



February 17, 2020

John Wilson, President
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Written testimony in opposition to House Bill 2553
House Taxation Committee

Chairman Johnson and Members of the Committee:

Thank you for the opportunity to provide testimony in opposition to House Bill 2553, which would provide income tax modifications for global intangible low-taxed income (GILTI), business interest, capital contributions and FDIC premiums. Our testimony will focus primarily on the GILTI component of the bill. Kansas Action for Children, which includes the Kansas Center for Economic Growth project, is a nonprofit, nonpartisan organization. Our vision is to make Kansas the best state to raise -- and be -- a child, and our organization shapes health, education, and economic policies that improve the lives of Kansas children and families. We support budget and tax policy that prioritizes investments in children and families, particularly among those with low incomes.

This year will mark the third year the House Taxation committee has heard a bill proposing to decouple from the federal changes made in the 2017 Tax Cuts and Jobs Act (TCJA). The TCJA changes were made in recognition that many large U.S. multinational corporations put much effort into dodging their tax responsibility, including shifting their income to lower-tax jurisdictions.

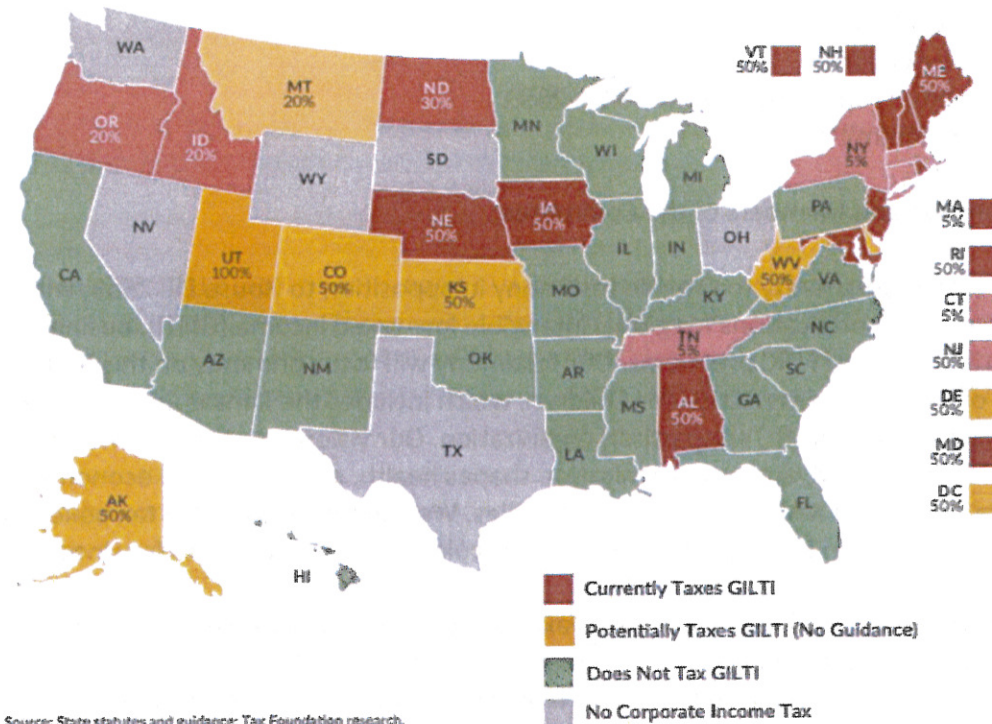
This year, once again, your committee is considering legislation that the state cannot afford. House Bill 2553 is not a revenue-neutral bill. Based on the fiscal note from SB 22 last year, this bill will decrease revenue by roughly \$130 million in the first year alone, with most of that cost benefiting multinational corporations.

To move forward without House Bill 2553 would not be adding a new tax to these corporations. According to the Department of Revenue, which testified before your committee last year on January 29, 2019: The Internal Revenue Code "treats these dollars pretty much as ordinary income. Kansas has always taxed ordinary income. Granted this is a new IRC section, but the general consensus among states and industry professionals is that these dollars are viewed on the federal level as ordinary income. As a rolling conformity state, Kansas also would view these dollars as ordinary income. So, it would not be unusual to tax this type of income if you so choose."

Kansas would not be alone in taxing this income. According to the Tax Foundation, a majority of states that tax corporate income are potentially taxing GILTI, as "twenty-four states and the District of Columbia potentially tax GILTI, though only 17 states have issued guidance." Six states are not able to tax GILTI income because they do not tax corporate income.

State Taxation of GILTI

As of January 1, 2020



Source: State statutes and guidance; Tax Foundation research.

If Kansas remains in federal conformity by not making any changes, GILTI income will continue to be taxed at an already reduced rate outlined by the federal tax code. Currently, GILTI taxation requires the following steps, according to Massachusetts Budget and Policy Center:

1. "The GILTI provision requires that corporations total up the physical assets of all their foreign subsidiaries (i.e., factories, warehouses, equipment, etc.) and calculate what a 10 percent return on these assets would equal.
2. If the combined profits of a corporation's foreign subsidiaries exceed this 10 percent maximum "routine rate of return," the excess profit is understood to be the result of income shifting, from higher tax jurisdictions (like the U.S.) to low- or no-tax jurisdictions. Under the federal provision, this income is deemed GILTI.
3. Once a corporation's GILTI total has been determined, the federal provision then allows the corporation to **reduce this calculated total by half**, under the assumption that only half of the total excess profits was generated originally in the U.S. Many large, multinational corporations have operations around the world and also are engaged in income shifting from other higher-tax locations (for example, France or Germany), to avoid taxes in those jurisdictions as well.
4. Finally, the half of the corporation's calculated GILTI deemed to have originated in the U.S. is added to the corporation's total taxable U.S. income and is subject both to U.S. federal tax and to state-level tax in those states that conform to the GILTI provision."



Lawmakers should be cautious of significant tax policy changes, as these make accurate revenue projections difficult. With continued tax changes and long-term fiscal challenges, lawmakers will have more difficulty making fiscally responsible decisions. To be prudent and responsible, lawmakers should continue to tax GILTI income, remain coupled with the federal tax code, and have the ability to make informed policy decisions based on accurate and reliable information.

We urge you to reject calls for additional tax changes, particularly to help corporate tax avoidance through bills such as HB 2553. We encourage you to concentrate on the state's lengthy list of needs for reinvestment, debt reduction, and securing a fiscal foundation to prepare for an economic downturn. Thank you for the opportunity to voice our opposition to this bill, and please do not hesitate to contact me at john@kac.org if you have any questions.

