

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 22**

As Amended by House Committee of the Whole

**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; reduce the state sales tax rate by 1.0 percent on certain purchases of food; and enact a number of provisions in response to a U.S. Supreme Court decision authorizing states and local units to collect sales and compensating use taxes on certain transactions made through out-of-state retailers and marketplace facilitators who have an economic presence (nexus) in Kansas.

***Individual Income Tax***

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.

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\*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>

### ***Business Income Tax***

The bill would stipulate for tax year 2017 and thereafter, 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 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.

### ***Sales Tax on Food***

The bill would reduce the sales tax rate on certain food and food ingredients from 6.5 percent to 5.5 percent beginning October 1, 2019. The reduction would extend to substances sold for ingestion or chewing by humans and consumed for their taste or nutritional value. The reduction would apply to any items eligible to be purchased with food stamps issued by the U.S. Department of Agriculture.

### ***Internet Sales and Use Tax***

The bill would enact the Kansas Main Street Parity Act (KMSPA) designed to clarify the applicability of Kansas sales and use tax provisions to certain out-of-state retailers and marketplace facilitators. Generally, such entities would be required, beginning October 1, 2019, to collect tax if they have more than \$100,000 in total gross sales sourced to Kansas.

Specifically excluded from the definition of “marketplace facilitators” would be platforms and forums providing certain Internet advertising services and those entities selling or charging for rooms, lodging, or accommodations for occupancy provided by hotels, motels, and inns.

Related to the KMSPA provisions, the bill would repeal a requirement under current law (KSA 79-3221o) that Kansas individual income tax forms contain a line allowing taxpayers to voluntarily remit unpaid use taxes as part of their income tax reconciliation.

## **Background**

SB 22, as amended, includes provisions of HB 2261 and HB 2352. The following provides background information on each bill.

### ***SB 22 (Individual and Business Income Tax)***

SB 22, as introduced, which dealt with the individual and business income tax provisions in the wake of the 2017 federal tax law changes, 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 proponent testimony was submitted from several groups, including Bombardier, Inc., the Kansas Beer

Wholesalers Association, and the Overland Park Chamber of Commerce.

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

Written-only opponent testimony was submitted by the Kansas Center for Economic Growth.

On January 31, the Senate Select Committee adopted amendments 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).

On February 25, the House Committee on Taxation amended the bill to incorporate the 1.0 percent rate reduction on food and food ingredients (provisions present in HB 2261) and the Internet sales and use tax provisions (provisions present in HB 2352).

On March 7, the House Committee of the Whole amended the bill to change the definition of food purchases eligible for the rate decrease to generally apply to items eligible for food stamps, effectively clarifying the reduction would be extended to vending machine sales, which would not have been impacted under the original provisions of HB 2261.

Although a fiscal note on SB 22, as amended by the House Committee of the Whole, was not immediately available, on March 7, KDOR verbally indicated the combined provisions of the bill would have the following impact on receipts.

	(Dollars in Millions)		
	FY 2020	FY 2021	FY 2022
<b>Individual Income Tax Provisions</b>			
Itemized Deduction Option	\$ (50.1)	\$ (60.3)	\$ (60.9)
<b>Business Income Tax Provisions</b>			
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
<i>Subtotal-Business Income Tax</i>	<u>\$ (137.2)</u>	<u>\$ (51.9)</u>	<u>\$ (56.3)</u>
<b>Sales Tax Rate Decrease on Food (all funds)</b>			
State General Fund Share	\$ (36.5)	\$ (55.4)	\$ (56.3)
State Highway Fund Share	(7.0)	(10.7)	(10.8)
<i>Subtotal-Food Sales Tax Decrease</i>	<u>\$ (43.5)</u>	<u>\$ (66.1)</u>	<u>\$ (67.1)</u>
<b>Internet Sales Tax Provisions (all funds)</b>			
State General Fund Share	\$ 18.2	\$ 27.7	\$ 28.2
State Highway Fund Share	3.5	5.4	5.5
<i>Subtotal-Internet Sales Tax</i>	<u>\$ 21.7</u>	<u>\$ 33.1</u>	<u>\$ 33.7</u>
<b>TOTAL</b>	<u><b>\$ (209.1)</b></u>	<u><b>\$ (145.2)</b></u>	<u><b>\$ (150.6)</b></u>
<i>Total State General Fund Share</i>	\$ (205.6)	\$ (139.9)	\$ (145.3)
<i>Total State Highway Fund Share</i>	(3.5)	(5.3)	(5.3)

According to the fiscal note prepared by the Division of the Budget on SB 22, as introduced, KDOR expects to incur an additional \$0.820 million in FY 2020 administrative costs to implement the bill's income tax provisions beyond the amount recommended for the agency in *The FY 2020 Governor's Budget Report*. The Department of Administration indicates 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*.

### ***HB 2261 (Sales Tax on Food)***

During the House Committee on Taxation hearing on HB 2261, proponents included Representative Tim Hodge and representatives of the Kansas National Education Association, KC Healthy Kids, and the Kansas Food Dealers Association. Opponents included representatives of the Kansas Farm Bureau, the Kansas Chamber, and the Kansas Restaurant and Hospitality Association. Neutral testimony was provided by representatives of Kansas Action for Children and the Kansas Appleseed Center for Law and Justice.

According to the fiscal note prepared by the Division of the Budget on HB 2261, KDOR expects to incur an additional \$2.864 million in additional administrative costs. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.

### ***HB 2352 (Internet Sales and Use Tax)***

During the House Committee on Taxation hearing, a representative of the League of Kansas Municipalities testified in favor of HB 2352. Representatives of a number of cities and the Overland Park Chamber of Commerce provided written-only proponent testimony. A representative of the Kansas Chamber gave neutral testimony, indicating he would be working with the Department of Revenue and the Office of Revisor of Statutes on a number of clarifying amendments. No opponent testimony was provided.

During informational briefings earlier in the session, staff of KDOR had explained other states had adopted legislation similar to HB 2352 in response to a June 2018 decision by the U.S. Supreme Court (*South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_) authorizing states to compel out-of-state retailers to collect and remit sales and use taxes on transactions involving taxable goods shipped in across state lines.

The House Committee adopted many of the amendments suggested by the Kansas Chamber representative as part of a package presented during House Committee deliberations on February 25, when the provisions of HB 2352 were inserted into SB 22.

Although updated administrative costs associated with the House Committee amendments were not immediately available, according to the fiscal note prepared by the Division of the Budget on HB 2352, as introduced, KDOR expects to incur an additional \$0.506 million in FY 2020 administrative costs.