

SESSION OF 2019

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2212**

As Amended by House Committee on Taxation

**Brief\***

HB 2212, as amended, would clarify the Multistate Tax Compact (Compact) under Kansas statutory provisions relative to the definition of business income for corporation income tax purposes.

The bill would clarify, relative to tax year 2019 and thereafter, the Compact's provisions are supplemental to the Kansas Income Tax Act (KITA) and are not available as an alternative method of allocating and apportioning business income. The bill would state that should a conflict between the Compact and KITA be determined, KITA would apply.

Additional amendments to the Compact would clarify only 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 allocable non-business income would be limited to the total non-business income received in excess of related expenses allowed as deductions.

The bill would clarify the Compact does not provide a taxpayer an election for any separate alternative methodology relative to the determination of business income under the functional test utilized in KITA.

Finally, the bill would prohibit taxpayers from filing amended returns for tax years 2008 through 2018 claiming that an election had existed under the Compact or that certain

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

provisions of the Compact had been inconsistent with KITA relative to the determination of business income.

## **Background**

The bill was introduced by the House Committee on Taxation at the request of the Department of Revenue (Department). A representative of the Department appeared as the only proponent during the House Committee hearing on February 12. During the hearing, the representative explained legislation enacted in 2008 had reduced corporation income tax rates but broadened the base under KITA by replacing the transactional test for the determination of business income with the functional test. The conferee further explained litigation recently has been filed in a number of states, suggesting the Compact's provisions provide flexibility in the determination of business income that somehow control over more specifically enacted state law, and many millions of dollars in refunds potentially could be sought if such litigation were to be filed in Kansas. The conferee added that since the change to KITA in 2008, the assumption has been the churning of investment capital was not to be included in the sales factor of the multistate formula.

No neutral or opponent testimony was provided.

The House Committee adopted a technical amendment, which was suggested by the Department representative.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department indicates the bill would have no direct fiscal effect; however, it has the potential to prevent large revenue losses if taxpayers were able to assume an alternative set of apportionment rules has been available under the Compact since 2008. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.