

33 34 ARTICLE IX.—Arbitration

35 (1) Whenever the commission finds a need for settling disputes
36 concerning apportionments and allocations by arbitration, it may adopt a
37 regulation placing this article in effect, notwithstanding the provisions of
38 article VII.

39 (2) The commission shall select and maintain an arbitration panel
40 composed of officers and employees of state and local governments and
41 private persons who shall be knowledgeable and experienced in matters of
42 tax law and administration.

43 (3) Whenever a taxpayer who has elected to employ article IV, or

1 whenever the laws of the party state or subdivision thereof are
2 substantially identical with the relevant provisions of article IV, the
3 taxpayer, by written notice to the commission and to each party state or
4 subdivision thereof that would be affected, may secure arbitration of an
5 apportionment or allocation, if he is dissatisfied with the final
6 administrative determination of the tax agency of the state or subdivision
7 with respect thereto on the ground that it would subject him to double or
8 multiple taxation by two or more party states or subdivisions thereof. Each
9 party state and subdivision thereof hereby consents to the arbitration as
10 provided herein, and agrees to be bound thereby.

11 (4) The arbitration board shall be composed of one person selected by
12 the taxpayer, one by the agency or agencies involved, and one member of
13 the commission's arbitration panel. If the agencies involved are unable to
14 agree on the person to be selected by them, such person shall be selected
15 by lot from the total membership of the arbitration panel. The two persons
16 selected for the board in the manner provided by the foregoing provisions
17 of this paragraph shall jointly select the third member of the board. If they
18 are unable to agree on the selection, the third member shall be selected by
19 lot from among the total membership of the arbitration panel. No member
20 of a board selected by lot shall be qualified to serve if he is an officer or
21 employee or is otherwise affiliated with any party to the arbitration
22 proceeding. Residence within the jurisdiction of a party to the arbitration
23 proceeding shall not constitute affiliation within the meaning of this
24 paragraph.

25 (5) The board may sit in any state or subdivision party to the
26 proceeding, in the state of the taxpayer's incorporation, residence or
27 domicile, in any state where the taxpayer does business, or in any place
28 that it finds most appropriate for gaining access to evidence relevant to the
29 matter before it.

30 (6) The board shall give due notice of the times and places of its
31 hearings. The parties shall be entitled to be heard, to present evidence, and
32 to examine and cross-examine witnesses. The board shall act by majority
33 vote.

34 (7) The board shall have power to administer oaths, take testimony,
35 subpoena and require the attendance of witnesses and the production of
36 accounts, books, papers, records, and other documents, and issue
37 commissions to take testimony. Subpoenas may be signed by any member
38 of the board. In case of failure to obey a subpoena, and upon application
39 by the board, any judge of a court of competent jurisdiction of the state in
40 which the board is sitting or in which the person to whom the subpoena is
41 directed may be found may make an order requiring compliance with the
42 subpoena, and the court may punish failure to obey the order as a
43 contempt. The provisions of this paragraph apply only in states that have

1 adopted this article.

2 (8) Unless the parties otherwise agree the expenses and other costs of
3 the arbitration shall be assessed and allocated among the parties by the
4 board in such manner as it may determine. The commission shall fix a
5 schedule of compensation for members of arbitration boards and of other
6 allowable expenses and costs. No officer or employee of a state or local
7 government who serves as a member of a board shall be entitled to
8 compensation therefor unless he is required on account of his service to
9 forego the regular compensation attaching to his public employment, but
10 any such board member shall be entitled to expenses.

11 (9) The board shall determine the disputed apportionment or
12 allocation and any matters necessary thereto. The determinations of the
13 board shall be final for purposes of making the apportionment or
14 allocation, but for no other purpose.

15 (10) The board shall file with the commission and with each tax
16 agency represented in the proceeding: The determination of the board; the
17 board's written statement of its reasons therefor; the record of the board's
18 proceedings; and any other documents required by the arbitration rules of
19 the commission to be filed.

20 (11) The commission shall publish the determinations of boards
21 together with the statements of the reasons therefor.

22 (12) The commission shall adopt and publish rules of procedure and
23 practice and shall file a copy of such rules and of any amendment thereto
24 with the appropriate agency or officer in each of the party states.

25 (13) Nothing contained herein shall prevent at any time a written
26 compromise of any matter or matters in dispute, if otherwise lawful, by the
27 parties to the arbitration proceeding.

28

29

ARTICLE X.—Entry Into Force and Withdrawal

30

31

32

33

34

35

36

37

38

39

40

41

42

43

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination

1 therein.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

ARTICLE XI.—Effect on Other Laws and Jurisdiction

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement article III (2) of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: Provided, That the definition of "tax" in article VIII (9) may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to article VI (3) may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

ARTICLE XII.—Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Sec. 2. K.S.A. 79-4302 is hereby amended to read as follows: 79-4302. ~~The provisions of article III (2) of the multistate tax compact shall apply to the Kansas income tax act and to every income tax hereafter adopted by any taxing subdivision of this state~~ *It is hereby declared, as a matter of legislative determination that: (a) The provisions of articles III and IV of the multistate tax compact are intended to supplement the Kansas income tax act and any income tax hereafter adopted by any taxing subdivision of this state; (b) the multistate tax compact is intended to supplement the Kansas income tax act and any income tax hereafter adopted by any taxing subdivision of this state, and not as an alternative method of allocating and apportioning income, or classifying income in a*

1 *manner other than as specified in the Kansas income tax act or any*
2 *income tax hereafter adopted by any taxing subdivisions of this state; (c)*
3 *any amendments to the Kansas income tax act or any income tax hereafter*
4 *adopted by any taxing subdivision of this state shall, where applicable, be*
5 *deemed to have repealed, with retroactive effect, any provisions of the*
6 *multistate tax compact that are inconsistent with such amendments; and*
7 *(d) in the event of a conflict between the Kansas income tax act or any*
8 *income tax hereafter adopted by any taxing subdivision of this state and*
9 *the provisions contained in the multistate tax compact, the Kansas income*
10 *tax act or income tax hereafter adopted by any taxing subdivision of this*
11 *state shall apply.*

12 *The provisions of this section shall apply from and after taxable years*
13 *commencing after December 31, 2007.*

14 Sec. 3. K.S.A. 79-4301 and 79-4302 are hereby repealed.

15 Sec. 4. This act shall take effect and be in force from and after its
16 publication in the statute book.