

UPDATED
SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 50

As Amended by House Committee on Taxation

Brief*

SB 50, as amended, would require the collection and remittance of certain taxes by marketplace facilitators. The bill also would amend 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 would mandate 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 would be subject to the mandate, which also would apply to out-of-state retailers with annual receipts from sales sourced into Kansas in excess of \$100,000.

The bill would require 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 would define “marketplace facilitators” to include entities that contract with sellers to facilitate the sale of products or lodgings through a physical or electronic

*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>

marketplace operated, owned, or otherwise controlled by the entity and either directly or indirectly collects the payment from the purchaser and transmits all or part of the payment to the seller. The definition would exclude platforms that exclusively provide advertising services, principally provides payment processing, or is a certain commodity futures trading organization.

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

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

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

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

The bill would repeal the "click-through" nexus provisions for affiliated persons related to sales and use tax collections.

The bill would also make technical changes.

Fraudulent Unemployment Benefits

The bill would clarify that victims of identify theft would 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 would provide 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 would, beginning in tax year 2021, increase 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 would provide, 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 would provide, 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 would, beginning in tax year 2021, specify 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.

FDIC Premiums

The bill would provide, 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 would provide, 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 would allow individual income taxpayers to begin claiming 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, would require 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 would extend 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 would provide that no late-filing penalty could be assessed on taxpayers filing state corporation income tax returns when the return is filed within 30 days after having received extensions to file federal returns by the Internal Revenue Service.

The provisions of the bill would be applicable to returns for tax year 2020 and all future years.

Net Operating Loss Carry Forward Extension

The bill also would allow 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 10 years.

Background

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of a representative of the Kansas Chamber of Commerce.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, representatives of the Kansas Chamber of Commerce, Kansas Restaurant and Hospitality Association, League of Kansas Municipalities,

Travel Industry Association of Kansas, and Verizon testified as **proponents**, stating the bill would provide tax equity between in-state and out-of-state retailers. Written-only **proponent** testimony was provided by representatives of Amazon, AT&T, Verizon, and T-Mobile; Cities of Mission, Prairie Village, and Westwood Hills; City of Overland Park; Council on State Taxation; and Overland Park Chamber of Commerce.

Neutral testimony was provided by representatives of KDOR and Kansas Action for Children.

No other testimony was provided.

The Senate Committee amended the bill to make a technical correction related to the definition of “hotel” and to make the required date for prepaid wireless 911 fee collection April 1, 2022.

House Committee on Taxation

In the House Committee hearing on March 22, 2021, **proponent** testimony was provided by a representative of the League of Kansas Municipalities, who noted the bill addresses an important issue, but little more needs to be said beyond what has already been testified to with respect to this issue.

The chairperson of the House Committee also noted he had requested conferees previously testifying on HB 2173 not provide testimony, in the interest of time, as the bill was substantially the same as HB 2173.

The House Committee amended SB 50 to:

- Require KDOR to remove the line for reporting compensating use tax from individual income tax returns;

- Require marketplace facilitators that reach \$100,000 in annual gross sales for the first time in the current calendar year to collect and remit the tax;
- Include the provisions of HB 2421, as introduced (income tax modifications, expensing deduction);
- Remove provisions subtracting from federal adjusted gross income amounts received from the Paycheck Protection Program and expenses provided under the Consolidated Appropriations Act, as found in HB 2421, as introduced;
- Increase Kansas standard deduction amounts;
- Include the provisions of HB 2239, as amended by the House Committee (net operating loss carryforward extension); and
- Include the provisions of HB 2106, as introduced (corporation income tax return filing deadline).

Fiscal Information

On March 30, 2021, the Department of Revenue provided the following updated fiscal information concerning the bill, as amended by the House Committee.

(\$ in millions)

	FY 2022	FY 2023	FY 2024
Marketplace Facilitator - SGF	\$35.5	\$41.7	\$44.1
Expensing Deduction	2.3	2.4	2.5
Limitation on Deduction for Interest	-30.6	-37.5	-38.6
Limitation on Deduction for FDIC Premiums	-1.3	-1.3	-1.3
GILTI*	-24.2	-23.5	-23.7
Deduction for Meal Expenditure	0.0	0.0	-3.0
Standard Deduction Increase and Itemization Allowance	-82.9	-83.7	-84.6
<i>Subtotal State General Fund</i>	<i>-101.2</i>	<i>-101.9</i>	<i>-104.6</i>
Marketplace Facilitator - SHF	6.9	8.1	8.6
<i>Subtotal State Highway Fund</i>	<i>6.9</i>	<i>8.1</i>	<i>8.6</i>
Total All Funds	-94.3	-93.8	-96.0

* Individuals are allowed to deduct GILTI income before any deduction. KDOR is unable to determine the impact for this allowance at this time.

Taxation; sales tax; marketplace facilitators; 911 fee; Transient Guest Tax; tax filing; income tax; business income; itemization; standard deductions; net operating loss carryforward; Global Intangible Low-Taxed Income