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**Written Testimony on Kansas' Treatment of GILTI
submitted to the House Committee on Taxation**

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Chairman Johnson and Members of the Committee:

Kansas' tax on GILTI is an accident of tax conformity—a tax lawmakers never sought to impose, and which undermines the state's economic competitiveness and raises serious constitutional issues that may have to be resolved in court. This body never voted to tax Global Intangible Low-Taxed Income (GILTI), and in fact sought to exempt it last year. House Bill 2553 represents an attempt to roll back this accidental new tax, along with other automatically incorporated provisions which increase state tax liability.

Taxation of GILTI is a byproduct of Kansas's conformity with the Internal Revenue Code after the implementation of the Tax Cuts and Jobs Act. At the federal level, GILTI is one of two guardrails, along with the Base Erosion Anti-Abuse Tax (the BEAT), which can return some international income to the federal tax base despite the federal government's broader transition from a global to a territorial tax regime. In other words, the federal government is moving away from the taxation of international income, with certain exceptions, whereas Kansas, by conforming to one of those exceptions, has inadvertently broadened its reach to new sources of international income.

The federal GILTI inclusion functions in tandem with other provisions Kansas lacks, like the credit for foreign taxes paid, without which, despite the name, the tax has nothing to do with "low-taxed income." Consequently, not only does conformity to GILTI involve state taxation of international income, but it yields a far more aggressive international tax regime than the one implemented by the federal government. Moreover, its purpose—to discourage profit shifting by parking intangible property in low-tax jurisdictions overseas—is not served by inclusion in state tax codes.

Because Kansas' tax code was not constructed with the taxation of international income in mind, its inclusion in the absence of any legislative design gives rise to anomalous and constitutionally suspect treatment of the income. The income of controlled foreign corporations (CFCs) would be apportioned to Kansas if the parent company is domiciled in Kansas or, failing that, if that income is related to activity the parent company performs in Kansas. As a three-factor apportionment

state, Kansas would include the relevant sales, payroll, and property of in the numerator of the apportionment formula. However, only the *net* taxable national GILTI of the company is included in the denominator, which means that the taxable activity is wrongly—and excessively—apportioned, which unconstitutionally discriminates against foreign commerce.

The mere fact of its inclusion is economically harmful, moreover, since multinational businesses are penalized for locating in Kansas, and would not face similar taxation of their international income were they to domicile in another state.

By the same token, Kansas now adopts the new federal § 163(j) net interest limitation, a provision from which H.B. 2553 would decouple. The purpose of the net interest limitation at the federal level was to eliminate the disparity in the tax treatment of debt and equity financing, but the provision also increases the cost of capital investment. Unlike some of its peers, Kansas does well to conform to the 100 percent bonus depreciation rules under § 168(k), which is important because the interest limitation was intended in tandem with “full expensing.” However, the interest limitation, like several other tax changes also addressed in H.B. 2553, was also intended as a base-broadening provision, partially offsetting the federal rate cuts. These cuts, of course, did not flow through to Kansas or other states, while many of the base-broadening provisions did.

Most of Kansas’s peer states have either exempted GILTI or are not currently taxing it, and many states—including nearby Iowa—adopted rate cuts intended in part to offset the broader tax base inherited through federal tax reform. Kansas’ current approach raises legal concerns and puts the state at a competitive disadvantage compared to its peer states. Decoupling from provisions that undermine in-state investment, like GILTI and the net interest limitation, would enhance the state’s competitiveness and eliminate tax changes which never received proper consideration by this body.

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