

As Amended by House Committee

Session of 2018

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 **New Section 1. No taxpayer may file an amended return for any**
7 **taxable year commencing after December 31, 2007, and ending before**
8 **January 1, 2017, that: (1) Claims an election under Article III of the**
9 **multistate tax compact; (2) treats sales in a manner that is inconsistent**
10 **with K.S.A. 79-3271(h) and 79-3285, as amended by chapter 182 of the**
11 **2008 Session Laws of Kansas; or (3) treats business income in a**
12 **manner that is inconsistent with K.S.A. 79-3271(a), as amended by**
13 **chapter 182 of the 2008 Session Laws of Kansas.**

14 ~~Section 1.~~ **Sec. 2.** K.S.A. 79-4301 is hereby amended to read as
15 follows: 79-4301. "The multistate tax compact" is hereby enacted into law
16 and entered into with all jurisdictions legally joining therein, in the form
17 substantially as follows:
18

19 MULTISTATE TAX COMPACT

20 ARTICLE I.—Purposes

21 The purposes of this compact are to:

22 (1) Facilitate proper determination of state and local tax liability of
23 multistate taxpayers, including the equitable apportionment of tax bases
24 and settlement of apportionment disputes.

25 (2) Promote uniformity or compatibility in significant components of
26 tax systems.

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

29 (4) Avoid duplicative taxation.
30

31 ARTICLE II.—Definitions

32 As used in this compact:

33 (1) "State" means a state of the United States, the District of
34 Columbia, the Commonwealth of Puerto Rico, or any territory or
35 possession of the United States.

36 (2) "Subdivision" means any governmental unit or special district of a

1 state.

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

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

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

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

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

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

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

35

36

ARTICLE III.—Elements of Income Tax Laws

37 (1) ~~*Taxpayer option, state and local taxes.* Any taxpayer subject to an~~
38 ~~income tax whose income is subject to apportionment and allocation for~~
39 ~~tax purposes pursuant to the laws of a party state or pursuant to the laws of~~
40 ~~subdivisions in two or more party states may elect to apportion and~~
41 ~~allocate his income in the manner provided by the laws of such state or by~~
42 ~~the laws of such states and subdivisions without reference to this compact,~~
43 ~~or may elect to apportion and allocate in accordance with article IV. This~~

1 election for any tax year may be made in all party states or subdivisions
2 thereof or in any one or more of the party states or subdivisions thereof
3 without reference to the election made in the others. For the purposes of
4 this paragraph, taxes imposed by subdivisions shall be considered
5 separately from state taxes and the apportionment and allocation also may
6 be applied to the entire tax base. In no instance wherein article IV is
7 employed for all subdivisions of a state may the sum of all apportionments
8 and allocations to subdivisions within a state be greater than the
9 apportionment and allocation that would be assignable to that state if the
10 apportionment or allocation were being made with respect to a state
11 income tax.

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

28 (3)(2) *Coverage.* Nothing in this article relates to the reporting or
29 payment of any tax other than in income tax.
30

31 ARTICLE IV.—Division of Income

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

33 (a) ~~"Business income" means income arising from transactions and~~
34 ~~activity in the regular course of the taxpayer's trade or business and~~
35 ~~includes income from tangible and intangible property if the acquisition,~~
36 ~~management, and disposition of the property constitute integral parts of the~~
37 ~~taxpayer's regular trade or business operations~~For all tax years
38 *commencing after December 31, 2007, "business income" means: (1)*
39 *Income arising from transactions and activity in the regular course of the*
40 *taxpayer's trade or business; (2) income arising from transactions and*
41 *activity involving tangible and intangible property or assets used in the*
42 *operation of the taxpayer's trade or business; or (3) income of the*
43 *taxpayer that may be apportioned to this state under the provisions of the*

1 *constitution of the United States and laws thereof, except that a taxpayer*
2 *may elect that all income constitutes business income. Any election made*
3 *under this subsection shall be effective and irrevocable for the tax year in*
4 *which the election is made and the following nine tax years and shall be*
5 *binding on all members of a unitary group of corporations.*

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

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

10 (d) "Financial organization" means any bank, trust company, savings
11 bank, industrial bank, land bank, safe deposit company, private banker,
12 savings and loan association, credit union, cooperative bank, small loan
13 company, sales finance company, investment company, or any type of
14 insurance company.

15 (e) "Nonbusiness income" means all income other than business
16 income.

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

24 (g) "Sales" means all gross receipts of the taxpayer not allocated
25 under paragraphs of this article. **For taxable years commencing after**
26 **December 31, 2007, in the case of sales of business assets, other than**
27 **sales of tangible personal property sold in the ordinary course of the**
28 **taxpayer's trade or business, only the net gain from such sales shall be**
29 **included in the sales factor.**

30 (h) "State" means any state of the United States, the District of
31 Columbia, the Commonwealth of Puerto Rico, any territory or possession
32 of the United States, and any foreign country or political subdivision
33 thereof.

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

38 (2) Any taxpayer having income from business activity which is
39 taxable both within and without this state, other than activity as a financial
40 organization or public utility or the rendering of purely personal services
41 by an individual, shall allocate and apportion his net income as provided in
42 this article. If a taxpayer has income from business activity as a public
43 utility but derives the greater percentage of his income from activities

1 subject to this article, the taxpayer may elect to allocate and apportion his
2 entire net income as provided in this article.

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

9 (4) Rents and royalties from real or tangible personal property, capital
10 gains, interest, dividends or patent or copyright royalties, to the extent that
11 they constitute nonbusiness income, shall be allocated as provided in
12 paragraphs 5 through 8 of this article. **Allocable nonbusiness income**
13 **shall be limited to the total nonbusiness income received that is in**
14 **excess of any related expenses that have been allowed as a deduction**
15 **during the income year.**

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

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

23 (c) The extent of utilization of tangible personal property in a state is
24 determined by multiplying the rents and royalties by a fraction, the
25 numerator of which is the number of days of physical location of the
26 property in the state during the rental or royalty period in the taxable year
27 and the denominator of which is the number of days of physical location of
28 the property everywhere during all rental or royalty periods in the taxable
29 year. If the physical location of the property during the rental or royalty
30 period is unknown or unascertainable by the taxpayer, tangible personal
31 property is utilized in the state in which the property was located at the
32 time the rental or royalty payer obtained possession.

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

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

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

43 (7) Interest and dividends are allocable to this state if the taxpayer's

1 commercial domicile is in this state.

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

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

13 (c) A copyright is utilized in a state to the extent that printing or other
14 publication originates in the state. If the basis of receipts from copyright
15 royalties does not permit allocation to states or if the accounting
16 procedures do not reflect states of utilization, the copyright is utilized in
17 the state in which the taxpayer's commercial domicile is located.

18 (9) All business income shall be apportioned to this state by
19 multiplying the income by a fraction, the numerator of which is the
20 property factor plus the payroll factor plus the sales factor, and the
21 denominator of which is three.

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

27 (11) Property owned by the taxpayer is valued at its original cost.
28 Property rented by the taxpayer is valued at eight times the net annual
29 rental rate. Net annual rental rate is the annual rental rate paid by the
30 taxpayer less any annual rental rate received by the taxpayer from
31 subrentals.

32 (12) The average value of property shall be determined by averaging
33 the values at the beginning and ending of the tax period but the tax
34 administrator may require the averaging of monthly values during the tax
35 period if reasonably required to reflect properly the average value of the
36 taxpayer's property.

37 (13) The payroll factor is a fraction, the numerator of which is the
38 total amount paid in this state during the tax period by the taxpayer for
39 compensation and the denominator of which is the total compensation paid
40 everywhere during the tax period.

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

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

43 (b) The individual's service is performed both within and without the

1 state, but the service performed without the state is incidental to the
2 individual's service within the state; or

3 (c) Some of the service is performed in the state and (1) the base of
4 operations or, if there is no base of operations, the place from which the
5 service is directed or controlled is in the state, or (2) the base of operations
6 or the place from which the service is directed or controlled is not in any
7 state in which some part of the service is performed, but the individual's
8 residence is in this state.

9 (15) The sales factor is a fraction, the numerator of which is the total
10 sales of the taxpayer in this state during the tax period, and the
11 denominator of which is the total sales of the taxpayer everywhere during
12 the tax period.

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

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

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

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

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

24 (b) The income-producing activity is performed both in and outside
25 this state and a greater proportion of the income-producing activity is
26 performed in this state than in any other state, based on costs of
27 performance.

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

32 (a) Separate accounting;

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

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

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

38 39 ARTICLE V.—Elements of Sales and Use Tax Laws

40 (1) *Tax credit.* Each purchaser liable for a use tax on tangible personal
41 property shall be entitled to full credit for the combined amount or
42 amounts of legally imposed sales or use taxes paid by him with respect to
43 the same property to another state and any subdivision thereof. The credit

1 shall be applied first against the amount of any use tax due the state, and
2 any unused portion of the credit shall then be applied against the amount
3 of any use tax due a subdivision.

4 (2) *Exemption certificates, vendors may rely.* Whenever a vendor
5 receives and accepts in good faith from a purchaser a resale or other
6 exemption certificate or other written evidence of exemption authorized by
7 the appropriate state or subdivision taxing authority, the vendor shall be
8 relieved of liability for a sales or use tax with respect to the transaction.
9

10 ARTICLE VI.—The Commission

11 (1) *Organization and management.* (a) The multistate tax commission
12 is hereby established. It shall be composed of one "member" from each
13 party state who shall be the head of the state agency charged with the
14 administration of the types of taxes to which this compact applies. If there
15 is more than one such agency the state shall provide by law for the
16 selection of the commission member from the heads of the relevant
17 agencies. State law may provide that a member of the commission be
18 represented by an alternate but only if there is on file with the commission
19 written notification of the designation and identity of the alternate. The
20 attorney general of each party state or his designee, or other counsel if the
21 laws of the party state specifically provide, shall be entitled to attend the
22 meetings of the commission, but shall not vote. Such attorneys general,
23 designees, or other counsel shall receive all notices of meetings required
24 under paragraph (1) (e) of this article.

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

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

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

33 (e) The commission shall hold an annual meeting and such other
34 regular meetings as its bylaws may provide and such special meetings as
35 its executive committee may determine. The commission bylaws shall
36 specify the dates of the annual and any other regular meetings, and shall
37 provide for the giving of notice of annual, regular and special meetings.
38 Notices of special meetings shall include the reasons therefor and an
39 agenda of the items to be considered.

40 (f) The commission shall elect annually, from among its members, a
41 chairman, a vice-chairman and a treasurer. The commission shall appoint
42 an executive director who shall serve at its pleasure, and it shall fix his
43 duties and compensation. The executive director shall be secretary of the

1 commission. The commission shall make provision for the bonding of
2 such of its officers and employees as it may deem appropriate.

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

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

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

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

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

21 (l) The commission annually shall make to the governor and
22 legislature of each party state a report covering its activities for the
23 preceding year. Any donation or grant accepted by the commission or
24 services borrowed shall be reported in the annual report of the
25 commission, and shall include the nature, amount and conditions, if any,
26 of the donation, gift, grant or services borrowed and the identity of the donor
27 or lender. The commission may make additional reports as it may deem
28 desirable.

29 (2) *Committees.* (a) To assist in the conduct of its business when the
30 full commission is not meeting, the commission shall have an executive
31 committee of seven members, including the chairman, vice-chairman,
32 treasurer and four other members elected annually by the commission. The
33 executive committee, subject to the provisions of this compact and
34 consistent with the policies of the commission, shall function as provided
35 in the laws of the commission.

36 (b) The commission may establish advisory and technical
37 committees, membership on which may include private persons and public
38 officials, in furthering any of its activities. Such committees may consider
39 any matter of concern to the commission, including problems of special
40 interest to any party state and problems dealing with particular types of
41 taxes.

42 (c) The commission may establish such additional committees as its
43 bylaws may provide.

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

3 (a) Study state and local tax systems and particular types of state and
4 local taxes.

5 (b) Develop and recommend proposals for an increase in uniformity
6 or compatibility of state and local tax laws with a view toward
7 encouraging the simplification and improvement of state and local tax law
8 and administration.

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

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

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

18 (b) Each of the commission's budget of estimated expenditures shall
19 contain specific recommendations of the amounts to be appropriated by
20 each of the party states. The total amount of appropriations requested
21 under any such budget shall be apportioned among the party states as
22 follows: One-tenth in equal shares; and the remainder in proportion of the
23 amount of revenue collected by each party state and its subdivisions from
24 income taxes, capital stock taxes, gross receipts taxes, sales and use taxes.
25 In determining such amounts, the commission shall employ such available
26 public sources of information as, in its judgment, present the most
27 equitable and accurate comparisons among the party states. Each of the
28 commission's budgets of estimated expenditures and requests for
29 appropriations shall indicate the sources used in obtaining information
30 employed in applying the formula contained in this paragraph.

31 (c) The commission shall not pledge the credit of any party state. The
32 commission may meet any of its obligations in whole or in part with funds
33 available to it under paragraph (1) (i) of this article: Provided, That the
34 commission takes specific action setting aside such funds prior to
35 incurring any obligation to be met in whole or in part in such manner.
36 Except where the commission makes use of funds available to it under
37 paragraph (1) (i), the commission shall not incur any obligation prior to the
38 allotment of funds by the party states adequate to meet the same.

39 (d) The commission shall keep accurate accounts of all receipts and
40 disbursements. The receipts and disbursements of the commission shall be
41 subject to the audit and accounting procedures established under its
42 bylaws. All receipts and disbursements of funds handled by the
43 commission shall be audited yearly by a certified or licensed public

1 accountant and the report of the audit shall be included in and become part
2 of the annual report of the commission.

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

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

10

11

ARTICLE VII.—Uniform Regulations and Forms

12

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

19

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

20

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

24

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

27

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

31

32

ARTICLE VIII.—Interstate Audits

33

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

35

(2) Any party state or subdivision thereof desiring to make or
36 participate in an audit of any accounts, books, papers, records or other
37 documents may request the commission to perform the audit on its behalf.
38 In responding to the request, the commission shall have access to and may
39 examine, at any reasonable time, such accounts, books, papers, records,
40 and other documents and any relevant property or stock of merchandise.
41 The commission may enter into agreements with party states or their
42 subdivisions for assistance in performance of the audit. The commission
43 shall make charges, to be paid by the state or local government or

1 governments for which it performs the service, for any audits performed
2 by it in order to reimburse itself for the actual costs incurred in making the
3 audit.

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

12 (4) The commission may apply to any court having power to issue
13 compulsory process for orders in aid of its powers and responsibilities
14 pursuant to this article and any and all such courts shall have jurisdiction
15 to issue such orders. Failure of any person to obey any such order shall be
16 punishable as contempt of the issuing court. If the party or subject matter
17 on account of which the commission seeks an order is within the
18 jurisdiction of the court to which application is made, such application
19 may be to a court in the state or subdivision on behalf of which the audit is
20 being made or a court in the state in which the object of the order being
21 sought is situated. The provisions of this paragraph apply only to courts in
22 a state that has adopted this article.

23 (5) The commission may decline to perform any audit requested if it
24 finds that its available personnel or other resources are insufficient for the
25 purpose or that, in the terms requested, the audit is impracticable of
26 satisfactory performance. If the commission, on the basis of its experience,
27 has reason to believe that an audit of a particular taxpayer, either at a
28 particular time or on a particular schedule, would be of interest to a
29 number of party states or their subdivisions, it may offer to make the audit
30 or audits, the offer to be contingent on sufficient participation therein as
31 determined by the commission.

32 (6) Information obtained by any audit pursuant to this article shall be
33 confidential and available only for tax purposes to party states, their
34 subdivisions or the United States. Availability of information shall be in
35 accordance with the laws of the states or subdivisions on whose account
36 the commission performs the audit, and only through the appropriate
37 agencies or officers of such states or subdivisions. Nothing in this article
38 shall be construed to require any taxpayer to keep records for any period
39 not otherwise required by law.

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

43 (8) In no event shall the commission make any charge against a

1 taxpayer for an audit.

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

5
6 ARTICLE IX.—Arbitration

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

11 (2) The commission shall select and maintain an arbitration panel
12 composed of officers and employees of state and local governments and
13 private persons who shall be knowledgeable and experienced in matters of
14 tax law and administration.

15 (3) Whenever a taxpayer who has elected to employ article IV, or
16 whenever the laws of the party state or subdivision thereof are
17 substantially identical with the relevant provisions of article IV, the
18 taxpayer, by written notice to the commission and to each party state or
19 subdivision thereof that would be affected, may secure arbitration of an
20 apportionment or allocation, if he is dissatisfied with the final
21 administrative determination of the tax agency of the state or subdivision
22 with respect thereto on the ground that it would subject him to double or
23 multiple taxation by two or more party states or subdivisions thereof. Each
24 party state and subdivision thereof hereby consents to the arbitration as
25 provided herein, and agrees to be bound thereby.

26 (4) The arbitration board shall be composed of one person selected by
27 the taxpayer, one by the agency or agencies involved, and one member of
28 the commission's arbitration panel. If the agencies involved are unable to
29 agree on the person to be selected by them, such person shall be selected
30 by lot from the total membership of the arbitration panel. The two persons
31 selected for the board in the manner provided by the foregoing provisions
32 of this paragraph shall jointly select the third member of the board. If they
33 are unable to agree on the selection, the third member shall be selected by
34 lot from among the total membership of the arbitration panel. No member
35 of a board selected by lot shall be qualified to serve if he is an officer or
36 employee or is otherwise affiliated with any party to the arbitration
37 proceeding. Residence within the jurisdiction of a party to the arbitration
38 proceeding shall not constitute affiliation within the meaning of this
39 paragraph.

40 (5) The board may sit in any state or subdivision party to the
41 proceeding, in the state of the taxpayer's incorporation, residence or
42 domicile, in any state where the taxpayer does business, or in any place
43 that it finds most appropriate for gaining access to evidence relevant to the

1 matter before it.

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

6 (7) The board shall have power to administer oaths, take testimony,
7 subpoena and require the attendance of witnesses and the production of
8 accounts, books, papers, records, and other documents, and issue
9 commissions to take testimony. Subpoenas may be signed by any member
10 of the board. In case of failure to obey a subpoena, and upon application
11 by the board, any judge of a court of competent jurisdiction of the state in
12 which the board is sitting or in which the person to whom the subpoena is
13 directed may be found may make an order requiring compliance with the
14 subpoena, and the court may punish failure to obey the order as a
15 contempt. The provisions of this paragraph apply only in states that have
16 adopted this article.

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

26 (9) The board shall determine the disputed apportionment or
27 allocation and any matters necessary thereto. The determinations of the
28 board shall be final for purposes of making the apportionment or
29 allocation, but for no other purpose.

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

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

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

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

43

ARTICLE X.—Entry Into Force and Withdrawal

(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 therein.

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.

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

1 shall not be affected thereby. If this compact shall be held contrary to the
2 constitution of any state participating therein, the compact shall remain in
3 full force and effect as to the remaining party states and in full force and
4 effect as to the state affected as to all severable matters.

5 ~~Sec. 2.~~ **3.** K.S.A. 79-4302 is hereby amended to read as follows: 79-
6 4302. ~~The provisions of article III (2) of the multistate tax compact shall~~
7 ~~apply to the Kansas income tax act and to every income tax hereafter~~
8 ~~adopted by any taxing subdivision of this state~~ *It is hereby declared, as a*
9 *matter of legislative determination that: (a) The provisions of articles III*
10 *and IV of the multistate tax compact are intended to supplement the*
11 *Kansas income tax act and any income tax hereafter adopted by any*
12 *taxing subdivision of this state; (b) the multistate tax compact is intended*
13 *to supplement the Kansas income tax act and any income tax hereafter*
14 *adopted by any taxing subdivision of this state, and not as an alternative*
15 *method of allocating and apportioning income, or classifying income in a*
16 *manner other than as specified in the Kansas income tax act or any*
17 *income tax hereafter adopted by any taxing subdivisions of this state; (c)*
18 *any amendments to the Kansas income tax act or any income tax hereafter*
19 *adopted by any taxing subdivision of this state shall, where applicable, be*
20 *deemed to have repealed, with retroactive effect, any provisions of the*
21 *multistate tax compact that are inconsistent with such amendments; and*
22 *(d) in the event of a conflict between the Kansas income tax act or any*
23 *income tax hereafter adopted by any taxing subdivision of this state and*
24 *the provisions contained in the multistate tax compact, the Kansas income*
25 *tax act or income tax hereafter adopted by any taxing subdivision of this*
26 *state shall apply.*

27 *The provisions of this section shall apply from and after taxable years*
28 *commencing after December 31, ~~2007~~ 2016.*

29 ~~Sec. 3.~~ **4.** K.S.A. 79-4301 and 79-4302 are hereby repealed.

30 ~~Sec. 4.~~ **5.** This act shall take effect and be in force from and after its
31 publication in the statute book.