



House Taxation Committee

Verbal Testimony in Support on Senate Bill 22

Presented by Don Brown, Cargill's Managing Director for U.S. State and Local Government Relations

Wednesday, February 20, 2019

Mr. Chairman and Committee Members, my name is Don Brown and I am the managing director of Cargill's U.S. state and local relations group. Cargill appreciates the opportunity to testify in support of Senate Bill 22. I am here today to speak to those sections of Senate Bill 22 that would decouple Kansas corporate tax code from certain provisions of the federal tax code enacted as part of the 2017 Tax Cuts & Jobs Act of 2017 or "TCJA". Senate Bill 22 decouples from Internal Revenue Code 965(a) and 965(c) regarding deemed repatriated income and 951A, 250(a) or Global Intangible Low Tax Income or GILTI for short. Without decoupling, Cargill and other U.S. multinationals subject to Kansas' corporate tax would see a significant tax increase on our foreign operations that would impede our ability to compete with foreign multinationals.

Some of you may be familiar with Cargill's presence in Kansas and I would like to speak briefly of our global footprint. Founded in 1865, Cargill's 155,000 employees across 70 countries work to achieve our purpose of nourishing the world in a safe, responsible and sustainable way. Every day, we connect farmers with markets, customers with ingredients, and people and animals with the food they need to thrive.

We combine 153 years of experience with new technologies and insights to serve as a trusted partner for food, agriculture, financial and industrial customers in more than 125 countries. Working side by side with our customers, we are building a stronger, sustainable future for agriculture.

We connect producers and users of grains and oilseeds around the globe through origination, trading, processing, and distribution, as well as offering a range of farmer services and risk management solutions.

Some of many products we produce for our customers are cocoa and chocolate, beef, turkeys, corn sweeteners, ethanol, biodiesel, food grade salt and water softener salt under our Diamond Crystal® brand, and road deicing salt. We produce animal feed and premix to feed beef cattle, dairy cattle, swine, and poultry. Our aquaculture business feeds salmon, shrimp and tilapia. Most of Cargill's earnings, assets, and employees are located outside the U.S.

However, as much as we are a global company, we are a local company. Cargill has deep ties to Kansas communities where we have 4300 professionals working in diverse businesses across the state.

We have grain elevators in Atchison, Hutchinson Lenexa, Salina, and Topeka; animal feed plants in Kansas City, McPherson, and Emporia, where we recently made a \$4 million investment. We have a salt evaporation facility in Hutchinson and a beef plant in Dodge City.

Cargill recently opened a \$70 million, 188,000 square-foot headquarters for our Protein businesses in Wichita – it currently houses 1200 employees and we are planning to hire more. In May we are opening a \$90 million dollar, state of the art biodiesel facility also in Wichita. When it is fully operational, it will produce 60 million gallons of biodiesel annually.

It's not just our facilities where Cargill makes investments. In 2018, Cargill contributed \$135,000 to the Kansas Food Bank and more than 3,200 Honeysuckle White turkeys to help the organization provide food for families across the state. Cargill also donated \$200,000 to the Ronald McDonald House of Wichita, Inc. that will fund construction of a 20 bedroom facility for families of children battling major illnesses. Since 2010, Cargill has partnered with Ducks Unlimited to organize an annual clean-up of the Arkansas River. Each year, more than 1,400 Cargill volunteers participate.

Cargill's success depends on the company investing both locally and globally, which is why I am here to explain why Cargill supports Kansas decoupling from those sections of the TCJA that tax foreign income.

Like our foreign competitors, we build grain elevators, crush facilities, food production plants, and port facilities around the globe. We compete for the opportunity to serve farmers, customers, consumers, and markets. We pay local taxes, including not only income taxes, but export taxes, value-added tax, and other excise and sales and use taxes. We also build roads, schools and infrastructure to support our investments and enhance the communities where we do business.

Many of Cargill's competitors are foreign multinationals organized in jurisdictions with both low home-country income tax rates and territorial tax systems. Unlike our competitors, Cargill also bears U.S. federal and state income tax burdens on its foreign income and investments. This puts Cargill at a competitive disadvantage with non-U.S. multinationals as we compete for investments. To succeed abroad, U.S. multinationals must maintain sufficient efficiencies and synergies to overcome the additional tax burden.

As a U.S. multinational with substantial operations outside the U.S., Cargill was significantly impacted by the TCJA. While the U.S. moved closer towards a "territorial" tax system, the federal tax code retained

some provisions that continue to tax foreign income. And the TCJA enacted new provisions that tax entirely new types of income – again earned by non-U.S. companies outside the U.S.

Because the Kansas tax code automatically conformed to the Tax Cut & Jobs Act federal changes, absent decoupling legislation, a significant amount of foreign income both previously earned and to be earned by our foreign operations will be included in Kansas apportionable income. And this results in a very large tax increase for Cargill. These new provisions are the deemed repatriation tax under Section 965 and the Global Intangible Low Tax Income or GILTI provisions under Sections 951A and 250.

As you have heard from the others who have testified on Senate Bill 22, Section 965 requires U.S. shareholders to pay a transition tax on the untaxed earnings of their foreign corporations as if those earnings had been repatriated to the U.S. The tax is based on the foreign corporation's post-1986 earnings that have not already been paid as a dividend back to a U.S. parent company. This is a type of income that has never before been subject to Kansas income tax.

While many foreign companies actually distributed earnings back to their U.S. parent following enactment of the TCJA, it is important to remember that the repatriation tax is not on what the foreign company *actually* distributed to its U.S. parent, instead, all past earnings are *deemed* to be received by the U.S. parent.

In fact, Cargill's foreign companies typically reinvest their earnings in their operations and don't dividend their earnings back to the U.S. The businesses in which Cargill operates around the world require continuous investment in plants and equipment if we are to remain competitive.

Federal tax reform also created a second category of foreign income – Global Intangible Low Tax Income, commonly referred to as GILTI, that is now subject to U.S. tax. GILTI is defined as income in excess of what policymakers determined to be a normal rate of return (10 percent) on tangible assets. Even though the name suggests that it applies only to high return, low taxed intangible income, it really captures any income in excess of the deemed rate of return.

For federal purposes, both of these items were enacted to offset the revenue lost from federal rate reductions by broadening the base and moving closer to a territorial tax system. Because Kansas has not reduced its tax rates, Kansas should not tax this income from foreign companies. Further, because Kansas decided long ago to tax on a water's edge basis, Kansas should not now include this income earned by companies outside the waters' edge in Kansas apportionable income.

There are also Constitutional issues that would be raised with how Kansas would tax the deemed dividend and GILTI. One of the most glaring is Kansas using current year domestic activity apportionment factors to tax 30+ years of foreign income and GILTI.

Also, because of Kansas' apportionment formula, where a taxpayer's Kansas property and payroll is included as part of the formula, those companies that have made the decision to invest in Kansas have a larger portion of its' foreign income subject to Kansas tax than out of state companies.

Kansas is a water's edge state (taxing companies based on their U.S. water's edge activity). Foreign source income should not be subject to tax in Kansas. Attempts to tax this income would raise serious legal and policy issues, and will almost certainly be challenged in court. Most states do not tax this income, and Kansas should not adopt policies that place it at a competitive disadvantage with other states.

On behalf of Cargill, thank you for your time today.