UPDATED

SESSION OF 2019

SUPPLEMENTAL NOTE ON SENATE BILL NO. 22

As Amended by Senate Select Committee on Federal Tax Code Implementation

Brief*

SB 22, as amended, would make several changes to Kansas income tax provisions in response to federal income tax changes enacted late in 2017.

Individual Income Tax Provision

The bill would remove a restriction under current law preventing Kansas individual income taxpayers from itemizing deductions for state income tax purposes unless they also itemize deductions for federal income tax purposes. Beginning with tax year 2018, the bill would provide an option to take Kansas itemized deductions regardless of whether itemized deductions or the standard deduction are claimed for federal tax purposes. Language in the bill would authorize the filing of amended returns through December 31, 2019, for purposes of this provision's retroactive applicability to tax year 2018.

Business Income Tax Provisions

The bill would stipulate for tax year 2017 and thereafter that Kansas would not be taxing deferred foreign income, defined to include income under section 965(a) of the federal Internal Revenue Code (Code) (certain repatriation income); the bill would require certain deductions used in determining

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org federal adjusted gross income for the repatriated income to be added back for Kansas income tax purposes prior to the determination of Kansas adjusted gross income.

For tax year 2018 and thereafter, global intangible low taxed income (GILTI) under section 951A of the federal Code would not be subject to the Kansas income tax; the bill would require certain related deductions claimed prior to the determination of federal adjusted gross income to be added back prior to the determination of Kansas adjusted gross income.

Kansas similarly would exempt for tax year 2018 and thereafter certain disallowed business interest under section 163(j) of the federal Code in effect on January 1, 2018, while deductions attributable to a carry-forward of such disallowed business income under the federal code in effect on that date would be required to be added back for all years beginning with tax year 2018.

The bill further would provide for tax year 2018 and thereafter certain capital contributions as determined under federal Code section 118 would be excluded from the Kansas income tax.

Finally, for tax year 2018 and thereafter, amounts attributable to the disallowance of Federal Deposit Insurance Corporation premiums paid by certain large financial institutions would be excluded from Kansas income taxation.

Specific language in the bill would clarify the retroactive application of several of these sections, which would effectively authorize the filing of amended returns to claim refunds during the three-year statute of limitations available under current law.

Background

The bill was introduced on January 17 by the Senate Committee on Federal and State Affairs at the request of Senator Masterson.

In the Senate Select Committee on Federal Tax Code Implementation hearing on January 29, a representative of the Kansas Chamber appeared as the lead proponent, stating the legislation would return to taxpayers certain additional Kansas income tax receipts that had been and would continue to be collected as a result of enactment of the federal Tax Cuts and Jobs Act in 2017. Two representatives of Ernst and Young also appeared as proponents and explained how other states had been treating repatriated and GILTI income. A number of additional proponents appeared during continuation of the hearing on January 30, including representatives of Cargill and the Kansas Bankers' Association, who spoke primarily in favor of the bill's business income tax provisions. A representative of the Kansas Association of Realtors expressed support for the provision authorizing individual income taxpayers to itemize deductions for Kansas tax purposes regardless of whether deductions have been itemized for federal purposes. Additional proponents appearing on January 31 included representatives of the Council on State Taxation, Seaboard Corporation, and Spirit Aerosystems, all of whom spoke in favor of the business income tax provisions. Written-only testimony in favor of the legislation also was submitted from several groups, including Bombardier, the Kansas Beer Wholesalers' Association, and the Overland Park Chamber of Commerce.

Written-only testimony in opposition to the bill was submitted by the Kansas Center for Economic Growth.

Written-only neutral testimony was submitted by the Kansas Association of School Boards and the Kansas National Education Association.

The amendments adopted by the Senate Select Committee on January 31 were recommended by the Kansas Chamber, whose representative stated the provisions were technical in nature and had been agreed to by legal analysts in the Kansas Department of Revenue (KDOR).

A fiscal note prepared by the Division of the Budget on the bill, as introduced, indicates KDOR expects the bill to have the following impact on SGF receipts. [*Note:* The fiscal note associated with the itemized deduction option for individuals was revised by KDOR on February 4. The agency reported that tax year 2017 returns had become available to provide a more updated baseline for estimating.]

($ in millions)

Individual Income Tax Provision	FY 20	FY 21	FY 22
Itemized Deduction Option	(50.1)	(60.3)	(60.9)
Business Income Tax Provisions	FY 20	FY 21	FY 22
Repatriation	(10.5)	(0.4)	(0.2)
GILTI	(70.9)	(24.7)	(24.2)
Limitation on Interest Deductions	(53.1)	(25.5)	(30.6)
FDIC Premium Deductions	(2.7)	(1.3)	(1.3)
Capital Contributions	negligible	negligible	negligible
Total Business Provisions	(137.2)	(51.9)	(56.3)
Grand Total	**(187.3)**	**(112.2)**	**(117.2)**

The fiscal note also indicates KDOR expects to incur an additional $0.820 million in FY 2020 administrative costs to implement the bill's provisions beyond the amount recommended for the agency in *The FY 2020 Governor's Budget Report*. The Department of Administration further indicates that collections for its debt setoff program could increase by an indeterminate amount to the extent that more individual income tax refunds would be available for potential interception as a result of the bill's enactment.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.