Marketplace Facilitators and Income Tax Deductions and Exemptions; SB 50

SB 50 requires the collection and remittance of certain taxes by marketplace facilitators. The bill also amends income tax law regarding fraudulent unemployment benefits, itemized and standard deductions, business income related to 2017 federal legislation, corporation return filing, net operating losses, and the business expensing deduction.

Marketplace Facilitators Tax Collection and Remittance

The bill requires the collection and remittance of sales and compensating use tax by most marketplace facilitators beginning July 1, 2021. Such entities with annual gross receipts from sales sourced into Kansas in excess of $100,000 are subject to the requirement, which also applies to out-of-state retailers with annual receipts from sales sourced into Kansas exeeding $100,000.

The bill requires marketplace facilitators that reach the $100,000 threshold for the first time in the current calendar year to collect and remit the tax on cumulative gross receipts from sales into the state in excess of $100,000 during the current calendar year.

The bill defines “marketplace facilitators” to include entities that contract with sellers to facilitate the sale of products or lodgings through a physical or electronic marketplace operated, owned, or otherwise controlled by the entity and either directly or indirectly collect the payment from the purchaser and transmit all or part of the payment to the seller. The definition excludes platforms that exclusively provide advertising services, principally provide payment processing, or are a certain type of commodity futures trading organization.

The bill authorizes the Department of Revenue (KDOR) to waive the obligation of a marketplace facilitator to collect and remit taxes upon a showing by the marketplace facilitator that substantially all of its marketplace sellers are already collecting and remitting all applicable taxes. The bill also allows marketplace facilitators to contract with marketplace sellers with at least $1.0 billion of annual gross sales in the United States to require the marketplace seller to collect and remit all applicable taxes and fees.

The bill further clarifies that, in addition to state and local sales and use tax, marketplace facilitators also are responsible for collecting and remitting local transient guest taxes beginning January 1, 2022, and certain prepaid wireless 911 fees beginning April 1, 2022.

KDOR is authorized to require marketplace facilitators to provide any information necessary to assure implementation of the bill’s provisions, including the documentation of sales.

The Director of Taxation, KDOR, is required to remove the line for reporting compensating use tax from individual income tax returns beginning January 1, 2022.

The Secretary of Revenue is required to adopt any rules and regulations for purposes outlined in the bill.

The bill repeals the “click-through” nexus provisions for affiliated persons related to sales and use tax collections.

Fraudulent Unemployment Benefits

The bill clarifies that victims of identify theft do not owe Kansas individual income tax on unemployment compensation that was fraudulently obtained by another individual.

Itemized Deductions

Beginning in tax year 2021, the bill provides individual income taxpayers the option to take Kansas itemized deductions regardless of whether deductions are itemized or the standard deduction is claimed for federal income tax purposes.

Standard Deductions

The bill, beginning in tax year 2021, increases the standard deduction amounts to $3,500 for single filers, $6,000 for single head-of-household filers, and $8,000 for married filers filing jointly. These amounts are currently set at $3,000, $5,500, and $7,500, respectively.

Business Income

Global Intangible Low Tax Income (GILTI)

The bill provides, beginning in tax year 2021, a subtraction modification exempting GILTI, as defined in section 951A of the federal Internal Revenue Code (IRC), before any deductions allowed under section 250(a)(1)(B) of the IRC.

Business Interest

The bill provides, beginning in tax year 2021, a subtraction modification exempting certain business interest, to the extent such business interest is currently disallowed as a deduction pursuant to the IRC but was deductible under the IRC as in effect on December 31, 2017.

Capital Contributions

The bill, beginning in tax year 2021, specifies for Kansas corporation income tax purposes that the exemption from federal taxable income for capital contributions shall be the exemption as it existed in section 118 of the IRC as in effect on December 31, 2017.

Federal Deposit Insurance Corporation Premiums

The bill provides, beginning in tax year 2021, a subtraction modification for the amount disallowed as a deduction by section 162(r) of the IRC, as in effect on January 1, 2018, for Federal Deposit Insurance Corporation (FDIC) premiums paid by the taxpayer.

Business Meal Expenses

The bill provides, beginning in tax year 2021, a subtraction modification exempting certain meal expenditures, to the extent such expenditures are currently disallowed as a deduction pursuant to the IRC but were deductible under the IRC as in effect on December 31, 2017.

Expensing Deduction

The bill allows individual income taxpayers to claim the expensing deduction (provided by KSA 79-32,143(a)) for the costs of placing certain tangible property and computer software into service in the state beginning in tax year 2021. A second change, also effective with tax year 2021, requires all taxpayers claiming the Kansas expensing deduction to offset the amount of federal expensing deduction claimed pursuant to Section 179 of the IRC.

Corporation Income Tax Return Filing Deadline

The bill extends the deadline for the filing of Kansas corporation income tax returns to one month after the due date established under federal law. The bill also provides that no late-filing penalty will be assessed on taxpayers filing state corporation income tax returns when the return is filed within one month after the taxpayer has received an extension to file a federal return by the Internal Revenue Service.

The provisions of this section are applicable to returns for tax year 2020 and all future years.

Net Operating Loss Carry Forward Extension

The bill allows Kansas income taxpayers to carry forward net operating losses indefinitely, beginning with such losses incurred in tax year 2018. Current law provides for net operating losses to be carried forward for ten years.