

February 12, 2019

The Honorable Steven Johnson, Chairperson
House Committee on Taxation
Statehouse, Room 185-N
Topeka, Kansas 66612

Dear Representative Johnson:

SUBJECT: Fiscal Note for HB 2212 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2212 is respectfully submitted to your committee.

HB 2212 would eliminate the taxpayer's option to use the apportionment rules of the Multistate Tax Compact to determine business income and allocation of income tax liability between states. In the event of a conflict between the Kansas Income Tax Act and the Multistate Tax Compact, the language in the Kansas Income Tax Act would be used. The bill would also make changes to the definition of business income by defining business income as follows:

1. Income arising from transactions and activity in the regular course of the taxpayer's trade or business;
2. Income arising from transactions and activity involving tangible and intangible property or assets used in the operation of the taxpayer's trade or business; or
3. Income of the taxpayer that may be apportioned to this state under the provisions of the U.S. Constitution and federal law, except that a taxpayer may elect that all income constitutes business income. Any election made would be effective and irrevocable for the tax year in which the election is made and the following nine tax years and would also be binding on all members of a unitary group of corporations.

The bill would not allow a taxpayer to file an amended return for tax year 2008 through tax year 2018 that uses apportionment rules of the Multistate Tax Compact to determine business income and allocation of income tax liability between states, or treats sales or business income inconsistent with state statutes. The bill would provide clarifying language that the net gain from the sales of certain business assets could be included in the sales factor of the multistate business income distribution formula, and that allocable nonbusiness income would be limited to that total nonbusiness income received, which is in excess of related expenses allowed as deductions.

The Department of Revenue indicates HB 2212 would have no direct fiscal effect. However, this bill has the potential to prevent a State General Fund revenue decrease in corporate income tax receipts. The Department of Revenue indicates that if taxpayers elect to use the alternative apportionment rules of the Multistate Tax Compact instead of apportionment rules in state law, then Kansas tax liability could be reduced significantly. The Department of Revenue estimates that the administrative costs associated with the bill would be negligible and could be absorbed within existing resources. Any fiscal effect associated with HB 2212 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "L. L. Campbell". The signature is fluid and cursive, with a large initial "L" and a smaller "L." followed by "Campbell".

Larry L. Campbell
Director of the Budget

cc: Lynn Robinson, Department of Revenue