

## **Income and Sales Tax Provisions; SB 22**

**SB 22** makes several changes to Kansas income tax provisions in response to federal income tax changes enacted in late 2017, reduces the state sales tax rate by 1.0 percent on certain purchases of food, and enacts 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 that have an economic presence (nexus) in Kansas.

### ***Individual Income Tax***

The bill removes a restriction 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 provides an option to take Kansas itemized deductions regardless of whether itemized deductions or the standard deduction are claimed for federal tax purposes. The bill authorizes the filing of amended returns through December 31, 2019, for purposes of this provision's retroactive applicability to tax year 2018.

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

The bill stipulates, 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 requires 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 is not be subject to the Kansas income tax. The bill requires 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 will 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 are required to be added back for all years beginning with tax year 2018.

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

Additionally, for tax year 2018 and thereafter, amounts attributable to the disallowance of Federal Deposit Insurance Corporation (FDIC) premiums paid by certain large financial institutions are excluded from Kansas income taxation.

The bill clarifies the retroactive application of several of these sections, which effectively authorizes the filing of amended returns to claim refunds during the three-year statute of limitations available under continuing law.

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

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

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

The bill enacts 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 are 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” are 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, or inns.

Related to the KMSPA provisions, the bill repeals a requirement (KSA 2018 Supp. 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.

The bill is expected to 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>                    | \$ (137.2)            | \$ (51.9)         | \$ (56.3)         |
| <b>Sales Tax Rate Decrease on Food<br/>(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>                | \$ (43.5)             | \$ (66.1)         | \$ (67.1)         |
| <b>Internet Sales Tax Provisions<br/>(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>                     | \$ 21.7               | \$ 33.1           | \$ 33.7           |
| <b>TOTAL</b>   | <b>\$ (209.1)</b>     | <b>\$ (145.2)</b> | <b>\$ (150.6)</b> |
| <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)             |