

Kansas Administrative Regulations

Kansas Department of Revenue

Article 12.—Income Tax

92-12-91. Payroll factor; in general.

(a) The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount "paid" to employees shall be determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.

(c) The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.

(d) The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services when the amounts constitute income to the recipient under the federal internal revenue code. In the case of employees not subject to the federal internal revenue code such as those employed in foreign countries, the determination of whether the benefits or services would constitute income to the employees shall be made as though the employees were subject to the federal internal revenue code. The term "employee" means any officer of a corporation, or any individual who, under the usual common-law rules applicable in determining the

employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if the person is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the federal insurance contributions act; except that, since certain individuals are included within the term "employees" in the federal insurance contributions act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the federal insurance contributions act is not an employee for purposes of this regulation.

(e) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(f) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the multistate tax compact or the uniform division of income for tax purposes act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(Authorized by K.S.A. 79-3236; implementing K.S.A. 79-3283, 79-3289, 79-4301; effective May 1, 1979; amended May 1, 1986.)

***** Authenticated Kansas Administrative Regulation *****