SESSION OF 2019

SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2033

As Agreed to May 2, 2019

Brief*

HB 2033 would clarify the Finney County sales tax authority and the role of the Kansas Department of Revenue (KDOR) in implementing local sales taxes; implement two changes relating to expensing deductions for income tax purposes; 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 under certain circumstances based on growth in compensating use tax receipts; 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.

Finney County and Local Sales Tax Provisions

One provision would retroactively ratify the results of a 2017 election in Finney County seeking to increase that county's sales tax by 0.3 percent and would clarify the county has such rate authority. The tax imposed by the election would be for purposes of an interlocal agreement between the county and Garden City regarding certain infrastructure upgrades and would sunset after 15 years.

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*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at http://www.kslegislature.org/klrd

The bill would require the Director of Taxation (Director) to confirm all provisions of law applicable to the authorization of local sales taxes have been followed prior to causing collections to commence. Should the Director discover a city or county did not comply with the authorization law after collections have commenced, collections would cease until such error has been remedied.

Expensing Deductions

The bill would allow individual income taxpayers to begin claiming the expensing deduction (provided by KSA 2018 Supp. 79-32,143a) for the costs of placing certain tangible property and computer software into service in the state beginning in tax year 2019. A second change, also effective with tax year 2019, would require all taxpayers claiming the Kansas expensing deduction to offset the amount of federal expensing deduction claimed pursuant to Section 179 of the federal Internal Revenue Code (Code).

Individual Income Tax Itemized Deductions

The bill would remove a restriction in 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 2019, 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.

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 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, 95 percent of global intangible low taxed income (GILTI) under section 951A of the Code would not be subject to the Kansas income tax. All such income would be exempt in tax year 2019 and thereafter. 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.

The bill further would provide for tax year 2019 and thereafter certain capital contributions, as determined under Code section 118, would be excluded from the Kansas income tax.

For tax year 2019 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.

Another provision would allow Kansas income taxpayers to carry forward net operating losses for 20 years, beginning with such losses incurred in tax year 2018. Current law provides for net operating losses to be carried forward for 10 years.

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.

Marketplace Facilitators 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 to collect tax, beginning October 1, 2019, 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 (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.

Sales Tax on Food

The bill would provide for formulaic reductions in the state sales tax rate (currently 6.5 percent) on certain food and food ingredients beginning July 1, 2020, and on each January 1 thereafter based on annual growth in compensating use tax receipts of more than 3 percent above such receipts in FY 2018, which would be established as the base year. The formulaic provisions would require a certification to the KDOR, which would then publish any food sales tax reduction that would have been triggered, rounded to the nearest 0.1 percent. Food and food ingredients generally would include those substances sold for ingestion or chewing by humans and consumed for their taste or nutritional value, and would specifically include soft drinks, candy, food sold through vending machines, and bottled water. Alcohol, tobacco, and dietary supplements would be excluded from the food definition.

Conference Committee Action

The second Conference Committee agreed to the provisions of HB 2033 as passed by the Senate, regarding Finney County and the KDOR role in implementing local sales taxes, with these additions: the expensing provisions from SB 196, the carryforward provisions from HB 2388, selected provisions from SB 22, and linking potential food sales tax reductions to certain growth in use taxes.

Background

The bill would include certain provisions from the bills listed above. (No hearing was held on SB 196, although the subject matter of expensing had been approved by the Senate as part of SB 104.)

HB 2033 (Local Sales Tax Authority)

HB 2033, as introduced, would have provided additional local sales tax authority for Thomas, Jackson, Russell and Dickinson counties. HB 2033 was introduced by Representative Adam Smith on January 15, 2019. In the House Committee on Taxation hearing on January 23, 2019, Representative Smith testified as a proponent of HB 2033. He spoke to Thomas County's need for a new consolidated Criminal Justice Center to house the Courts, the County Attorney, the Sheriff's Office, the jail, and the Colby Police Department. He noted that a November 2017 Thomas County election approved a one-half cent increase in sales tax and the bill would levy an additional one-fourth cent increase. Representatives from the Kansas Association of Realtors and Thomas County also testified as proponents. Representatives Awerkamp and Waymaster and a representative of Dickinson

County provided written-only proponent testimony. No neutral or opponent testimony was provided.

On January 24, the House Committee on Taxation amended the bill to include the provisions of HB 2040 relating to Finney County. On February 7, the House Committee of the Whole adopted a technical amendment. On March 20, the Senate Committee on Assessment and Taxation amended the bill to remove the provisions relating to the four counties in the original bill (leaving only Finney County) and inserted such provisions into HB 2160. The Senate Committee also amended the bill to include language regarding local sales tax authorization and the requirements of the Director.

HB 2040 (Sales Tax Authority for Garden City and Finney County)

HB 2040 was introduced by Representative Hineman on behalf of Garden City and Finney County on January 16, 2019. In the House Committee on Taxation hearing on January 23, 2019, representatives from Finney County, Garden City, and the Kansas Association of Counties testified as proponents of HB 2040. The representative from Finney County testified the bill would approve a November 2017 joint Finney County and Garden City election approving a 0.3 percent increase in sales tax for 15 years. The representative noted Finney County is the retail hub of Southwest Kansas. No neutral or opponent testimony was provided.

HB 2388 (NOL Carryforwards)

HB 2388 was introduced by the House Committee on Taxation at the request of Sprint. During the public hearing in the House Committee on March 18, representatives of Sprint and the Kansas Chamber appeared as proponents. Written-only proponent testimony was provided by a representative of CenturyLink. No other conferees appeared or submitted testimony.

The original bill also contained provisions that would have allowed taxpayers to make elections to add certain bonus depreciation amounts to income, and to allow loss carryovers from prior years to offset up to 100 percent of taxable income (as opposed to 80 percent under current law). The House Committee on Taxation amended the bill on March 21 to remove these provisions.

SB 22

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 KDOR legal analysts.

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 for which Supplemental Nutrition Assistance Program benefits could be used, effectively clarifying the reduction would be extended to vending machine sales, which would not have been impacted under the original provisions of HB 2261.

SB 22 was approved by the House on March 8 and by the Senate on March 14 before being vetoed by the Governor on March 26. That veto was sustained on May 1.

Selected Fiscal Information

Based on use tax receipts in FY 2018 and on the April 18, 2019, Consensus Revenue Estimate, the Department of Revenue determined that future use tax receipts, which would include additional revenues from the KMSPA, would not trigger a food tax reduction on July 1, 2020, but would be expected to reduce the food tax rate to 6.0 percent on January 1, 2021, and to 5.4 percent on January 1, 2022.

Based on those assumptions and on remaining provisions of the bill with identifiable fiscal notes, the bill would be expected to have the following impact on State General Fund receipts:

	(Dollars in Millions)		
	FY 2020	FY 2021	FY 2022
Individual Itemized Deduction Option	$ (35.5)	$ (60.3)	$ (60.9)

	FY 2020	FY 2021	FY 2022
Repatriation	$ (10.5)	$ (0.4)	$ (0.2)
GILTI	(61.7)	(24.7)	(24.2)
FDIC Premium Deductions	(1.9)	(1.3)	(1.3)
Capital Contributions	negligible	negligible	negligible
NOL Carryforwards – 20 years	0.0	0.0	0.0
Net Changes to Expensing	2.1	2.2	2.3
Total Business Provisions	*$ (72.0)*	*$ (24.2)*	*$ (23.4)*
Marketplace Facilitator Use Tax (all funds)	$ 21.7	$ 33.1	$ 33.6
State General Fund Share	18.2	27.8	28.2
State Highway Fund Share	3.5	5.3	5.4
Sales Tax Rate Cut on Food (all funds)	$ 0.0	$ (14.2)	$ (36.8)
State General Fund Share	0.0	(11.9)	(30.9)
State Highway Fund Share	0.0	(2.3)	(5.9)
Grand Total	*$ (85.8)*	*$ (65.6)*	*$ (87.5)*
Total State General Fund Share	*(89.3)*	*(68.6)*	*(87.0)*
Total State Highway Fund Share	*3.5*	*3.0*	*(0.5)*

Administrative costs on the bill were not immediately available.

local sales tax; income tax reform; expensing; itemized deductions; marketplace facilitators; food sales tax

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