Kansas Administrative Regulations

Kansas Department of Revenue

Article 12.—Income Tax

92-12-81. Taxable in another state; when a corporation is "subject to" a tax under K.

S.A. 79-3273 (1) and 79-4301, article IV.3.(1). A taxpayer is "subject to" one (1) of the taxes, specified in K.S.A. 79-3273(1) and 79-4301, article IV.3.(1) if it carries on business activities in such state and such state imposes such a tax thereon. Any taxpayer which asserts that it is subject to one (1) of the taxes specified in K.S.A. 79-3273(1) or 79-4301, article IV.3.(1) in another state shall furnish to the director of taxation upon his request evidence to support such assertion. The director of taxation may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one (1) of the taxes specified in K.S.A. 79-3273 and K.S.A. 79-4301, article IV.3.(1) in such other state.

If the taxpayer voluntarily files and pays one (1) or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but (a) does not actually engage in business activity in that state, or

(b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not "subject to" one of the taxes specified within the meaning of K.S.A. 79-3273 and K.S.A. 79-4301, article IV.3.(1).

The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in K.S.A. 79-3273 and 79-4301, article IV.3.(1) which may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in K.S.A. 79-3273 and 79-4301, article IV.3.(1) in another state.

(Authorized by K.S.A. 79-3236, 79-3273, 79-4301; effective May 1, 1979.)