KANSASCHAMBER
UNITED FOR BUSINESS

House Committee on Taxation
Testimony in Support of House Bill 2421
Presented by Eric Stafford, Vice President of Government Affairs

Wednesday, March 17, 2021

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber appreciates the opportunity to testify in support of House Bill 2421, a bill that addresses conformity issues related to the tax cuts and jobs act (TCJA) passed by Congress in December 2017.

This subject is not new to Kansas lawmakers. Unfortunately, previous efforts from the Legislature have been vetoed by Governor Kelly. Last year, legislation failed to pass due to the COVID-shortened session. We feel it is important to state from the beginning that a state electing to decouple from these provisions is not a tax cut for corporations. These provisions included in previous bill drafts were implemented in the federal tax changes as a pay-for to lower the federal corporate rate from 35% to 21%. Just like the individual itemization issue, federal tax changes in rolling conformity states such as Kansas created an unlegislated tax increase on Kansas corporations if proactive measures are not taken.

Like last year, this year's bill does not propose to decouple from IRC 965 repatriated earnings. Our members have agreed to forgo decoupling on that provision in an effort to show compromise, reduce the fiscal note and find a solution that can earn support of the Legislature and the Governor.

HB 2421 proposes to decouple from the following items starting next tax year:

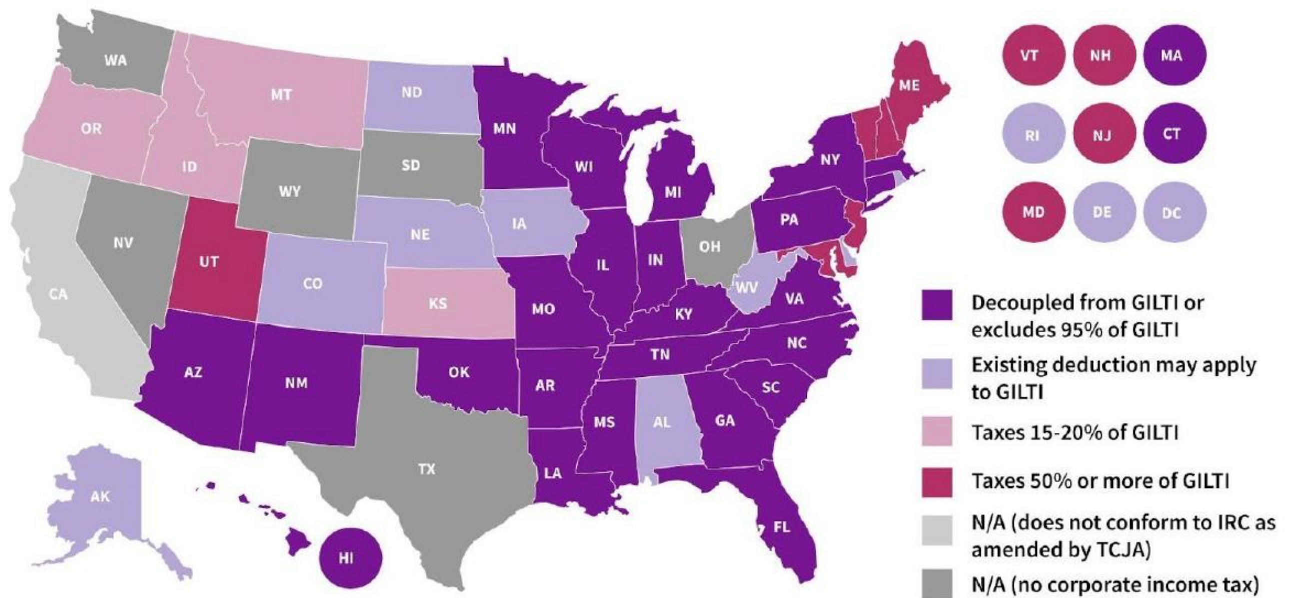
- IRC 951A, 250(a)(1)(B)(i) or GILTI as it is known
- IRC section 163(j) on interest limitation deductions
- IRC 118- capital contributions
- IRC 162(r)- FDIC premiums

As previously stated, these, business-related provisions were created to help pay for the reduction in the corporate income tax rate, but more importantly, to eliminate disincentives on investment in the United States. TCJA moves business taxes from a worldwide taxation system to a territorial system reflective of the global environment.

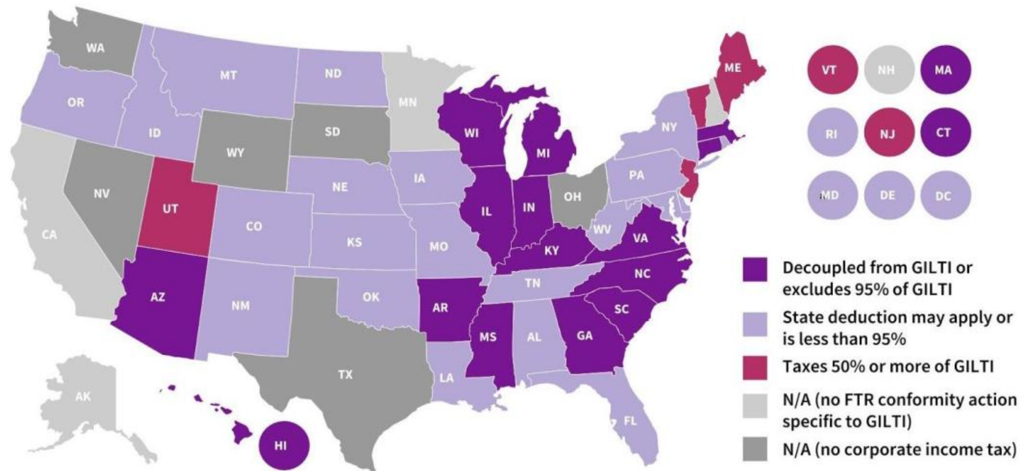
IRC 951A, 250(a)(1)(B)(i) - GILTI
Global Intangible Low Tax Income (GILTI) is a new provision which taxes income earned in jurisdictions with a low tax rate. According to the Council on State Taxation (COST), *"This provision is meant to discourage the location of high-value activities outside the US. It functions as a mandatory annual inclusion of global intangible low taxed income (GILTI) determined on an aggregate basis for all controlled foreign corporations owned by the same US shareholder, with partial credits for foreign taxes properly attributable to the GILTI amount. The GILTI inclusion effectively taxes foreign earnings in excess of a 10% rate of return on fixed assets at a reduced rate by providing a 50% deduction initially (subject to certain limitations), reduced to 37.5% for tax years beginning after 2025. At a 21% federal corporate tax rate, the deduction results in effective rates of 10.5% and 13.125% respectively)."*

This complex calculation only becomes worse for businesses when determining the proper apportionment to determine how much of this foreign income should be attributable to Kansas. We must stress that foreign income has never been subject to Kansas corporate income tax before. As more states act to decouple from GILTI provisions, Kansas is becoming more of an outlier Failure to address these provisions would place Kansas as an outlier and diminish the competitiveness of our already mediocre tax policy.

Below are two maps specific to state conformity efforts on GILTI. In the first map from February 2021, you will see that nearly half of states have either decoupled from GILTI or exclude 95 percent of GILTI from the state tax base (dark purple on the map below). Only six states explicitly tax GILTI (red on the map below). At the federal level, taxation of GILTI is supposed to reach only that income that is attributable to "low-tax" foreign jurisdictions; this is accomplished by use of foreign tax credits. Kansas does not apply foreign tax credits, so conformity would result in taxing much more than income earned in low-tax jurisdictions. Decoupling from IRC section 951A or providing a clear 100% deduction avoids significant apportionment complexity and potential disputes. Failure to decouple from GILTI has placed Kansas at a competitive disadvantage by subjecting foreign-earned income to state corporate income taxes. Decoupling from these provisions is recommended by the Tax Foundation as part of our comprehensive review of the state's tax code.



You'll notice in the second map below from January 2019 the growth in the number of states that have taken the steps to decouple and remove GILTI from their tax base.



IRC section 163(j) on interest limitation deductions

TCJA modified IRC 163(j) to limit deductibility of business interest expenses. According to the STAR partnership, not decoupling from 163(j) will result in a variety of complex questions that will need to be answered. *"(The) Legislature or tax department will need to spend much time drafting rules concerning myriad of issues, including: whether carried forward interest expense will be based on taxpayer's apportionment in the year the interest expense paid or in the year the interest expense used; how to account for the suspended interest expense when a corporation leaves/joins a combined group; how to account for the interest expense when there is a change of ownership in the taxpayer; how to allocate the disallowed interest expense in a state with an add back for interest expense paid to related parties; and whether to suspend the income inclusion if a disallowed business expense is paid to a related party that also files a return in the state."*

IRC 118- capital contributions and IRC 162(r)- FDIC premiums

These last two provisions lack the complexity as the others on the reasons why decoupling is essential. TCJA included a new modification to IRC 118 providing that contributions (incentives) by governmental entities and civic groups to corporations are taxable. If Kansas wants to offer incentives to attract and retain businesses, taxing those incentives reduces the effectiveness of the policy decision.

TCJA disallowed deductions of FDIC premiums paid by financial institutions simply to raise revenue to offset rate reductions. Bringing more revenue to the state without any reduction of rates results in an unlegislated tax increase on banks.

In closing, we hope this information helps with your decision to support House Bill 2421 and to decouple from these four provisions, and also to allow Kansans to itemize when using the federal standard deduction. We appreciate the opportunity to testify in support of House Bill 2421 and I'm happy to answer any questions you might have at the appropriate time.