

SENATE BILL No. 507

By Committee on Assessment and Taxation

2-13

1 AN ACT concerning income tax; relating to the apportionment of income;
2 providing for the apportionment of business income by the single sales
3 factor; requiring the use of single sales factor pursuant to the multistate
4 tax compact; amending K.S.A. 79-3269, 79-3271, 79-3279, 79-3287,
5 79-4301 and 79-4302 and repealing the existing sections; also repealing
6 K.S.A. 79-3280, 79-3281, 79-3282, 79-3283 and 79-3284.

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

9 Section 1. K.S.A. 79-3269 is hereby amended to read as follows: 79-
10 3269. (a) As used in this section:

11 (1) "Administrative fee" means those amounts charged by the
12 professional employer organization to the client over and above amounts
13 applied to the mandatory state and federal taxes, wages of assigned
14 workers and amounts applied to premiums or contributions for benefits
15 provided for assigned workers.

16 (2) "Assigned worker" means a person having an employment
17 relationship with both the professional employer organization and the
18 client.

19 (3) "Client" means a person who contracts with a professional
20 employer organization to obtain employer services from another person
21 through a professional employer arrangement.

22 (4) "Person" means an individual, an association, a company, a firm,
23 a partnership, a corporation or any other form of legally recognized entity.

24 (5) "Professional employer arrangement" means an arrangement,
25 under contract or whereby:

26 (A) A professional employer organization agrees to employ all or a
27 majority of a client's workforce;

28 (B) the arrangement is intended to be, or is, ongoing rather than
29 temporary in nature;

30 (C) employer responsibilities for workers under the arrangement are
31 in fact shared by the professional employer organization and the client;
32 and

33 (D) for the purposes of this act, a professional employer arrangement
34 shall not include:

35 (i) Arrangements wherein a person, whose principal business activity
36 is not entering into professional employer arrangements, shares employees

1 with a commonly owned company within the meaning of section 414(b)
2 and (c) of the federal internal revenue code of 1986, as amended, and
3 which does not hold itself out as a professional employer organization.

4 (ii) Arrangements in which a person assumes full responsibility for
5 the product or service performed by such person or such person's agents
6 and retains and exercises, both legally and in fact, a right of direction and
7 control over the individuals whose services are supplied under such
8 contractual arrangements, and such person and such person's agents
9 perform a specified function for the client which is separate and divisible
10 from the primary business or operations of the client.

11 (iii) Any person otherwise subject to this act if, during any fiscal year
12 of the person commencing after July 1, 2000, the person pays total gross
13 wages to employees employed by the person in the state under one or more
14 professional employer arrangements which do not exceed 5% of the total
15 gross wages paid to all employees employed by the person in the state
16 during the same fiscal year under all arrangements described in paragraph
17 (4) and that each person does not advertise or hold itself out to the public
18 as providing services as a professional employer organization.

19 (6) "Professional employer organization" means any person engaged
20 in providing the services of employees pursuant to one or more
21 professional employer arrangements or any person that represents itself to
22 the public as providing services pursuant to a professional employer
23 arrangement.

24 (b) (1) A professional employer organization shall be considered an
25 employer for the purposes of withholding state income tax of the assigned
26 workers pursuant to the Kansas income tax act. ~~Commencing after~~
27 ~~December 31, 1999,~~ The client shall be considered as the employer of an
28 assigned worker under the terms of the professional employer arrangement
29 between the client and the professional employer organization, for
30 purposes of:

31 ~~(1) subsection (d) of (A) K.S.A. 79-32,154(d), subsection (d) of~~
32 ~~K.S.A. 74-50,114(d), K.S.A. 79-32,160a or K.S.A. 74-50,131, and~~
33 ~~amendments thereto; and~~

34 ~~(2) (B) calculating the client's payroll factor under K.S.A. 79-3283~~
35 ~~that shall be a fraction, the numerator of which is the total amount paid in~~
36 ~~this state during the tax period by the taxpayer for compensation, and the~~
37 ~~denominator of which is the total compensation paid everywhere during~~
38 ~~the tax period.~~

39 (2) The client shall provide to the department of revenue the payroll
40 information for assigned workers needed for purposes of administering the
41 above provisions.

42 Sec. 2. K.S.A. 79-3271 is hereby amended to read as follows: 79-
43 3271. As used in this act, unless the context otherwise requires:

1 ~~(a) For tax years commencing prior to January 1, 2008, "business-~~
2 ~~income" means income arising from transactions and activity in the regular~~
3 ~~course of the taxpayer's trade or business and includes income from~~
4 ~~tangible and intangible property if the acquisition, management, and~~
5 ~~disposition of the property constitute integral parts of the taxpayer's~~
6 ~~regular trade or business operations, except that a taxpayer may elect that~~
7 ~~all income constitutes business income. For tax years commencing after~~
8 ~~December 31, 2007, "Business income" means: (1) Income arising from~~
9 ~~transactions and activity in the regular course of the taxpayer's trade or~~
10 ~~business; (2) income arising from transactions and activity involving~~
11 ~~tangible and intangible property or assets used in the operation of the~~
12 ~~taxpayer's trade or business; or (3) income of the taxpayer that may be~~
13 ~~apportioned to this state under the provisions of the Constitution of the~~
14 ~~United States and laws thereof, except that a taxpayer may elect that all~~
15 ~~income constitutes business income. Any election made under this~~
16 ~~subsection shall be effective and irrevocable for the tax year in which the~~
17 ~~election is made and the following nine tax years and shall be binding on~~
18 ~~all members of a unitary group of corporations.~~

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

21 (c) "Compensation" means wages, salaries, commissions and any
22 other form of remuneration paid to employees for personal services.

23 (d) "Financial organization" means any bank, trust company, savings
24 bank, industrial bank, land bank, safe deposit company, private banker,
25 savings and loan association, credit union, cooperative bank, or any type
26 of insurance company, but such term shall not be deemed to include any
27 business entity, other than those hereinbefore enumerated, whose primary
28 business activity is making consumer loans or purchasing retail installment
29 contracts from one or more sellers.

30 (e) "Nonbusiness income" means all income other than business
31 income.

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

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

40 (h) "*Receipts*" or "sales" means, except as otherwise provided in
41 K.S.A. 79-3285, and amendments thereto, all gross receipts of the taxpayer
42 not allocated under K.S.A. 79-3274 through 79-3278, and amendments
43 thereto.

1 (i) "State" means any state of the United States, the District of
2 Columbia, the Commonwealth of Puerto Rico, any territory or possession
3 of the United States, and any foreign country or political subdivision
4 thereof.

5 ~~(j) "Telecommunications company" means any business entity or~~
6 ~~unitary group of entities whose primary business activity is the~~
7 ~~transmission of communications in the form of voice, data, signals or~~
8 ~~facsimile communications by wire or fiber optic cable.~~

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

16 (l) For the purposes of this subsection and subsection (b)(5) of K.S.A.
17 79-3279, and amendments thereto, the following terms are defined:

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

22 (2) "distribution services" include the services of advertising,
23 servicing, marketing, underwriting or selling shares of an investment
24 company, but, in the case of advertising, servicing or marketing shares,
25 only where such service is performed by a person who is, or in the case of
26 a closed end company, was, either engaged in the services of underwriting
27 or selling investment company shares or affiliated with a person who is
28 engaged in the service of underwriting or selling investment company
29 shares. In the case of an open end company, such service of underwriting
30 or selling shares must be performed pursuant to a contract entered into
31 pursuant to 15 U.S.C. § 80a-15(b), as in effect on the effective date of this
32 act;

33 (3) "investment company", means any person registered under the
34 federal Investment Company Act of 1940, as in effect on the effective date
35 of this act, or a company which would be required to register as an
36 investment company under such act except that such person is exempt to
37 such registration pursuant to § 80a-3(c)(1) of such act;

38 (4) "investment funds service corporation" includes any corporation
39 or S corporation headquartered in and doing business in this state which
40 derives more than 50% of its gross income from the provision of
41 management, distribution or administration services to or on behalf of an
42 investment company or from trustees, sponsors and participants of
43 employee benefit plans which have accounts in an investment company;

1 ~~(5) "management services" include the rendering of investment~~
2 ~~advice to an investment company making determinations as to when sales~~
3 ~~and purchases of securities are to be made on behalf of the investment~~
4 ~~company, or the selling or purchasing of securities constituting assets of an~~
5 ~~investment company, and related activities, but only where such activity or~~
6 ~~activities are performed:~~

7 ~~(A) Pursuant to a contract with the investment company entered into~~
8 ~~pursuant to 15 U.S.C. § 80a-15(a), in effect on the effective date of this~~
9 ~~act; or~~

10 ~~(B) for a person that has entered into such contract with the~~
11 ~~investment company;~~

12 ~~(6) "qualifying business income" is business income derived from the~~
13 ~~provision of management, distribution or administration services to or on~~
14 ~~behalf of an investment company or from trustees, sponsors and~~
15 ~~participants of employee benefit plans which have accounts in an~~
16 ~~investment company; and~~

17 ~~(7) "residence" is the fund shareholder's primary residence address.~~

18 Sec. 3. K.S.A. 79-3279 is hereby amended to read as follows: 79-
19 3279. (a) All business income of railroads and interstate motor carriers of
20 persons or property for-hire shall be apportioned to this state by
21 multiplying the business income by a fraction, in the case of railroads, the
22 numerator of which is the freight car miles in this state and the
23 denominator of which is the freight car miles everywhere, and, in the case
24 of interstate motor carriers, the numerator of which is the total number of
25 miles operated in this state and the denominator of which is the total
26 number of miles operated everywhere.

27 (b) All business income of any other taxpayer shall be apportioned to
28 this state by one of the following methods:

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

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

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

42 ~~(B) An election under this subsection (b)(2) shall be made by~~
43 ~~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 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), a qualifying
15 telecommunications company is a telecommunications company that is a
16 qualifying taxpayer under paragraph (A) of subsection (b)(2).

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

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 shall be effective for the taxable year of the election and the following nine
26 taxable years for so long as the taxpayer maintains the payroll amount
27 prescribed by subsection (j) of K.S.A. 79-3271, 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
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 residence 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 residence 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 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 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) of K.S.A. 79-3279, and amendments thereto, shall only
2 be eligible to continue to make such election if the taxpayer maintains at
3 least 95% of the Kansas employees in existence at the time the taxpayer
4 first makes such an 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 shall be effective for~~
12 ~~the taxable year of the election and the following nine taxable years or for~~
13 ~~so long as the taxpayer maintains the wage requirements set forth in~~
14 ~~paragraph (A). If the qualifying taxpayer is a member of a unitary group of~~
15 ~~corporations, all other members of the unitary group doing business within~~
16 ~~this state shall apportion their business income to this state pursuant to~~
17 ~~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 shall either provide an average wage that is above the average
4 wage paid by all Kansas business facilities that share the same assigned
5 NAICS category and that have reported wages for 500 or fewer employees
6 to the Kansas department of labor on the quarterly wage reports, or be the
7 sole Kansas business facility within its assigned NAICS category that has
8 reported wages to the Kansas department of labor on the quarterly wage
9 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 or
19 more equity in the taxpayer, the average wage calculated for the taxpayer's
20 new Kansas business facility is greater than or equal to 1.5 times the
21 aggregate state-wide average wage paid by industries covered by the
22 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 Sec. 4. K.S.A. 79-3287 is hereby amended to read as follows: 79-
 10 3287.

11 Sales, other than sales of tangible personal property, are in this state if:

12 ~~(a) the income-producing activity is performed in this state; or~~

13 ~~(b) the income-producing activity is performed both in and outside~~
 14 ~~this state and a greater proportion of the income-producing activity is~~
 15 ~~performed in this state than in any other state, based on costs of~~
 16 ~~performance the taxpayer's market for the sales is in this state. The~~
 17 ~~taxpayer's market for the sales is in this state if:~~

18 ~~(a) (1) In the case of sale of a service, if and to the extent that the~~
 19 ~~service is delivered to a location in this state;~~

20 ~~(2) in the case of intangible property, such property is:~~

21 ~~(A) Rented, leased or licensed, if and to the extent that the property is~~
 22 ~~used in this state, if that intangible property utilized in marketing a good~~
 23 ~~or service to a consumer is used in this state if that good or service is~~
 24 ~~purchased by a consumer who is in this state; or~~

25 ~~(B) that is sold, if and to the extent the property is used in this state~~
 26 ~~if:~~

27 ~~(i) A contract right, government license or similar intangible~~
 28 ~~property that authorizes the holder to conduct a business activity in a~~
 29 ~~specific geographic area is used in this state if the geographic area~~
 30 ~~includes all or part of this state; or~~

31 ~~(ii) receipts from intangible property sales that are contingent on the~~
 32 ~~productivity, use or disposition of the intangible property shall be treated~~
 33 ~~as receipts from rental, lease or licensing of such intangible property~~
 34 ~~under paragraph (2)(A);~~

35 ~~(3) in the case of interest from a loan:~~

36 ~~(A) Secured by real property, if and to the extent the property is~~
 37 ~~located in this state; or~~

38 ~~(B) not secured by real property, if and to the extent the borrower is~~
 39 ~~located in this state; or~~

40 ~~(b) in the case of dividends, if and to the extent the payor's~~
 41 ~~commercial domicile is located in this state.~~

42 ~~If the state or states of assignment of receipts under subsection (a)(1)~~
 43 ~~or (2) cannot be determined, the state or states of assignment shall be~~

1 *reasonably approximated. If the state or states of assignment of receipts*
 2 *cannot be reasonably approximated, then such assignment of receipts shall*
 3 *be excluded from the denominator of the sales factor.*

4 *The secretary of revenue may adopt rules and regulations necessary to*
 5 *administer the provisions of this section.*

6 Sec. 5. 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.

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

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

43 (7) "Sales tax" means a tax imposed with respect to the transfer for a

1 consideration of ownership, possession or custody of tangible personal
 2 property or the rendering of services measured by the price of the tangible
 3 personal property transferred or services rendered and which is required by
 4 state or local law to be separately stated from the sales price by the seller,
 5 or which is customarily separately stated from the sales price, but does not
 6 include a tax imposed exclusively on the sale of a specifically identified
 7 commodity or article or class of commodities or articles.

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

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

20 21 ARTICLE III.—Elements of Income Tax Laws

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

40 (2) ~~*Taxpayer option, short form state and local taxes.*~~ Each party state
 41 or any subdivision thereof which imposes an income tax shall provide by
 42 law that any taxpayer required to file a return, whose only activities within
 43 the taxing jurisdiction consist of sales and do not include owning or

1 renting real estate or tangible personal property, and whose dollar volume
2 of gross sales made during the tax year within the state or subdivision, as
3 the case may be, is not in excess of \$100,000 may elect to report and pay
4 any tax due on the basis of a percentage of such volume, and shall adopt
5 rates which shall produce a tax which reasonably approximates the tax
6 otherwise due. The multistate tax commission, not more than once in five
7 years, may adjust the \$100,000 figure in order to reflect such changes as
8 may occur in the real value of the dollar, and such adjusted figure, upon
9 adoption by the commission, shall replace the \$100,000 figure specifically
10 provided herein. Each party state and subdivision thereof may make the
11 same election available to taxpayers additional to those specified in this
12 paragraph.

13 ~~(3)~~(2) *Coverage.* Nothing in this article relates to the reporting or
14 payment of any tax other than in income tax.

15

16 ARTICLE IV.—Division of Income

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

18 (a) "Business income" means:

19 (i) Income arising from transactions and activity in the regular course
20 of the taxpayer's trade or business ~~and includes income from tangible and~~
21 ~~intangible property if the acquisition, management, and disposition of the~~
22 ~~property constitute integral parts of the taxpayer's regular trade or business~~
23 ~~operations;~~

24 (ii) *income arising from transactions and activity involving tangible*
25 *and intangible property or assets used in the operation of the taxpayer's*
26 *trade or business; or*

27 (iii) *income of the taxpayer that may be apportioned to this state*
28 *under the provisions of the Constitution of the United States and laws*
29 *thereof, except that a taxpayer may elect that all income constitutes*
30 *business income. Any election made under this subsection shall be*
31 *effective and irrevocable for the tax year in which the election is made and*
32 *the following nine tax years and shall be binding on all members of a*
33 *unitary group of corporations.*

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

36 (c) "Compensation" means wages, salaries, commissions and any
37 other form of remuneration paid to employees for personal services.

38 (d) "Financial organization" means any bank, trust company, savings
39 bank, industrial bank, land bank, safe deposit company, private banker,
40 savings and loan association, credit union, cooperative bank, small loan
41 company, sales finance company, investment company, or any type of
42 insurance company.

43 (e) "Nonbusiness income" means all income other than business

1 income.

2 (f) "Public utility" means any business entity:

3 (1) ~~which~~*That* owns or operates any plant, equipment, property,
4 franchise, or license for the transmission of communications,
5 transportation of goods or persons, except by pipeline, or the production,
6 transmission, sale, delivery; or furnishing of electricity, water or steam;
7 and

8 (2) whose rates of charges for goods or services have been
9 established or approved by a federal, state or local government or
10 governmental agency.

11 (g) "*Receipts*" or "sales" means all gross receipts of the taxpayer not
12 allocated under paragraphs of this article. *In the case of sales of business*
13 *assets, other than sales of tangible personal property sold in the ordinary*
14 *course of the taxpayer's trade or business, only the net gain from such*
15 *sales shall be included in the sales factor.*

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

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

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

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

38 (4) Rents and royalties from real or tangible personal property, capital
39 gains, interest, dividends or patent or copyright royalties, to the extent that
40 they constitute nonbusiness income, shall be allocated as provided in
41 paragraphs 5 through 8 of this article. *Allocable nonbusiness income shall*
42 *be limited to the total nonbusiness income received in excess of any*
43 *related expenses that have been allowed as a deduction during the income*

1 *year.*

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

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

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

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

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

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

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

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

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

42 (c) A copyright is utilized in a state to the extent that printing or other
43 publication originates in the state. If the basis of receipts from copyright

1 royalties does not permit allocation to states or if the accounting
2 procedures do not reflect states of utilization, the copyright is utilized in
3 the state in which the taxpayer's commercial domicile is located.

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

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

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

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

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

27 (14) ~~Compensation is paid in this state if:~~

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

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

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

38 (15)(10) ~~The sales factor is a fraction, the numerator of which is the~~
39 ~~total sales of the taxpayer in this state during the tax period, and the~~
40 ~~denominator of which is the total sales of the taxpayer everywhere during~~
41 ~~the tax period. *In the case of sales of business assets, other than sales of*~~
42 ~~*tangible personal property sold in the ordinary course of the taxpayer's*~~
43 ~~*trade or business, only the net gain from such sales shall be included in*~~

1 *the sales factor.*

2 ~~(16)~~(11) Sales of tangible personal property are in this state if:

3 (a) The property is delivered or shipped to a purchaser, other than the
4 United States government, within this state regardless of the f.o.b. point or
5 other conditions of the sale; or

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

10 ~~(17)~~(12) Sales, other than sales of tangible personal property, are in
11 this state if:

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

13 ~~(b) The income-producing activity is performed both in and outside~~
14 ~~this state and a greater proportion of the income-producing activity is~~
15 ~~performed in this state than in any other state, based on costs of~~
16 ~~performance the taxpayer's market for the sales is in this state. The~~
17 ~~taxpayer's market for the sales is in this state if:~~

18 (a) *In the case of sale of a service, if and to the extent the service is*
19 *delivered to a location in this state;*

20 (b) *in the case of intangible property, such property is:*

21 (i) *Rented, leased or licensed, if and to the extent the property is used*
22 *in this state, if intangible property utilized in marketing a good or service*
23 *to a consumer is used in this state if that good or service is purchased by a*
24 *consumer who is in this state; or*

25 (ii) *is sold, if and to the extent the property is used in this state if:*

26 (A) *A contract right, government license or similar intangible*
27 *property that authorizes the holder to conduct a business activity in a*
28 *specific geographic area is used in this state if the geographic area*
29 *includes all or part of this state; or*

30 (B) *receipts from intangible property sales that are contingent on the*
31 *productivity, use or disposition of the intangible property shall be treated*
32 *as receipts from rental, lease or licensing of such intangible property*
33 *under paragraph (b)(i);*

34 (c) *in the case of interest from a loan:*

35 (i) *Secured by real property, if and to the extent the property is*
36 *located in this state; or*

37 (ii) *not secured by real property, if and to the extent the borrower is*
38 *located in this state; or*

39 (d) *in the case of dividends, if and to the extent the payor's*
40 *commercial domicile is located in this state.*

41 *If the state or states of assignment of receipts under paragraph (a) or*
42 *(b) cannot be determined, the state or states of assignment shall be*
43 *reasonably approximated. If the state or states of assignment of receipts*

1 *cannot be reasonably approximated, then such shall be excluded from the*
 2 *denominator of the sales factor.*

3 ~~(18)~~(13) If the allocation and apportionment provisions of this article
 4 do not fairly represent the extent of the taxpayer's business activity in this
 5 state, the taxpayer may petition for or the tax administrator may require, in
 6 respect to all or any part of the taxpayer's business activity, if reasonable:

- 7 (a) Separate accounting;
- 8 (b) The exclusion of any one or more of the factors;
- 9 (c) The inclusion of one or more additional factors which will fairly
 10 represent the taxpayer's business activity in this state; or
- 11 (d) The employment of any other method to effectuate an equitable
 12 allocation and apportionment of the taxpayer's income.

13

14

ARTICLE V.—Elements of Sales and Use Tax Laws

15 (1) *Tax credit.* Each purchaser liable for a use tax on tangible personal
 16 property shall be entitled to full credit for the combined amount or
 17 amounts of legally imposed sales or use taxes paid by him with respect to
 18 the same property to another state and any subdivision thereof. The credit
 19 shall be applied first against the amount of any use tax due the state, and
 20 any unused portion of the credit shall then be applied against the amount
 21 of any use tax due a subdivision.

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

27

28

ARTICLE VI.—The Commission

29 (1) *Organization and management.* (a) The multistate tax commission
 30 is hereby established. It shall be composed of one "member" from each
 31 party state who shall be the head of the state agency charged with the
 32 administration of the types of taxes to which this compact applies. If there
 33 is more than one such agency the state shall provide by law for the
 34 selection of the commission member from the heads of the relevant
 35 agencies. State law may provide that a member of the commission be
 36 represented by an alternate but only if there is on file with the commission
 37 written notification of the designation and identity of the alternate. The
 38 attorney general of each party state or his designee, or other counsel if the
 39 laws of the party state specifically provide, shall be entitled to attend the
 40 meetings of the commission, but shall not vote. Such attorneys general,
 41 designees, or other counsel shall receive all notices of meetings required
 42 under paragraph (1) (e) of this article.

43

(b) Each party state shall provide by law for the selection of

1 representatives from its subdivisions affected by this compact to consult
2 with the commission member from that state.

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

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

8 (e) The commission shall hold an annual meeting and such other
9 regular meetings as its bylaws may provide and such special meetings as
10 its executive committee may determine. The commission bylaws shall
11 specify the dates of the annual and any other regular meetings, and shall
12 provide for the giving of notice of annual, regular and special meetings.
13 Notices of special meetings shall include the reasons therefor and an
14 agenda of the items to be considered.

15 (f) The commission shall elect annually, from among its members, a
16 chairman, a vice-chairman and a treasurer. The commission shall appoint
17 an executive director who shall serve at its pleasure, and it shall fix his
18 duties and compensation. The executive director shall be secretary of the
19 commission. The commission shall make provision for the bonding of
20 such of its officers and employees as it may deem appropriate.

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

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

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

33 (j) The commission may establish one or more offices for the
34 transacting of its business.

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

39 (l) The commission annually shall make to the governor and
40 legislature of each party state a report covering its activities for the
41 preceding year. Any donation or grant accepted by the commission or
42 services borrowed shall be reported in the annual report of the
43 commission, and shall include the nature, amount and conditions, if any, of

1 the donation, gift, grant or services borrowed and the identity of the donor
2 or lender. The commission may make additional reports as it may deem
3 desirable.

4 (2) *Committees.* (a) To assist in the conduct of its business when the
5 full commission is not meeting, the commission shall have an executive
6 committee of seven members, including the chairman, vice-chairman,
7 treasurer and four other members elected annually by the commission. The
8 executive committee, subject to the provisions of this compact and
9 consistent with the policies of the commission, shall function as provided
10 in the laws of the commission.

11 (b) The commission may establish advisory and technical
12 committees, membership on which may include private persons and public
13 officials, in furthering any of its activities. Such committees may consider
14 any matter of concern to the commission, including problems of special
15 interest to any party state and problems dealing with particular types of
16 taxes.

17 (c) The commission may establish such additional committees as its
18 bylaws may provide.

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

21 (a) Study state and local tax systems and particular types of state and
22 local taxes.

23 (b) Develop and recommend proposals for an increase in uniformity
24 or compatibility of state and local tax laws with a view toward
25 encouraging the simplification and improvement of state and local tax law
26 and administration.

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

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

32 (4) *Finance.* (a) The commission shall submit to the governor or
33 designated officer or officers of each party state a budget of its estimated
34 expenditures for such period as may be required by the laws of that state
35 for presentation to the legislature thereof.

36 (b) Each of the commission's budget of estimated expenditures shall
37 contain specific recommendations of the amounts to be appropriated by
38 each of the party states. The total amount of appropriations requested
39 under any such budget shall be apportioned among the party states as
40 follows: One-tenth in equal shares; and the remainder in proportion of the
41 amount of revenue collected by each party state and its subdivisions from
42 income taxes, capital stock taxes, gross receipts taxes, sales and use taxes.
43 In determining such amounts, the commission shall employ such available

1 public sources of information as, in its judgment, present the most
2 equitable and accurate comparisons among the party states. Each of the
3 commission's budgets of estimated expenditures and requests for
4 appropriations shall indicate the sources used in obtaining information
5 employed in applying the formula contained in this paragraph.

6 (c) The commission shall not pledge the credit of any party state. The
7 commission may meet any of its obligations in whole or in part with funds
8 available to it under paragraph (1) (i) of this article: Provided, That the
9 commission takes specific action setting aside such funds prior to
10 incurring any obligation to be met in whole or in part in such manner.
11 Except where the commission makes use of funds available to it under
12 paragraph (1) (i), the commission shall not incur any obligation prior to the
13 allotment of funds by the party states adequate to meet the same.

14 (d) The commission shall keep accurate accounts of all receipts and
15 disbursements. The receipts and disbursements of the commission shall be
16 subject to the audit and accounting procedures established under its
17 bylaws. All receipts and disbursements of funds handled by the
18 commission shall be audited yearly by a certified or licensed public
19 accountant and the report of the audit shall be included in and become part
20 of the annual report of the commission.

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

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

28

29

ARTICLE VII.—Uniform Regulations and Forms

30 (1) Whenever any two or more party states, or subdivisions of party
31 states, have uniform or similar provisions of law relating to an income tax,
32 capital stock tax, gross receipts tax, sales or use tax, the commission may
33 adopt uniform regulations for any phase of the administration of such law,
34 including assertion of jurisdiction to tax, or prescribing uniform tax forms.
35 The commission may also act with respect to the provisions of article IV
36 of this compact.

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

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

42 (b) Afford all affected party states and subdivisions and interested
43 persons an opportunity to submit relevant written data and views, which

1 shall be considered fully by the commission.

2 (3) The commission shall submit any regulations adopted by it to the
3 appropriate officials of all party states and subdivisions to which they
4 might apply. Each such state and subdivision shall consider any such
5 regulation for adoption in accordance with its own laws and procedures.
6

7 ARTICLE VIII.—Interstate Audits

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

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

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

30 (4) The commission may apply to any court having power to issue
31 compulsory process for orders in aid of its powers and responsibilities
32 pursuant to this article and any and all such courts shall have jurisdiction
33 to issue such orders. Failure of any person to obey any such order shall be
34 punishable as contempt of the issuing court. If the party or subject matter
35 on account of which the commission seeks an order is within the
36 jurisdiction of the court to which application is made, such application
37 may be to a court in the state or subdivision on behalf of which the audit is
38 being made or a court in the state in which the object of the order being
39 sought is situated. The provisions of this paragraph apply only to courts in
40 a state that has adopted this article.

41 (5) The commission may decline to perform any audit requested if it
42 finds that its available personnel or other resources are insufficient for the
43 purpose or that, in the terms requested, the audit is impracticable of

1 satisfactory performance. If the commission, on the basis of its experience,
2 has reason to believe that an audit of a particular taxpayer, either at a
3 particular time or on a particular schedule, would be of interest to a
4 number of party states or their subdivisions, it may offer to make the audit
5 or audits, the offer to be contingent on sufficient participation therein as
6 determined by the commission.

7 (6) Information obtained by any audit pursuant to this article shall be
8 confidential and available only for tax purposes to party states, their
9 subdivisions or the United States. Availability of information shall be in
10 accordance with the laws of the states or subdivisions on whose account
11 the commission performs the audit, and only through the appropriate
12 agencies or officers of such states or subdivisions. Nothing in this article
13 shall be construed to require any taxpayer to keep records for any period
14 not otherwise required by law.

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

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

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

23

24

ARTICLE IX.—Arbitration

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

29 (2) The commission shall select and maintain an arbitration panel
30 composed of officers and employees of state and local governments and
31 private persons who shall be knowledgeable and experienced in matters of
32 tax law and administration.

33 (3) Whenever a taxpayer who has elected to employ article IV, or
34 whenever the laws of the party state or subdivision thereof are
35 substantially identical with the relevant provisions of article IV, the
36 taxpayer, by written notice to the commission and to each party state or
37 subdivision thereof that would be affected, may secure arbitration of an
38 apportionment or allocation, if he is dissatisfied with the final
39 administrative determination of the tax agency of the state or subdivision
40 with respect thereto on the ground that it would subject him to double or
41 multiple taxation by two or more party states or subdivisions thereof. Each
42 party state and subdivision thereof hereby consents to the arbitration as
43 provided herein, and agrees to be bound thereby.

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

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

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

24 (7) The board shall have power to administer oaths, take testimony,
25 subpoena and require the attendance of witnesses and the production of
26 accounts, books, papers, records, and other documents, and issue
27 commissions to take testimony. Subpoenas may be signed by any member
28 of the board. In case of failure to obey a subpoena, and upon application
29 by the board, any judge of a court of competent jurisdiction of the state in
30 which the board is sitting or in which the person to whom the subpoena is
31 directed may be found may make an order requiring compliance with the
32 subpoena, and the court may punish failure to obey the order as a
33 contempt. The provisions of this paragraph apply only in states that have
34 adopted this article.

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

1 (9) The board shall determine the disputed apportionment or
2 allocation and any matters necessary thereto. The determinations of the
3 board shall be final for purposes of making the apportionment or
4 allocation, but for no other purpose.

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

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

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

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

18

19 ARTICLE X.—Entry Into Force and Withdrawal

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

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

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

35

36 ARTICLE XI.—Effect on Other Laws and Jurisdiction

37 Nothing in this compact shall be construed to:

38 (a) Affect the power of any state or subdivision thereof to fix rates of
39 taxation, except that a party state shall be obligated to implement article III
40 ~~(2)~~ (1) of this compact.

41 (b) Apply to any tax or fixed fee imposed for the registration of a
42 motor vehicle or any tax on motor fuel, other than a sales tax: Provided,
43 That the definition of "tax" in article VIII (9) may apply for the purposes

1 of that article and the commission's powers of study and recommendation
2 pursuant to article VI (3) may apply.

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

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

10

11

ARTICLE XII.—Construction and Severability

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

23 Sec. 6. K.S.A. 79-4302 is hereby amended to read as follows: 79-
24 4302. The provisions of article III-(2) (1) of the multistate tax compact-
25 *K.S.A. 79-4301*}, and amendments thereto, shall apply to the Kansas
26 income tax act and to every income tax hereafter adopted by any taxing
27 subdivision of this state. *It is the intent of the legislature that the*
28 *provisions of articles III and IV of the multistate tax compact supplement*
29 *the Kansas income tax act and any income tax hereafter adopted by any*
30 *taxing subdivision of this state and not as an alternative method of*
31 *allocating and apportioning income or classifying income in a manner*
32 *other than as specified in the Kansas income tax act or any income tax*
33 *hereafter adopted by any taxing subdivision of this state. Any amendments*
34 *to the Kansas income tax act or any income tax hereafter adopted by any*
35 *taxing subdivision of this state shall, where applicable, be deemed to have*
36 *repealed any provisions of the multistate tax compact that are inconsistent*
37 *with such amendments. In the event of a conflict between the Kansas*
38 *income tax act or any income tax hereafter adopted by any taxing*
39 *subdivision of this state and the provisions contained in the multistate tax*
40 *compact, the Kansas income tax act or income tax hereafter adopted by*
41 *any taxing subdivision of this state shall apply.*

42

43

Sec. 7. K.S.A. 79-3269, 79-3271, 79-3279, 79-3280, 79-3281, 79-
3282, 79-3283, 79-3284, 79-3287, 79-4301 and 79-4302 are hereby

1 repealed.

2 Sec. 8. This act shall take effect and be in force from and after
3 January 1, 2025, and its publication in the statute book.