

ESTIMATED KANSAS IMPACT
OF
THE FEDERAL TAX CUTS AND
JOBS ACT

KANSAS DEPARTMENT OF REVENUE
FEBRUARY 14, 2018

Table of Contents

Summary.....	2
Individual Tax Reform.....	8
<i>Tax Rate Reform.....</i>	<i>8</i>
<i>Deduction for Qualified Business Income of Pass-Through Entities.....</i>	<i>9</i>
<i>Tax Benefits for Families and Individuals.....</i>	<i>12</i>
<i>Education.....</i>	<i>15</i>
<i>Deductions and Exclusions.....</i>	<i>16</i>
Business Related Provisions.....	20
<i>Corporate Provisions.....</i>	<i>20</i>
<i>Small Business Reforms.....</i>	<i>21</i>
<i>Cost Recovery and Accounting Methods.....</i>	<i>22</i>
<i>Business-Related Exclusions and Deductions.....</i>	<i>25</i>
International Tax Provisions.....	30
Sources.....	33

Summary

The Kansas Department of Revenue's Office of Research and Analysis has prepared this report containing summary provisions of the Tax Cuts and Jobs Act (TCJA) signed on December 22, 2017. Our findings are that many provisions in this tax act will have an impact on Kansas tax liability. This report shall provide summary background and analysis to the Kansas taxation statutes, federal adjustments made and their effects on Kansas tax liability.

CONFORMITY

Before any analysis of the federal tax changes can be conducted, there must be a general understanding of how Kansas incorporates federal tax law into its own code of taxation. Kansas generally is a "rolling conformity" state when it comes to the internal revenue code, meaning that any changes to federal internal revenue code relevant to Kansas statute will be abided by the state of Kansas automatically. Any requests to deviate from federal tax provisions must be done through legislative action. Most provisions of the TCJA took effect January 1, 2018, and so Kansas tax code will follow suit.

That being said, even though there are provisions within the TCJA that Kansas statute may not conform to there may still be a state fiscal effect stemming from such a federal adjustment. Knowing how Kansas calculates a taxpayer's individual or corporate income tax liability can address this.

INDIVIDUAL AND CORPORATE INCOME STARTING POINTS

For individuals, calculation of Kansas individual income tax liability starts with Federal Adjusted Gross Income (FAGI). FAGI is the income noted on line 37 of the federal individual income tax return, form 1040. This means that any change in the calculation of FAGI becomes a change in the calculation of Kansas individual income tax liability. Table 1 summarizes Kansas conformity to major individual income tax provisions within the TCJA.

Table 1

Kansas Individual Income Tax	
<i>TCJA Changes to Federal...</i>	<i>When Does TCJA Change Occur on Federal 1040?</i>
<i>Tax Rates</i>	After FAGI
<i>Standard Deduction</i>	After FAGI
<i>Personal Exemptions</i>	After FAGI
<i>Deductions Before FAGI</i>	Before FAGI
<i>Deductions After FAGI</i>	After FAGI
<i>Credits</i>	After FAGI

For corporations, calculation of Kansas corporate income tax liability starts with Federal Taxable Income (FTI). FTI is the income noted on line 30 of the federal corporate income tax return, form 1120. Similar in logic to individual income tax, any change in the calculation of FTI becomes an automatic adjustment in the calculation of Kansas corporate income tax liability. Table 2 provides a summary of Kansas conformity to major corporate income tax provisions outlined in the TCJA.

Table 2

Kansas Corporate Income Tax	
<i>TCJA Changes to Federal...</i>	<i>When Does TCJA Change Occur on Federal 1120?</i>
<i>Tax Rates</i>	After FTI
<i>Capital Expensing</i>	Before FTI
<i>Deductions Before FTI</i>	Before FTI
<i>Net Operating Losses</i>	Before FTI
<i>Credits</i>	After FTI
<i>Treatment of International Income</i>	Before FTI

ESTIMATION ASSUMPTIONS

The Kansas Department of Revenue used the Federal Joint Committee on Taxation's (JCT) estimated budget effects of the conference agreement for H.R. 1 to estimate Kansas changes to tax revenues. These estimates are made without additional effects stemming from macroeconomic analysis and taxpayer behavior, meaning estimates given are static. To generate impacts to Kansas individual income tax collections, the Kansas Department of Revenue found an estimate of the Kansas share of the change in FAGI. A Kansas effective tax rate was applied to that Kansas share. This same method was applied to estimate the business tax provisions. JCT's estimates of federal changes are based on a federal fiscal year which ends September 30th. The Kansas Department of Revenue assumes that federal estimates of revenue changes in federal fiscal year 2018 will take effect in Kansas's fiscal year 2019.

It is important to note, that while such methods provide an average estimate to the change in Kansas tax revenues, there are economic conditions as well as Kansas statutory language that should be considered. The Kansas Department of Revenue may further adjust estimates to account for such distinct factors. Results given in this report should be considered as rough approximations, and not a fiscal note.

RESULTS

The total impact to Kansas tax revenues stemming from the TCJA changes to the federal tax code is roughly \$140 million by fiscal year 2019, as noted by Table 3. Tables 4 and 5 outline whether specific provisions in the TCJA broaden the Kansas individual/corporate income tax base or narrow it.

Table 3

Estimated Kansas Revenue Impact from TCJA (In Millions)			
<i>Provisions in TCJA</i>	<i>FY 2019</i>	<i>FY 2020</i>	<i>FY 2021</i>
<i>Total</i>	<i>\$137.8</i>	<i>\$179.9</i>	<i>\$187.7</i>

Table 4

Estimated Effects from TCJA Individual Income Provisions (In Millions)			
<i>Individual Income Provisions in TCJA</i>	<i>FY 2019</i>	<i>FY 2020</i>	<i>FY 2021</i>
Modification of Rates	\$0.0	\$0.0	\$0.0
Deduction for Qualified Business Income	\$0.0	\$0.0	\$0.0
Increase in Standard Deductions	\$0.0	\$0.0	\$0.0
Increased Limitation for Certain Charitable Deductions*			
Limitation on Deduction for State and Local Taxes*	\$90.3	\$146.1	\$149.4
Limitation on Deduction for Qualified Residence Interest*			
Temporary Reduction in Medical Expense Deduction Floor	-\$7.9	-\$2.9	\$0.0
Account Funding for Elementary and Secondary Education	Negligible	Negligible	Negligible
Suspension of Deduction for Personal Exemptions**	\$0.0	\$0.0	\$0.0
Suspension of Exclusion for Qualified Bicycle Commuting Reimbursement	Negligible	Negligible	Negligible
Suspension of Exclusion for Qualified Moving Expense Reimbursement*	\$0.8	\$1.2	\$1.2
Suspension of Deduction for Moving Expenses	\$1.2	\$1.7	\$1.9
Repeal of Deduction for Alimony Payments*	Negligible	Negligible	Negligible
Total	\$84.4	\$146.3	\$152.9
* - Provisions sunset 12/31/2025			
** - See "For Legislative Considerations"			

Table 5

Estimated Effects from TCJA Business Provisions (In Millions)			
<i>Business Income Provisions in TCJA</i>	<i>FY 2019</i>	<i>FY 2020</i>	<i>FY 2021</i>
Modification of Rules for Expensing Depreciable Assets	-\$5.3	-\$8.3	-\$4.6
Temporary 100% Expensing for Certain Business Assets	-\$36.4	-\$40.9	-\$27.5
Amortization of Research and Experimental Expenditures (Starts in 2022)	\$0.0	\$0.0	\$0.0
Limitation on Deduction for Interest	\$9.4	\$19.8	\$22.1
Modification of Net Operating Loss Deduction	\$0.0	\$0.0	\$0.0
Limitation on Deduction by Employers of Expenses for Fringe Benefits	\$3.2	\$4.3	\$4.4
Repeal of Deduction for Income Attributable to Domestic Production Activities	\$4.8	\$10.0	\$10.4
Denial of Deduction for Certain Fines, Penalties, and Other Amounts	Negligible	Negligible	Negligible
Denial of Deduction for Settlements Subject to Nondisclosure Agreements Paid in Connection with Sexual Harassment or Sexual Abuse			
Repeal of Deduction for Local Lobbying Expenses			
Limitation on Deduction for FDIC Premiums			
Repeal of Deduction for Amounts Paid in Exchange for College Athletic Seating Rights			
Deduction for Foreign-Source Portion of Dividends Received By Domestic Corporations from Specified 10-Percent Owned Foreign Corporations*	\$68.2	\$24.3	-\$3.5
Special Rules Relating to Sales or Transfers Involving Specified 10-Percent Owned Foreign Corporations*			
Treatment of Deferred Foreign Income upon Transition to participation Exemption System of Taxation *			
Current Year Inclusion of Global Intangible Low-Taxed Income (GILTI) By United States Shareholders*	\$9.5	\$24.4	\$33.5
Deduction for Foreign-Derived Intangible Income and GILTI*			
Limitations on Income Shifting Through Intangible Property Transfers*			
Certain Related Party Amounts Paid or Accrued in Hybrid Transactions or with Hybrid Entities*			
Shareholders of Surrogate Foreign Corporations Not Eligible for Reduced Rate on Dividends*			
Base Erosion and Anti-Abuse Tax*			
Total	\$53.4	\$33.6	\$34.8

* - See "For Legislative Considerations"

FOR LEGISLATIVE CONSIDERATIONS

Dynamic Effects

In addition to the uncertainty related to providing estimates impacted by certain provisions that have not yet been fully specified by the federal government, the TCJA will certainly create dynamic incentives with regard to the classification of various types of income, as well as incentives for business restructuring. While the dynamic impact of this bill is extremely difficult to foresee and model, the lack of clarity, particularly for business related issues, further complicates estimation. Here are a few dynamic incentives that should be considered by policymakers.

1. Increase in the federal Standard Deduction and limits on Itemized Deductions may encourage more filers to take the Standard Deduction. K.S.A. 79-32,120 provides that if a taxpayer itemizes on the federal return they may claim standard or itemized deductions on the Kansas return. If the taxpayer claims standard deduction at the federal level, however, they must take the standard deduction at the Kansas level.
2. Increased limit and 100% bonus depreciation could encourage businesses to max out investment purchases every year in order to minimize tax liability.
3. Limiting tax benefits to itemized deductions may lead to declines in charitable contributions.
4. Economic activity could increase as a result of lowering the cost of doing business and encouraging taxpayers to work and spend.

International Income and Repatriation

Amended and new federal statutes outlined in the TCJA regarding repatriation and international income do not clarify how international income and expenses are recognized on the federal return. This creates uncertainty in how Kansas statute conforms to these international provisions. Such uncertainty makes estimation of changes in Kansas tax revenues not possible to quantify.

Individual Tax Reform

Tax Rate Reform

Sec. 11001. Modification of Rates, I.R.C. Sections §1, §11(b), §15, §63(c)(2)(A), §911(d)(2), §6013(c), §7706(c)(1)(D)

Pre TCJA: For tax year 2017, there are seven regular individual income tax brackets of 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%, and five categories of filing status. The income levels for each bracket threshold are indexed annually based on increases in the Consumer Price Index.

Short-term capital gains are taxed as ordinary income. For tax year 2017, taxpayers in the 10% and 15% tax brackets pay no tax on long-term gains on most assets; taxpayers in the 25%, 28%, 33%, 35% income tax brackets face a 15% rate on long term capital gains. For those in the top 39.6% bracket for ordinary income, the rate is 20%.

TCJA: The new law modifies the current income rate structure under which individuals are taxed. The new law maintains the seven-rate structure, but taxes a taxpayer's income at modified rates: 10%, 12%, 22%, 24%, 32%, 35%, and 37%. The new rate structure is effective for tax years beginning after December 31, 2017 and before January 1, 2026.

The income threshold amounts for each rate bracket will be indexed for inflation using Chained-CPI-U in tax years beginning after Dec 31, 2018. The requirement to index the amounts for inflation using Chained –CPI-U will not expire. The bill simplifies the “kiddie tax”.

Under the Act, the breakpoints between the 0% and 15% capital gains tax rates and between the 15% and 20% capital gains tax rates are the same as under present law.

Kansas Law: K.S.A. 79-32,110

Kansas Statutory Impact: Kansas Statutes may refer to CPI, and so a thorough review is recommended to ensure compliance to a Chained Consumer Price Index for urban consumers.

Kansas Fiscal Impact: No impact to Kansas individual income tax collections. Kansas calculates individual income tax starting with the taxpayer's federal adjusted gross income. This is income before the new lower federal individual income tax rates are applied.

Deduction for Qualified Business Income of Pass-Through Entities

Sec. 11011. Deduction for Qualified Business Income, I.R.C. Sections §1, §62, §63, §199A (new), §701, §1366, §6662

Pre TCJA: Businesses organized as sole proprietorships, partnerships, limited liability companies and S corporations are generally treated as pass-through entities subject to tax at the individual owner or shareholder level rather than the entity level. Net income earned by owners of these entities is reported on their individual income tax returns and is subject to ordinary income tax rates, up to the top individual marginal tax rate of 39.6%

TCJA: For tax years beginning after December 31, 2017 and before January 1, 2026. The new law adds a new section, Code Section 199A, Qualified Business Income. This section generally allows an individual taxpayer, and a trust or estate, that has qualified business income from a partnership, S corporation or sole proprietorship to deduct:

- (1) the lesser of: (a) the “combined qualified business income amount” of the taxpayer, or (b) 20% of the excess, if any, of the taxable income of the taxpayer for the tax year over the sum of net capital gain and the aggregate amount of the qualified cooperative dividends of the taxpayer for the tax year; plus
- (2) the lesser of: (i) 20% of the aggregate amount of the qualified cooperative dividends of the taxpayer for the tax year, or (ii) taxable income (reduced by the net capital gain) of the taxpayer for the tax year. (Code Sec. 199A(a), as added by Act Sec. 11011)

The “combined qualified business income amount” means, for any tax year, an amount equal to: (i) the deductible amount for each qualified trade or business of the taxpayer (defined as 20% of the taxpayer’s QBI subject to the W-2 wage limitation; see below); plus (ii) 20% of the aggregate amount of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership income of the taxpayer for the tax year.

Limitations. Except as provided below, the deduction cannot exceed the greater of:

- (1) 50% of the W-2 wages with respect to the qualified trade or business; or
- (2) the sum of 25% of the W-2 wages paid with respect to the qualified trade or business plus 2.5% of the unadjusted basis, immediately after acquisition, of all “qualified property.” Qualified property is defined in Code Sec. 199A(b)(6) as meaning tangible, depreciable property which is held by and available for use in the qualified trade or business at the close of the tax year, which is used at any point during the tax year in the production of qualified business income, and the depreciable period for which has not ended before the close of the tax year.

Qualified property means tangible property of a character subject to depreciation that: (i) is held by, and available for use in, the qualified trade or business at the close of the tax year; (ii) is used at any point during the tax year in the production of qualified business income; and (iii) for which the depreciable period has not ended before the close of the tax year. For this purpose, the “depreciable period” with respect to qualified property means the period beginning on the date the property is placed in service by the taxpayer

and ending on the later of: (i) 10 years after that date; or (ii) the last day of the last full year in the applicable recovery period that would apply to the property under section 168 (without regard to section 168(g)).

A taxpayer's "W-2 wages" generally equal the sum of wages subject to wage withholding, elective deferrals, and deferred compensation paid by the partnership, S corporation, or sole proprietorship during the tax year. In the case of a trust or estate, rules similar to present law section 199 (as in effect on December 1, 2017) would apply for purposes of apportioning between fiduciaries and beneficiaries any W-2 wages and unadjusted basis of qualified property. The 50% of wages limitation would not apply in the case of a taxpayer with income of \$315,000 or less for married individuals filing jointly (\$157,500 for other individuals), with phase-out over the next \$100,000 of taxable income for married individuals filing jointly (\$50,000 for other individuals).

With certain exceptions described below, an individual's qualified business income for the tax year is the net amount of domestic qualified items of income, gain, deduction, and loss (determined by taking into account only items included in the determination of taxable income) with respect to the taxpayer's "qualified business." If the amount of qualified business income for a tax year is less than zero (i.e., a loss), the loss is treated as a loss from qualified businesses in the next tax year.

A qualified business generally is any trade or business other than a "specified service trade or business." A specified service trade or business is any trade or business activity involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, any trade or business the principal asset of which is the reputation or skill of one or more of its owners or employees (excluding engineering and architecture), or any business that involves the performance of services that consist investment and investment managing trading or dealing in securities, partnership interest, or commodities. However, the deduction may apply to income from a specified service trade or business if the taxpayer's taxable income does not exceed \$315,000 (for married individuals filing jointly or \$157,500 for other individuals). Under the new law, this benefit is phased out over the next \$100,000 of taxable income for married individuals filing jointly (\$50,000 for other individuals).

Twenty percent (20%) of any dividends from a real estate investment trust (other than any portion that is a capital gain dividend) are qualified items of income, as is 20% of includible dividends from certain cooperatives and qualified publicly traded partnership income. However, qualified business income does not include certain service related income paid by an S corporation or a partnership. Specifically, qualified business income does not include an amount paid to the taxpayer by an S corporation as reasonable compensation. Further, it does not include a payment by a partnership to a partner in exchange for services (regardless of whether that payment is characterized as a guaranteed payment or one made to a partner acting outside his or her partner capacity). Finally, qualified business income does not include certain investment related gain, deduction, or loss.

The 20% deduction is not allowed in computing adjusted gross income; instead, it is allowed as a deduction reducing taxable income. Thus, the deduction does not affect limitations based on adjusted gross income. Moreover, the deduction is available to taxpayers that itemize deductions, as well as those that do not.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact

Kansas Fiscal Impact: No impact to Kansas individual income tax collections. Kansas calculates individual income tax starting with the taxpayer's federal adjusted gross income. This is income before the new deduction for qualified business income will be applied.

Tax Benefits for Families and Individuals

Sec. 11021. Increase in Standard Deductions, I.R.C. Sections §1(c)(2)(a), §2(A), §32, §63(c), §7706

Pre TCJA: An individual reduces adjusted gross income by personal exemption deductions and either the applicable standard deduction or itemized deductions, to determine taxable income.

The basic standard deduction varies dependent on the taxpayer's filing status. For 2017, the standard deduction is \$6,350 for single individuals and married individuals filing separate returns. \$9,350 for head of household, and \$12,700 for married individuals filing a joint return. Taxpayers blind or 65 or older are eligible for an increased standard deduction. The amounts of the basic and additional standard deductions are indexed annually for inflation. Taxpayers may elect to claim itemized deductions in lieu of taking the applicable standard deductions.

TCJA: The Act increases the standard deduction to the following amounts:
\$24,000 for taxpayers filing as married filing jointly (including surviving spouses)
\$18,000 for taxpayers filing as head of household
\$12,000 for taxpayers filing as single and married filing separately.

The Act retains the enhanced standard deduction for the blind and elderly that is available under current law.

The amount of the standard deduction will be indexed for inflation using Chained-CPI-U in tax years beginning after 2018. Increased standard deduction amounts are effective for tax years beginning after December 31, 2017 and before January 1, 2026.

Kansas Law: K.S.A. 79-32,119

For tax year 2013, and all tax years thereafter, the standard deduction amount of an individual, including husband and wife who are either both residents or who file a joint return as if both were residents, shall be as follows: Single individual filing status, \$3,000; married filing status, \$7,500; married filing separate status, \$3,750; and head of household filing status, \$5,500.

For tax year 1998, and all tax years thereafter, the additional standard deduction amount for those taxpayers who are over 65 and/or blind shall be as follows: Single individual, head of household filing status, \$850; and married filing status (joint and separate), \$700.

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: No impact to Kansas individual income tax collections. Kansas calculates individual income tax starting with the taxpayer's federal adjusted gross income. This is income before the new higher federal standard deductions will be applied.

Sec. 11022. Increase in and Modification of Child Tax Credit, I.R.C. Sections §24

Pre TCJA: An individual may claim a \$1,000 credit for each qualifying child under the age of 17. The aggregate amount of child tax credits that may be claimed is phased out by \$50 for each \$1,000 of AGI over \$75,000 for single filers and \$110,000 for joint filers. Neither the \$1,000

credit amount nor the AGI thresholds are indexed for inflation. To the extent the child tax credit exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit equal to 15% of earned income in excess of \$3,000.

TCJA: Under the Act, the child tax credit is increased to \$2,000.

The Act provides a \$500 nonrefundable credit for dependents other than qualifying children.

The Act increases the threshold modified adjusted gross income amount where the credit would begin to phase out the \$400,000 for married taxpayers filing jointly, and to \$200,000 for other taxpayers. This amount is not indexed for inflation.

The Act reduces the earned income threshold for the refundable portion to \$2,500.

The Act provides that the maximum amount of the refundable credit per eligible child is \$1,400, and also indexes the maximum amount refundable for inflation.

All provisions are effective for tax years beginning after December 31, 2017 and before January 1, 2026.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: No impact to Kansas individual income tax collections. Kansas calculates individual income tax starting with the taxpayer's federal adjusted gross income. This is income before the new higher child tax credit will be applied.

Sec. 11023. Increased Limitation for Certain Charitable Contributions, I.R.C. Section §170
Pre TCJA: The limitation on the deduction for cash contributions made to public charities, private operating foundations and private distributing foundations is 50% of AGI. The deduction for cash contributions to private non-operating foundations is limited generally to 30% of AGI.

For contributions made in tax years beginning before 2018, a taxpayer who receives the right to purchase tickets to an educational institutions' athletic events in exchange for a contribution to the educational institution is permitted to deduct 80% of the amount contributed.

TCJA: The Act increases the AGI limitation on cash contributions from 50% to 60%, effective for contributions made in tax years beginning after December 31, 2017 and before January 1, 2026.

The Act repeals the current 80% deduction for contributions made for university athletic seating rights, effective for contributions made in tax years beginning after 2017.

Kansas Law: K.S.A. 79-32,120

Kansas will continue to allow 100% of charitable contributions that qualify as charitable contributions allowable as deductions in section 170 of the federal internal revenue code.

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas allows an itemized deduction regarding gifts to charity that is tied to line 19 of the federal schedule A. The increased limitation for certain charitable contributions will result in higher Kansas itemized deductions, and therefore lower Kansas individual income tax collections.

Kansas allows an itemized deduction regarding gifts to charity that is tied to line 19 of the federal schedule A. The repeal of deduction for amounts paid in exchange for college athletic event seating rights will result in a lower Kansas itemized deduction, and therefore higher Kansas individual income tax collections.

Temporary Reduction in Medical Expense Deduction Floor, I.R.C. Section §213

Pre TCJA: Taxpayers may claim itemized deductions for out-of-pocket medical, dental, and related expenses of the taxpayer, a spouse, or a dependent not compensated for by insurance. This deduction is allowed to the extent the expenses exceed 10% of the taxpayers' adjusted gross income. A special rule applicable to taxpayers who have attained the age of 65 before the close of tax years beginning after December 31, 2012 and ending before January 1, 2017, reduced the floor to 7.5%.

TCJA: For tax years beginning after December 31, 2016, and ending before January 1, 2019, the Act reduces the medical expense deduction floor to 7.5% of adjusted gross income for all taxpayers.

Kansas Law: K.S.A. 79-32,120

Kansas will allow for tax year 2018, 50% of expenses of medical care allowable as deductions in section 213 of the federal internal revenue code. For tax year 2019, the percentage increases to 75% and for tax years 2020 and after, Kansas will allow 100% of expenses for medical care allowable as deductions in section 213 of the federal internal revenue code.

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: This federal adjustment lowers the floor of the expenses to 7.5% of AGI for all taxpayers for tax year 2017 and 2018. The temporary reduction in the medical expense deduction floor will result in higher Kansas itemized deductions, and therefore decrease Kansas individual income tax collections.

Education

Sec. 11032. 529 Account Funding for Elementary and Secondary Education, I.R.C. Section §529

Pre TCJA: Qualified education expenses that may be paid under qualified tuition programs include qualified higher education but not elementary and secondary school expenses.

TCJA: The Act provides that elementary and secondary school expenses of up to \$10,000 per year are qualified expenses for qualified tuition programs.

The provision applies to distributions made after December 31, 2017

Kansas Law: K.S.A. 75-640 to 75-648; K.S.A. 79-32,117

Kansas Statutory Impact: Kansas statute outlining a state 529 plan utilizes the term “qualified tuition program” as defined in section 529 of the federal internal revenue code of 1986, as amended. This means that the state learning quest program will be able to accept elementary and secondary school expenses.

Kansas Fiscal Impact: Kansas has a subtraction modification from federal adjusted gross income for individuals making contributions to the state’s qualified 529 tuition program. The amount is \$3,000 for each beneficiary, or \$6,000 for each beneficiary for a married couple filing a joint return. Changes made to account funding for elementary and secondary education will result in a higher Kansas subtraction modification, and therefore lower Kansas individual income tax collections.

Deductions and Exclusions

Sec. 11041. Suspension of Deduction for Personal Exemptions, I.R.C. Sections §151(d), §152, §642(b), §873(b), §3402(a)(2)

Pre TCJA: A taxpayer may claim a personal exemption for the taxpayer, the taxpayer's spouse, and any dependents. For 2017, taxpayers may deduct \$4,050 for each personal exemption. The exemption amount is indexed annually for inflation (CPI). Additionally, a personal exemption phase-out reduces a taxpayer's personal exemption by 2% for each \$2,500 by which the taxpayer's AGI exceeds \$261,500 (single), \$287,650 (head of household), \$313,800 (married filing jointly), and \$150,000 (married filing separately). These threshold amounts apply to tax year 2017.

TCJA: The Act suspends the deduction for personal exemption for tax years beginning after December 31, 2017 and before January 1, 2026.

Kansas Law: K.S.A. 79-32,121

An individual shall be allowed a Kansas exemption of \$2,250 for tax year 1998, and all tax years thereafter, for each exemption for which such individual is entitled to a deduction for the taxable year for federal income tax purposes.

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: No impact to Kansas individual income tax collections. This is due to federal law revising the exemption amount to equal zero, and not eliminating the exemption itself.

Sec. 11042. Limitation on Deduction for State and Local Taxes, I.R.C. Section §164(b)

Pre TCJA: Individuals may claim itemized deduction for state and local income, sales and property taxes paid.

TCJA: The Act provides that individual taxpayers may elect to deduct state and local sales, income, or property taxes up to \$10,000 (\$5,000 for a married taxpayer filing a separate return) for tax years beginning after December 31, 2017, and beginning before January 1, 2026.

Kansas Law: K.S.A. 79-32,120

Kansas will allow for tax year 2018, 50% of the amount of taxes on real and personal property as provided in section 164(a) of the federal internal revenue code. For tax year 2019, the percentage increases to 75% and for tax years 2020 and after, Kansas will allow 100% of the amount of taxes on real and personal property as provided in section 164(a) of the federal internal revenue code.

Kansas Statutory Impact: No statutory impact. However, consideration may be given to amending the reference to the internal revenue code to a more general reference of section 164 of

the federal internal revenue code, rather than the reference to section 164(a) of the federal internal revenue code.

Kansas Fiscal Impact: The limitation on the deduction for state and local taxes will result in a lower Kansas itemized deductions, and therefore higher Kansas individual income tax collections.

Sec. 11043. Limitation on Deduction for Qualified Residence Interest, I.R.C. Section §163(h)

Pre TCJA: Taxpayers may claim itemized deduction for mortgage interest paid with respect to a principal residence and one other residence of the taxpayer. Taxpayers who itemize their deductions may deduct interest payments on up to \$1,000,000 in acquisition indebtedness (for acquiring, constructing, or substantially, improving a residence), and up to \$100,000 in home equity indebtedness. Under the alternative minimum tax (AMT), however, the deduction for home equity indebtedness is disallowed.

TCJA: The Act reduces the mortgage interest deduction to interest on \$750,000 of acquisition indebtedness interest for debt incurred after December 15, 2017. The \$1,000,000 limitation remains for older debt. The deduction is limited to interest on a taxpayers' principal residence. For tax years beginning after December 31, 2025, the limitation reverts back to \$1,000,000 regardless of when the debt was incurred.

The Act suspends the mortgage interest deduction for interest on home equity indebtedness for tax years beginning after December 31, 2017 and before January 1, 2026.

Kansas Law: K.S.A. 79-32,120

Kansas will allow for tax year 2018, 50% of the amount of qualified residence interest as provided in section 163(h) of the federal internal revenue code. For tax year 2019, the percentage increases to 75% and for tax years 2020 and after, Kansas will allow 100% of the amount of qualified residence interest as provided in section 163(h) of the federal internal revenue code.

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: The limitation on the deduction for qualified residence interest will result in lower Kansas itemized deductions, and therefore higher Kansas individual income tax collections.

Sec. 11047. Suspension of Exclusion for Qualified Bicycle Commuting Reimbursement,

I.R.C. Sections §132(f)(8), §274

Pre TCJA: Qualified bicycle commuting reimbursements of up to \$20 per month are excludible from an employee's gross income. Amounts that are excludible from gross income for income tax purposes also are excluded from wages for employment tax purposes.

TCJA: Suspends the exclusion from gross income and wages for qualified bicycle commuting reimbursements. Effective for tax years beginning after December 31, 2017 and before January 1, 2026.

Kansas Law: K.S.A. 79-32,117

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas calculates individual income tax starting with the taxpayer's federal adjusted gross income. This is income after the suspension of exclusion for qualified bicycle commuting reimbursement from gross income. This federal adjustment will lead to an increased federal adjusted gross income, and therefore higher Kansas income tax collections.

Sec. 11048. Suspension of Exclusion for Qualified Moving Expense Reimbursement, I.R.C. Sections §132, §82

Pre TCJA: Qualified moving expense reimbursements provided by an employer to an employee are excluded from the employee's income.

TCJA: The Act suspends the exclusion from gross income for qualified moving expense reimbursements for tax years beginning after December 31, 2017 and before January 1, 2026. The exclusion is available for active duty members of the Armed Forces who move pursuant to a military order and incident to a permanent change of station.

Kansas Law: K.S.A. 79-32,117

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas calculates individual income tax starting with the taxpayer's federal adjusted gross income. This is income after the exclusion for qualified moving expense reimbursement from gross income. The suspension of exclusion for qualified moving expense reimbursement will lead to an increased federal adjusted gross income, and therefore higher Kansas income tax collections.

Sec. 11049. Suspension of Deduction for Moving Expenses, I.R.C. Section §217

Pre TCJA: Taxpayers may claim deductions for moving expenses incurred in connection with starting a new job, regardless of whether or not the taxpayer itemizes his deduction. To qualify, the new workplace generally must be at least 50 miles farther from the former residence than the former place of work or, if the taxpayer had no former workplace, at least 50 miles from the former residence.

TCJA: The Act generally suspends the deduction for moving expenses for tax years beginning after December 31, 2017, and before January 1, 2026. However, the deduction generally is still available for active duty members of the Armed Forces who move pursuant to a military order and incident to a permanent change of station.

Kansas Law: K.S.A. 79-32,117

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas calculates individual income tax starting with the taxpayer's federal adjusted gross income. This is income after the deduction for qualified moving expense from gross income. The suspension of deduction for moving expenses will lead to an increased federal adjusted gross income, and therefore higher Kansas income tax collections.

Sec. 11051. Repeal of Deduction and Inclusion of Income for Alimony Payments, I.R.C.

Section §215

Pre TCJA: Alimony payments generally are allowed as above the line deductions for the payor, and are included in the income of the payee. However, alimony payments are neither deductible by the payor, nor includible in the income of the payee, if designated as such by the divorce decree or separation agreement.

TCJA: The Act eliminates the current above-the-line deduction for alimony payments. The Act does not require the payee receiving alimony payments to include alimony payments in income. This provision is effective for divorce decrees, separation agreements, and certain modifications entered into after 2018.

Kansas Law: K.S.A. 79-32,117

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas calculates individual income tax starting with the taxpayer's federal adjusted gross income. This is income after the deduction for alimony payments and inclusion of income of payee from gross income. The repeal of the deduction and inclusion of income for alimony payments will lead to an increased federal adjusted gross income, and therefore higher Kansas income tax collections.

Business Related Provisions

Corporate provisions

Sec. 13001. 21-Percent Corporate Tax Rate, I.R.C. Sections §11, §243, §245, §246, §246A, §861

Pre TCJA: A corporation's regular tax liability is determined by applying the following rates: 15% for \$0-\$50,000 of taxable income, 25% for \$50,001-\$75,000 of taxable income, and 34% for \$75,001-\$10,000,000 of taxable income. The 15% and 25% rates are phased out for corporations with taxable income between \$100,000 and \$335,000 and 34% rate is gradually phased out for corporations with taxable income between \$15,000,000 and \$18,330,000. Additionally, personal service corporations are not entitled to use the graduated corporate rates.

TCJA: Reduces the corporate tax rate to a flat 21% for tax years beginning after December 31, 2017. Repeals the maximum corporate tax rate on net capital gains as obsolete. Does not require a special rate for personal service collections.

Kansas Law: K.S.A. 73-32,110

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: No impact to Kansas corporate income tax collections. Kansas calculates corporate income tax starting with the taxpayer's federal taxable income. This is income before the new lower federal corporate tax rate is applied.

Sec. 13002. Reduction in Dividend Received Deductions to Reflect Lower Corporate Income Tax Rates, I.R.C. Sections §11, §243, §245, §246, §246A, §861

Pre TCJA: Corporations which receive dividends from other taxable corporations are generally allowed a deduction equal to 70% of the dividends received. In the case of any dividend received from a 20%-owned corporation, the amount of the deduction is equal to 80% of the dividend received. The aggregate deduction for dividends received is limited to 70% of a corporation's taxable income or 80% of the corporation's in the case of any dividend received from a 20%-owned corporation.

TCJA: Reduces the 80% dividends received deduction to 65% and the 70% dividends received deduction to 50%. Also reduces the corresponding taxable income limitations.

Kansas Law: K.S.A. 79-32,138

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. Reduction in dividend received deductions will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections.

Small Business Reforms

Sec. 13101. Modification of Rules for Expensing Depreciable Assets, I.R.C. Section §179

Pre TCJA: Business may immediately expense up to \$500,000 (adjusted for inflation) of the cost of any §179 property placed in the service each tax year. If the business places in service more than \$2,000,000 of §179 property in a tax year, then the amount available for immediate expensing is reduced by the amount by which the cost of such property exceeds \$2M. Further limitations on the ability to immediately expense this amount may apply based on the business's taxable income for the year.

TCJA: Increases the amount that a taxpayer may expense under §179 to \$1,000,000. The Act also increases the phase-out threshold to \$2,500,000. These amounts are indexed for inflation for tax years beginning after 2018. The Act also expands the definition of qualified real property to include all qualified improvement property and certain improvements (roofs, heating, ventilation, and air-conditioning property, fire protection and alarm systems, and security systems) made to nonresidential real property.

Kansas Law: K.S.A. 79-32,143a, K.S.A. 79-32,138

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Due to the increased limit that may be deducted (\$1M) and the expanded definition of qualified real property, there will be a decrease in Kansas corporate tax collections. This is because such federal adjustments will decrease federal taxable income, the first line used in computing Kansas corporate income tax liability.

Kansas assets that qualify for the I.R.C. 179 depreciation deduction will also qualify for the Kansas expensing deduction. This means that an increase in the amount to be expensed on the federal return will result in an increased amount on the Kansas expensing deduction. With a higher Kansas expensing deduction, Kansas corporate income tax collections will decrease.

Cost Recovery and Accounting Methods

Sec. 13201. Temporary 100% Expensing for Certain Business Assets *I.R.C. Section §168(k)*
Pre TCJA: Taxpayers receive an additional depreciation deduction in the year in which it places certain “qualified property” in service (bonus depreciation), effective for property placed in service through 2019 (2020 for certain qualified property with a longer production period). The amount of bonus depreciation is 50% of the cost of such property placed in service during 2017 and phases down to 40% in 2018 and 30% in 2019.

Qualified property that is eligible for bonus depreciation is tangible personal property with a recovery period of 20 years or less under the modified accelerated cost recovery system (MACRS).

TCJA: The Act expands the definition of qualified property to include qualified film, television, and live theatrical productions initially released, broadcast, or staged live after September 27, 2017.

The Act initially allows full expensing for property placed in service after September 27, 2017, reducing the percentage that may be expensed for property placed in service after December 31, 2022, as follows:

Qualified Property

- For property placed in service after September 27, 2017, and before January 1, 2023 (before January 1, 2024 for longer production period property), 100% expensing.
- For property placed in service after December 31, 2022, and before January 1, 2024 (after December 31, 2023, and before January 1, 2025 for longer production period property), 80% expensing.
- For property placed in service after December 31, 2023, and before January 1, 2025 (after December 31, 2024, and before January 1, 2026 for longer production period property), 60% expensing.
- For property placed in service after December 31, 2024, and before January 1, 2026 (after December 31, 2025, and before January 1, 2027 for longer production period property), 40% expensing.
- For property placed in service after December 31, 2025, and before January 1, 2027 (after December 31, 2026, and before January 1, 2028 for longer production period property), 20% expensing.

Taxpayers may elect 50% in lieu of 100% expensing for qualified property placed in service during the first tax year ending after Sept. 27, 2017.

Kansas Law: K.S.A. 79-32,143a, K.S.A. 79-32,138

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Due to the full expensing allowed for qualified property and the expanded definition, this federal adjustment will decrease Kansas corporate income tax collections. This is

because such federal adjustments will decrease federal taxable income, the first line used in computing Kansas corporate income tax liability.

The Kansas expensing deduction is calculated using the basis of the asset (Basis for Depreciation minus Bonus Depreciation previously at 50%). Since the federal adjustment increases bonus depreciation to 100%, there will be no basis of the asset needed to compute the Kansas expensing deduction. This means the Kansas expensing deduction will be zero while bonus depreciation remains at 100%.

At present, there is no Kansas expensing deduction allowed for individuals.

Sec. 13206. Amortization of Research and Experimental Expenditures *I.R.C. Sections §174, §6652 (g) new*

Pre TCJA: Taxpayers may elect either to deduct current research or experimental expenditures paid or incurred in connection with a present or future trade or business or to treat such expenditures as deferred expenses and amortize these costs over a period of no less than 60 months.

TCJA: Specified research or experimental expenditures, including software development expenditures, are capitalized and amortized ratably over a five-year period (15 years if attributable to research conducted outside of the United States). Land acquisition and improvement costs, mine (including oil and gas) exploration costs are not subject to this rule. Upon retirement, abandonment, or disposition of property, any remaining basis continues to be amortized over the remaining amortization period.

Applies on a cutoff basis to expenditures paid or incurred in tax years beginning after December 31, 2021.

Kansas Law: K.S.A. 79-32,182b, K.S.A. 79-32,138

Kansas Statutory Impact: K.S.A. 79-32,182b allows a credit against tax for corporations for research and development activity expenditures. Kansas statute conforms to the expenses allowable for deduction under the provisions of the I.R.C. This means that certain corporations may not qualify for the Kansas R&D credit for the first couple of years after implementation of the federal adjustment due to the Kansas calculation based on the 3-year average.

Kansas Fiscal Impact: Due to amortization of R&D over a 5 year period, federal taxable income will increase because they are not allowed to fully expense the investment in a single year. In subsequent years, for the same investment, federal taxable income will decrease relative to the prior year.

As for the Kansas R&D credit, the federal law implements changes after 2021. There is expected to be no change in the credit until that time. The Kansas R&D credit is computed based on a 3-year average (current year and 2 preceding years of total expenditures). The federal amortization of R&D expenses will mean Kansas current year expenses won't be greater than the 3-year average, including the current year expenses at 20%. It is possible some Kansas corporations will

not be able to claim the R&D credit in the first few years following implementation of this federal adjustment.

Sec. 13207. Expensing of Certain Costs of Replanting Citrus Plants Lost by Reason of Casualty *I.R.C. Section §263A*

Pre TCJA: Taxpayers that produce agricultural products generally are required to capitalize the cost of acquiring long-lived plants, such as trees, as well as the production costs. These costs are deductible when the plant begins to produce a product that can be sold in commercial quantities. In the case of citrus trees, these costs included the acquisition cost of the sapling and the costs incurred with respect to planting, cultivating, maintaining, and developing the tree. A special rule permits agricultural producers and certain co-owners in such businesses to deduct the costs of replacing plants damaged as a result of freezing temperatures, disease, droughts, pest or casualty. The rule generally requires the agricultural producer to own the plants at the time that the damage occurred and to replace them with the same type of crop on property located in the United States. The rule also requires that co-owners materially participate in the business to deduct their portion of the replacement costs.

TCJA: Allows minority co-owners to deduct (rather than capitalize) the replanting costs for citrus plants lost or damaged due to freezing temperatures, disease, droughts, pest, or casualty if: (1) the majority co-owner has an equity interest of not less than 50% in the replanted plants and the minority co-owner holds any part of the remaining equity interest (note that this rule essentially removes the material participation requirement that applies for purposes of the other special rule for minority co-owners contained in §263A(d)(2)(B)); or (2) the minority co-owner acquires all of the majority co-owner's equity interest in the land on which the loss or damage and replanting occurred. Effective for costs paid or incurred after the date of enactment but not later than 10 years from the date of enactment.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Allowance of corporations to deduct the replanting costs for citrus plants lost by reason of casualty will decrease Kansas corporate income tax collections. This is because the federal adjustment decreases federal taxable income, the first line used in computing Kansas corporate income tax liability.

As for individuals, this federal adjustment will also reduce federal adjusted gross income, leading to decreased Kansas individual income tax collections.

Business-Related Exclusions and Deductions

Sec. 13301. Limitation on Deduction for Interest, I.R.C. Section §163(j)

Pre TCJA: Business interest is generally allowed as a deduction in the tax year in which the interest is paid or accrued, subject to a number of limitations.

TCJA: The Act limits the deduction for net interest expenses incurred by a business to the sum of business interest income, 30% of the business's adjusted taxable income, and floor plan financing interest.

Businesses with average annual gross receipts of \$25,000,000 or less are exempt from the limit. Disallowed interest could be carried forward indefinitely.

The Act allows real property trades or business that use the ADS and farming businesses to elect not to be subject to the business interest deduction limitation. Electing farming businesses must use ADS to depreciate property with a recovery period of 10 years or more. The interest deduction limit does not apply to certain regulated public utilities or to certain electric cooperatives. Applies to taxable years beginning after December 31, 2017.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. Limitation on deduction for interest will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections.

Kansas begins its calculations of individual income tax liability with federal adjusted gross income. Limitation on deduction for interest will result in higher federal adjusted gross income, and therefore, higher Kansas individual income tax collections.

Sec. 13302. Modification of Net Operating Loss Deduction, I.R.C. Section §172

Pre TCJA: A net operating loss is the amount by which a taxpayer's current-year business deductions exceed its current-year gross income. Net operating losses may not be deducted in the year generated, but may be carried back two years and carried forward 20 years.

TCJA: The Act limits the NOL deduction to 80% of taxable income and provides that amounts carried to other years be adjusted to account for the limitation for losses arising in tax years beginning after December 31, 2017.

NOLs of property and casualty insurance companies may be carried back two years and carried forward 20 years to offset 100% of taxable income in such years.

The Act eliminates carrybacks (except for farming NOLs, which would be permitted a two-year carryback) and allows unused NOLs to be carried forward indefinitely.

Kansas Law: K.S.A. 79-32,143, K.S.A. 79-32,117, K.S.A. 79-32,138

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas corporations are allowed a NOL deduction for 80% of taxable income on the federal return. Kansas statute adds that federal deduction back and then computes a separate Kansas net operating loss. Therefore there is no expected change in Kansas corporate income tax collections. Kansas computes its own NOL for a deduction.

Federal adjusted gross income will increase at the individual level due to the limitation of the NOL deduction (at 80% of federal taxable income) which will increase Kansas adjusted gross income. This will lead to an increase in individual Kansas income tax collections.

Sec. 13304. Limitation on Deduction by Employers of Expenses for Fringe Benefits, I.R.C. Section §274

Pre TCJA: A taxpayer may deduct up to 50 percent of expenses relating to meals and entertainment.

Housing and meals provided for the convenience of the employer on the business premises of the employer are excluded from the employee's gross income. Various other fringe benefits provided by employers are not included in an employee's gross income, such as qualified transportation fringe benefits.

TCJA: No deduction is allowed for entertainment, amusement, or recreation; membership dues for a club organized for business, pleasure, recreation, or other social purposes; or a facility used in connection with any of the above.

The Act repeals the exception to the deduction disallowance for entertainment, amusement, or recreation that is directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business (and the related rule applying a 50% limit).

Deduction for 50% of food and beverage expenses associated with operating a trade or business generally is retained.

Expands the 50% limit to include employer expenses associated with providing food and beverages to employees through an eating facility meeting fringe requirements.

Applies to amounts paid or incurred after December 31, 2017, but eliminates deduction for meals provided at convenience of employer to amounts paid or incurred after December 31, 2025.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. The limitation on deduction by employers of expenses for fringe benefits will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections.

Sec. 13305. Repeal of Deduction for Income Attributable to Domestic Production Activities, I.R.C. Section §199

Pre TCJA: Section 199 allows a deduction equal to 9 percent of the lesser of taxable income derived from qualified production activities, or taxable income (determined without regard to the section 199 deduction). Qualified production activities are defined to include manufacturing, mining, electricity and water production, film production, and domestic construction, among other activities.

TCJA: Deduction repealed for all taxpayers for tax years beginning after December 31, 2017. Deduction not extended for Puerto Rico activities.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. Repeal of deduction for income attributable to domestic production activities will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections.

Sec. 13306. Denial of Deduction for Certain Fines, Penalties, and Other Amounts, I.R.C. Sections §162, §6050X (new)

Pre TCJA: No deduction is allowed for fines and penalties paid to a government for the violation of any law.

TCJA: The Act denies a deduction for amounts paid in relation to the violation of a law or investigation into the potential violation of a law, if a government is a complainant or investigator with respect to the violation or potential violation.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. Denial of deduction for certain fines, penalties, and other amounts will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections.

Sec. 13307. Denial of Deduction for Settlements Subject to Nondisclosure Agreements Paid in Connection with Sexual Harassment or Sexual Abuse, I.R.C. Section §162

Pre TCJA: Taxpayers may generally deduct ordinary and necessary business expenses paid or incurred in carrying on any trade or business, subject to certain exceptions.

TCJA: The Act disallows a deduction for any settlement, payout or attorney fees related to sexual harassment or sexual abuse if the payments are subject to a nondisclosure agreement. Effective for amounts paid or incurred after the date of enactment.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. Denial of deduction for settlements subject to nondisclosure agreements paid in connection with sexual harassment or sexual abuse will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections.

Sec. 13308. Repeal of Deduction for Local Lobbying Expenses, I.R.C. Section §162

Pre TCJA: For amounts paid prior to the enactment of the tax reform act, an exception to the general disallowance of a deduction for lobbying expenses is available for expenses incurred for lobbying on legislation being considered by local government bodies, with Indian tribal government entities being treated as local government bodies for this purpose

TCJA: The Act eliminates the deduction for lobbying expenses regarding legislation before local government bodies, including Indian tribal governments. Effective for amounts paid or incurred on or after the date of enactment.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. Repeal of deduction for local lobbying expenses will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections.

Sec. 13531. Limitation on Deduction for FDIC Premiums, I.R.C. Section §162

Pre TCJA: Amounts paid by insured depository institutions pursuant to an assessment by the Federal Deposit Insurance Corporation (FDIC) to support the Deposit Insurance Fund (DIF) are currently deductible as a trade or business expense.

TCJA: Effective for tax years beginning after December 31, 2017, institutions with consolidated assets over \$10,000,000,000, are limited on the amount of FDIC premium payments that may be deducted. The limitation is a percentage derived from the ratio of excess consolidated assets over \$10,000,000,000 to \$40,000,000,000, this institutions with consolidated assets over \$50B cannot deduct FDIC premium payments. For purposes of determining consolidated assets, members of an “expanded affiliated group” are treated as on taxpayer. A partnership, corporation, or any other entity is a member of an expanded affiliated group if a common parent owns more than 50% of the vote and value of the entity.

Kansas Law: NA

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. Limitation on deduction for FDIC premiums will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections. This would have a similar result for Kansas privilege tax collections.

Sec. 13704. Repeal of Deduction for Amounts Paid In Exchange for College Athletic Event Seating Rights, I.R.C. Section §170

Pre TCJA: For contributions made in tax years beginning before 2018, a taxpayer who receives the right to purchase tickets to an educational institutions' athletic events in exchange for a contribution to the educational institution is permitted to deduct 80% of the amount contributed.

TCJA: The Act repeals the current 80% deduction for contributions made for university athletic seating rights, effective for contributions made in tax years beginning after 2017.

Kansas Law: K.S.A. 79-32,120

Kansas Statutory Impact: No statutory impact.

Kansas Fiscal Impact: Kansas begins its calculations of corporate tax liability with federal taxable income. Repeal of deduction for amounts paid in exchange for college athletic event seating rights will result in higher federal taxable income, and therefore, higher Kansas corporate tax collections.

Kansas allows an itemized deduction regarding gifts to charity that is tied to line 19 of the federal schedule A. The repeal of deduction for amounts paid in exchange for college athletic event seating rights will result in a lower Kansas itemized deduction, and therefore higher Kansas individual income tax collections.

International Tax Provisions

Sec. 14101. Deduction for Foreign-Source Portion of Dividends Received By Domestic Corporations from Specified 10-Percent Owned Foreign Corporations

Sec. 14102. Special Rules Relating to Sales or Transfers Involving Specified 10-Percent Owned Foreign Corporations

Sec. 14103. Treatment of Deferred Foreign Income upon Transition to Participation Exemption System of Taxation, I.R.C. Sections §91(new), §245A (new), §246, §367, §904, §956, §961, §965

Pre TCJA: U.S. citizens, resident individuals, and U.S. corporations are subject to U.S. tax on worldwide income. U.S. shareholders of foreign corporations are generally not taxed on the income earned by the foreign corporation until the income is distributed as a dividend to the U.S. shareholders.

Taxpayers are allowed a foreign tax credit or a deduction for foreign income taxes paid on the income out of which the dividend is paid but generally only when the foreign earnings are distributed to the U.S. parent or otherwise subject to U.S. taxation. The foreign tax credit generally is available to offset, in whole or in part, the U.S. tax owed on foreign source income.

Section 367(a) provides that if a U.S. person transfers property to a foreign corporation in connection with certain nonrecognition transactions, the foreign corporation will not be treated as a corporation for purposes of determining gain recognition. Section 367 (a) (3) provides exceptions of the general rule for transfers.

TCJA: The Act provides a 100% deduction for foreign-source portion of dividends received from “specified 10-percent owned foreign corporations” by U.S. corporate shareholders, subject to a one year holding period. No foreign tax credit would be permitted for foreign taxes paid or accrued with respect to a qualifying dividend. Deduction would be unavailable for “hybrid dividends”.

The Act repeals the active trade or business exception under §367, which general disallows nonrecognition treatment for transfers of property to a foreign corporation.

The Act imposes a mandatory tax on post-86 accumulated foreign earnings held in cash or cash equivalents of 15.5% and on post -86 accumulated foreign earnings held in illiquid assets of 8%. Taxpayers would be able to elect to pay any resulting liability over an 8-year period. Limitations period for assessment of tax on these mandatory inclusions are extended to 6 years. Recapture rule imposing 35% tax rate on mandatory inclusions of a U.S. shareholder that becomes an expatriated entity within 10 years of bill’s enactment; U.S. shareholders acquired by a surrogate corporation are within the scope of the provision only if the surrogate corporation inverted post enactment. Accumulated deferred foreign income would be excluded from REIT gross income tests. REITs would also be permitted to pay resulting liability over 8-year period. Election to preserve NOLs and coordinate NOL, ODL, and foreign tax credit carry forward rules upon transition to participation exemption system. Special rules for S corporation shareholders.

Kansas Law: K.S.A. 79-32,138

Kansas Statutory Impact: In summary, the new one-time repatriation requires domestic taxpayers to include a portion of their deferred earnings of controlled foreign corporations in the federal tax base pursuant to the new IRC Sec. 965(a), and the deduction of some of that income under new 965(c). The income is recognized under “Subpart F” of the IRC, and is included in the tax base for “the last tax year beginning before 1/1/2018.”

Kansas allows a subtraction modification of 100% of foreign dividend gross up and 80% of foreign dividend income which includes Subpart F. Amended and new federal statutes regarding repatriation do not clarify how international income and expenses are recognized on the federal return. This creates uncertainty in how Kansas statute conforms to these international provisions.

Kansas Fiscal Impact: It is currently unclear how Kansas statutes conform to repatriation of international income. If international income is to be repatriated as a foreign dividend, then Kansas allows a subtraction modification of 80% of foreign dividend income. This will increase federal taxable income, and therefore increase Kansas corporate income tax collections. If international income is to be repatriated not as a foreign dividend, then federal taxable income will increase, and therefore increase Kansas corporate tax collections.

There is a possibility 100% of repatriated expenses will flow through to Kansas corporate taxable income. This means such expenses will be deducted from the taxpayer’s taxable income. This is in contrast to repatriated foreign dividend income where 20% is taxed, creating an inequity of treatment. Repatriation includes a deduction under IRC 965(c) to eliminate previously-taxed foreign earnings. Kansas taxable base excludes 80% of the Subpart F income while otherwise conforming to the federal tax base. Legislation may need to be considered to avoid an unintended “double deduction”.

Sec. 14201. Current Year Inclusion of Global Intangible Low-Taxed Income (GILTI) By United States Shareholders

Sec. 14202. Deduction for Foreign-Derived Intangible Income and GILTI

Sec. 14221. Limitations on Income Shifting Through Intangible Property Transfers

Sec. 14222. Certain Related Party Amounts Paid or Accrued In Hybrid Transactions or with Hybrid Entities

Sec. 14223. Shareholders of Surrogate Foreign Corporations Not Eligible for Reduced Rate on Dividends

Sec. 14401. Base Erosion and Anti-Abuse Tax, I.R.C. Sections §1, §59A (new), §163.

§250(new), §267A (new), §367, §482, §882, §936, §951A (new), §960, §966 (new), §992, §995, §998 (new), §4491 (new), §6038A, §6038C, §6038E (new)

Pre Public Law: Under the Code U.S. Corporations that completed outbound transfers of goodwill, going concern value, or workforce in place received favorable tax treatment.

Corporations generally may deduct all of their interest expense. If a corporation capitalizes a foreign subsidiary with debt, the earnings from that debt generally will not be subject to U.S. tax until distributed as a dividend by the foreign subsidiary. Therefore, U.S. corporations can achieve a net U.S. tax benefit by deducting the interest expense currently while deferring U.S.

tax on the earnings. Additionally, irrespective of the use of the proceeds of the debt, if the debt is issued by a foreign affiliate rather than by the U.S. entity, the corresponding interest income generally is subject to a statutory 30% withholding tax, which can be reduced under an applicable treaty.

TCJA: The Act expands the definition of intangible property to include goodwill, going concern value, workforce in place, or any other item the value of which is not attributable to tangible property or the services of an individual.

In the case of transfers of multiple intangible properties in one or more related transaction, valuation of the intangible property if the Commissioner determines that an aggregate basis achieves a more reliable result than an asset-by asset approach.

The Act denies deductions for certain related-party amounts paid or accrued in hybrid transaction or with hybrid entities.

Dividends received by an individual shareholder of a surrogate foreign corporation are not eligible for reduced rate on dividends in §1(h)

Kansas Law: K.S.A. 79-32,138

Kansas Statutory Impact: Kansas allows a subtraction modification of 100% of foreign dividend gross up and 80% of foreign dividend income. The GILTI will be a continuing addition to the federal tax base and is explicitly excluded from the definition of Subpart F income. Amended and new federal statutes regarding GILTI do not clarify how GILTI will be specifically recognized on the federal return, whether as a foreign dividend or other income. This creates uncertainty in how Kansas statute conforms to these international provisions. Additionally, IRC 250 provides a deduction for some GILTI income, which could result in an unintended “double deduction” if GILTI income is excluded from the taxable base, but the deduction is not.

Kansas Fiscal Impact: It is currently unclear how Kansas statutes conform to GILTI. If GILTI is to be treated as a foreign dividend, then Kansas allows a subtraction modification of 80% of foreign dividend income. This will increase federal taxable income, and therefore increase Kansas corporate income tax collections.

If GILTI is to be treated a gross up dividend, then there will be no expected change in Kansas corporate income tax collections because we allow 100% subtraction modification.

If GILTI is to be treated as non-dividend income, then federal taxable income will increase, and therefore increase Kansas corporate tax collections.

Sources

115th United States Congress, Conference Committee Report on House Resolution 1, December 22, 2017, URL: <https://www.congress.gov/bill/115th-congress/house-bill/1/text>

Bloomberg Bureau of National Affairs, Insight Center, *Tax Reform Roadmap*, December 29, 2017, URL: <https://www.bna.com/tax-reform-roadmap/>

KPMG, *New Tax Law (H.R. 1) – Initial Observations*, 2017, URL: <https://home.kpmg.com/content/dam/kpmg/us/pdf/2017/12/tnf-new-tax-law-dec22-2017.pdf>

U.S. Congress Joint Committee on Taxation, *Estimated Budget Effects of the Conference Agreement for H.R. 1*, 2017, URL: <https://www.jct.gov/publications.html?func=startdown&id=5053>