House Committee on taxation
Testimony in Support of House Bill 2553
Presented by Eric Stafford, Vice President of Government Affairs

Monday, February 17, 2020

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber appreciates the opportunity to testify in support of House Bill 2553, which addresses conformity issues related to the tax cuts and jobs act (TCJA).

We feel it is important to state from the beginning that HB 2553 is not a tax cut for corporations. HB 2553 is however, a bill that decouples from the newly created base-broadening provisions in federal tax code. These provisions were implemented to lower the federal corporate rate from 35% to 21%. Just like the individual itemization issue, federal tax changes in rolling conformity states such as Kansas created an unlegislated tax increase on Kansas corporations if proactive measures are not taken to eliminate this .

Unlike previous versions of this legislation, HB 2553 does not propose to decouple from IRC 965 repatriated earnings. Our members have agreed to forgo decoupling on that provision in an attempt to show compromise and find a solution that can earn support of the legislature and the Governor.

HB 2553 proposes to decouple from the following items:

- IRC 951A, 250(a)(1)(B)(i) or GILTI as it is known
- IRC section 163(j) on interest limitation deductions
- IRC 118- capital contributions
- IRC 162(r)- FDIC premiums

As previously stated, these, business-related provisions were created to help pay for the reduction in the corporate income tax rate, but more importantly, to eliminate disincentives on investment in the United States. TCJA moves business taxes from a worldwide taxation system to a territorial system reflective of the global environment.

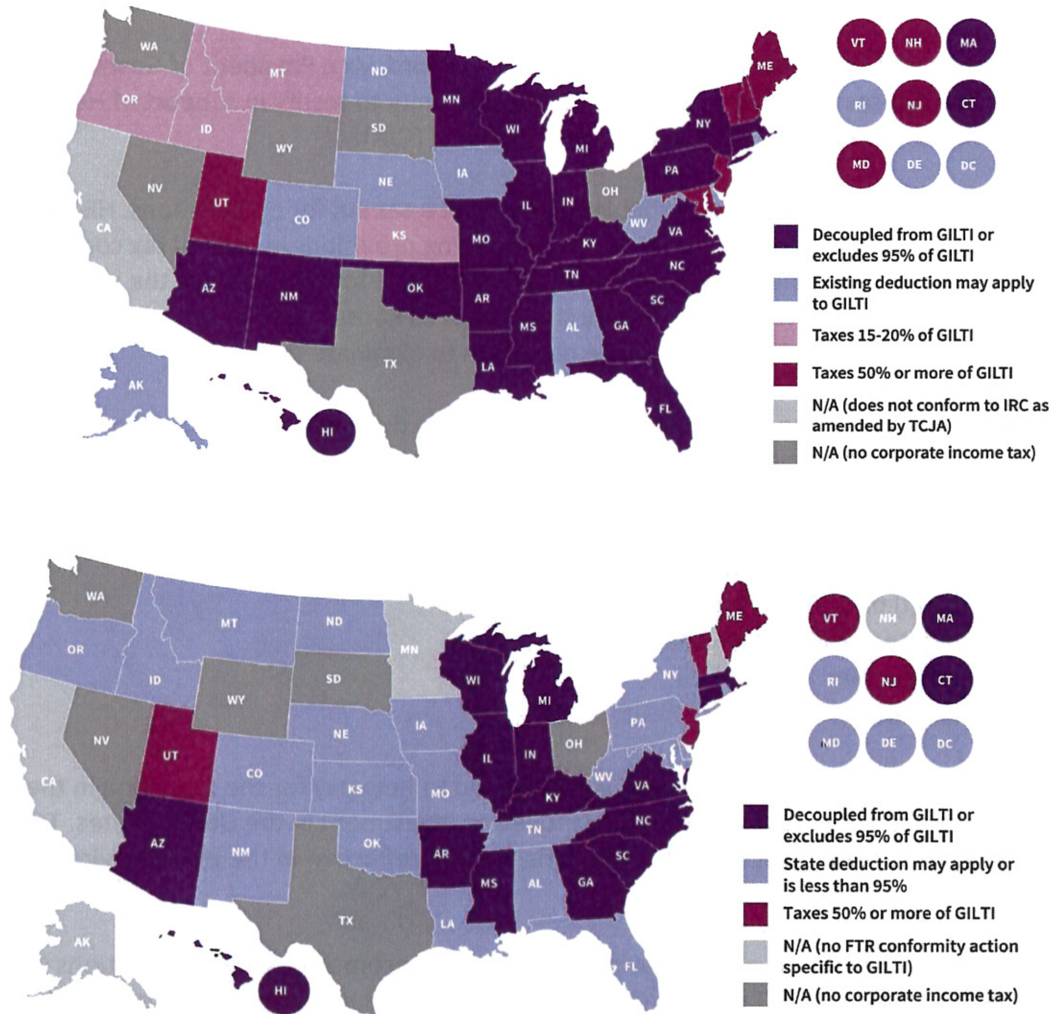
IRC 951A, 250(a)(1)(B)(i) - GILTI

Global Intangible Low Tax Income (GILTI) is a new provision which taxes income earned in jurisdictions with a low tax rate. According to the Council on State Taxation (COST), *"This provision is meant to discourage the location of high-value activities outside the US. It functions as a mandatory annual inclusion of global intangible low taxed income (GILTI) determined on an aggregate basis for all controlled foreign corporations owned by the same US shareholder, with partial credits for foreign taxes properly attributable to the GILTI amount. The GILTI inclusion effectively taxes foreign earnings in excess of a 10% rate of return on fixed assets at a reduced rate by providing a 50% deduction initially (subject to certain limitations), reduced to 37.5% for tax years beginning after 2025. At a 21% federal corporate tax rate, the deduction results in effective rates of 10.5% and 13.125% respectively)."*

This complex calculation only becomes worse for businesses when determining the proper apportionment to determine how much of this foreign income should be attributable to Kansas. We must stress that foreign income has never been subject to Kansas corporate income tax before. As more states act to decouple from GILTI provisions, Kansas is becoming more of an outlier Failure to address these provisions would place Kansas as an outlier and diminish the competitiveness of our already mediocre tax policy.

Below are two maps specific to state conformity efforts on GILTI. The top image shows the status as of January 24, 2020, while the second was from January of 2019. Right now, Utah and Nebraska are also considering legislation that would decouple from GILTI, but you can see the increase in the number of states electing to not include GILTI in its tax base.

Which states decoupled from the TCJA's **Global Intangible Low-Taxed Income (GILTI)** provisions?



IRC section 163(j) on interest limitation deductions

TCJA modified IRC 163(j) to limit deductibility of business interest expenses. According to the STAR partnership, not decoupling from 163(j) will result in a variety of complex questions that will need to be answered. *"(The) Legislature or tax department will need to spend much time drafting rules concerning myriad issues, including: whether carried forward interest expense will be based on taxpayer's apportionment in the year the interest expense paid or in the year the interest expense used; how to account for the suspended interest expense when a corporation leaves/joins a combined group; how to account for the interest expense when there is a change of ownership in the taxpayer; how to allocate the disallowed interest expense in a state with an add back for interest expense paid to related parties; and whether to suspend the income inclusion if a disallowed business expense is paid to a related party that also files a return in the state."*

IRC 118- capital contributions and IRC 162(r)- FDIC premiums
These last two provisions lack the complexity as the others on the reasons why decoupling is essential. TCJA included a new modification to IRC 118 providing that contributions (incentives) by governmental entities and civic groups to corporations are taxable. If Kansas wants to offer incentives to attract and retain businesses, taxing those incentives reduces the effectiveness of the policy decision.

TCJA disallowed deductions of FDIC premiums paid by financial institutions simply to raise revenue to offset rate reductions. Bringing more revenue to the state without any reduction of rates results in an unlegislated tax increase on banks.

In closing, we hope this information helps with your decision to support efforts to decouple from these four provisions and that the committee recognizes the sacrifice made by the Kansas business community by choosing to drop the 965 repatriation provision from this year's bill. We appreciate the opportunity to testify in support of House Bill 2553 and I'm happy to answer any questions you might have at the appropriate time.