Senate Committee on Assessment and Taxation
Neutral Testimony on Senate Bill 507
Presented by Eric Stafford, VP of Government Affairs, Kansas Chamber

Wednesday, March 6, 2024

Madam Chair and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large-sized businesses across the state, advocating for policies which improve the economic climate in Kansas. We appreciate the opportunity to provide neutral testimony on Senate Bill 507, which would move Kansas to a single-factor apportionment state for corporate income tax purposes.

The topic of single-factor apportionment is not a new one for our membership when determining our legislative agenda. Our membership has been divided over this issue and that remains the case today. Heading into the 2021 session, our members asked for a bill that would allow taxpayers from certain industries elect single-factor apportionment. At that time, our priority was passing legislation to decouple from the tax cuts and jobs act so we were not successful in getting single-factor apportionment through. We reintroduced House Bill 2110 in 2023 which was an election between three-factor (current law) and single-factor for those select NAICS codes.

On the afternoon when the House Tax Committee was scheduled to work HB 2110, we were called into a meeting with the chairman, along with representatives from the department of revenue. We were asked if we could support moving Kansas to a single-factor state. Knowing the history of this issue with our membership, our response was that we needed some time to work through this with members, so the bill did not move forward.

That let to a working group specific to this issue that met several times this summer and fall. First, let me say that ***our board adopted a position to support the change to single-factor apportionment for 2024***. However, it's not that simple. Switching to single-factor apportionment means there will be winners and losers. Some will experience a reduction in tax liability, while others will see an increase. That division remains among our membership, but the opposition has lightly softened. So what changed to switch out position from an election to full single-factor?

The best arguments made during our discussions were from a business located within five miles of the Missouri border. His argument was he could move their facility to Missouri, which is now a single-factor state and reduce their tax burden significantly. We had advocated for a taxpayer election because single-factor *DOES* reward those with significant capital investment in the state. The economic argument to move from three-factor to single-factor is to encourage economic development and investment in our state. If you look at page 3 of our testimony, you will see a list of states that have moved to the sales factor which now numbers over 40. Only six states, including Kansas, use the old three-factor formula of property, payroll and sales.

So if we are supportive of moving to single-factor apportionment as an organization, why are we neutral? Because through our task group process, those who expect an increase in their tax liability have asked us to include 1) a buy-down of the corporate rate; and 2) a provision known as a deferred tax liability credit.

Additionally, our members asked if we can have a two-year election period where taxpayers can choose between single-factor and three-factor, before moving fully to single factor apportionment in the third year. Again, these requests were made to help those businesses negatively impacted prepare for the change. SB 507 does not reflect any of these provisions, therefore we are neutral on the bill and would request that if this committee were to move forward, they adopt language found in House Bill 2798, which we introduced to reflect the requests from our members.

SB 507 does however include a provision known as "Market-based sourcing." We are supportive of this change. In 2020, the Tax Foundation conducted an analysis of the Kansas tax code and found this to be a recommendation for the state to consider. In their report they wrote:

"*Kansas has an inconsistency built into its approach to apportionment of corporate income that can be resolved by shifting to market sourcing of service income. The current code taxes inbound, but not outbound, sales of tangible property, but applies the opposite treatment to services and intangible property, sourcing service income based on the location of income-producing activity. This essentially puts additional emphasis on payroll and property for outbound sales of services, while failing to tax out-of-state businesses on the basis of their sales of services into Kansas.*

Many questions of tax apportionment are not easily resolved by an appeal to basic tax principles. Income should only be taxed once, which argues against the states' current patchwork approach to apportionment, but it does not necessarily follow that one particular apportionment formula is best—just that it is best that all states use the same one.

The argument for shifting to a market sourcing approach is not so much that, as a matter of principle, the corporate taxation of services should be destination-based, but rather that the state's choices should be consistent and not undercut each other. For that reason, Kansas should consider shifting to market sourcing of service income."

In conclusion, the discussions within our organization have been extensive surrounding moving to single-factor apportionment. Now that we have determined a path, we ask this committee to consider provisions included in our House version to help those businesses negatively impacted by such change. Thank you for the opportunity to testify today and I'm happy to answer any questions you may have.

STATE APPORTIONMENT OF CORPORATE INCOME

(Formulas for tax year 2022 -- as of January 1, 2022)

ALABAMA *	Sales	MONTANA *	Double wtd Sales
ALASKA*	3 Factor	NEBRASKA	Sales
ARIZONA *	Sales/Double wtd Sales	NEVADA	No State Income Tax
ARKANSAS *	Sales	NEW HAMPSHIRE (3)	Double wtd Sales
CALIFORNIA *	Sales	NEW JERSEY	Sales
COLORADO *	Sales	NEW MEXICO *	3 Factor/Sales
CONNECTICUT	Sales	NEW YORK	Sales
DELAWARE	Sales	NORTH CAROLINA *	Sales
FLORIDA	Double wtd Sales	NORTH DAKOTA *	3 Factor/Sales
GEORGIA	Sales	OHIO	N/A (2)
HAWAII *	3 Factor	OKLAHOMA	3 Factor
IDAHO *	Double wtd Sales	OREGON	Sales
ILLINOIS *	Sales	PENNSYLVANIA	Sales
INDIANA	Sales	RHODE ISLAND	Sales
IOWA	Sales	SOUTH CAROLINA	Sales
KANSAS *	3 Factor	SOUTH DAKOTA	No State Income Tax
KENTUCKY *	Sales	TENNESSEE	Triple wtd Sales
LOUISIANA	Sales	TEXAS	Sales
MAINE *	Sales	UTAH	Sales
MARYLAND	Sales	VERMONT	Double wtd Sales
MASSACHUSETTS	Sales/Double wtd Sales	VIRGINIA	Double wtd Sales/Sales
MICHIGAN	Sales	WASHINGTON	No State Income Tax
MINNESOTA	Sales	WEST VIRGINIA *	Sales
MISSISSIPPI	Sales/Other (1)	WISCONSIN *	Sales
MISSOURI *	Sales	WYOMING	No State Income Tax
		DIST. OF COLUMBIA	Sales

Source: Compiled by FTA from state sources. Notes:
The formulas listed are for general manufacturing businesses. Some industries have a special formula different from the one shown.

* State has adopted substantial portions of the UDITPA (Uniform Division of Income Tax Purposes Act). Slash (/) separating two formulas indicates taxpayer option or specified by state rules.

3 Factor = sales, property, and payroll equally weighted. Double wtd Sales = 3 factors with sales double-weighted Sales = single sales factor

(1) Mississippi provides different apportionment formulas based on specific type of business. A single sales factor formula is required if no specific business formula is specified.

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(2) Ohio Tax Department publishes specific rules for situs of receipts under the CAT tax.

(3) New Hampshire will use a Single Sales Factor for tax years ending on or after 12/31/22.