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NOTICE 21-08

CHANGES REGARDING BUSINESS INCOME (JULY 1, 2021)

During the 2021 Legislative Session Senate Bill 50 was passed and signed into law. Several Sections of the Bill make changes to the treatment of business income. This includes changes regarding global intangible low-taxed income (GILTI), business income, business meal expenses, capital contributions, federal deposit insurance corporation premiums, net operating losses, and expensing deductions.

Global Intangible Low-Taxed Income (GILTI)

Section 11 of Senate Bill 50 amends subsection (b) of K.S.A. 79-32,138, to add a new addition modification to the calculation of taxable income for Global Intangible Low Taxed Income (GILTI). Specifically, subsection (b) of the statute is amended to provide:

(b) There shall be added to federal taxable income:

(vii) for all taxable years commencing after December 31, 2020, the amount of any deduction claimed under section 250(a)(1)(B) of the federal internal revenue code of 1986.

Section 8 of Senate Bill 50 amends K.S.A. 79-32,117 to include a new subtraction modification for Global Intangible Low Taxed Income (GILTI). Specifically, the new provision provides that, beginning in tax year 2021:

(c) There shall be subtracted from federal adjusted gross income:

(xxv) For all taxable years commencing after December 31, 2020, 100% of global intangible low-taxed income under section 951A of the federal internal revenue code of 1986, before any deductions allowed under section 250(a)(1)(B) of such code.

Business Interest

Section 8 of Senate Bill 50 also amends K.S.A. 79-32,117 to include new addition and subtraction modifications for certain business interest. Specifically, the new provisions provide that, beginning in tax year 2021:

(b) There shall be added to federal adjusted gross income:

(xxvii) For all taxable years commencing after December 31, 2020, the amount deducted by reason of a carryforward of disallowed business interest pursuant to section 163(j) of the federal internal revenue code of 1986, as in effect on January 1, 2018.

(c) There shall be subtracted from federal adjusted gross income:

(xxvi) For all taxable years commencing after December 31, 2020, the amount disallowed as a deduction pursuant to section 163(j) of the federal internal revenue code of 1986, as in effect on January 1, 2018.

Business Meal Expenses

Section 8 of Senate Bill 50 further amends K.S.A. 79-32,117 to include a new subtraction modification for certain business meal expenditures. Specifically, the new provision provides that, beginning in tax year 2021:

(c) There shall be subtracted from federal adjusted gross income:

(xxvii) For taxable years commencing after December 31, 2020, the amount disallowed as a deduction pursuant to section 274 of the federal internal revenue code of 1986 for meal expenditures shall be allowed to the extent such expense was deductible for determining federal income tax and was allowed and in effect on December 31, 2017.

Capital Contributions

K.S.A. 79-32,138 addresses the calculation of taxable income for corporate income tax purposes. Section 11 of Senate Bill 50 amends K.S.A. 79-32,138 to specify that, beginning in tax year 2021, for Kansas corporation income tax purposes the exemption from federal taxable income for capital contributions will be the exemption as it existed in section 118 of the IRC as in effect on December 21, 2017. Specifically, subsection (a) of the statute is amended to say:

(a) Kansas taxable income of a corporation taxable under this act shall be the corporation's federal taxable income for the taxable year with the modifications specified in this section, *except that in determination of such federal taxable income for all taxable years commencing after December 31, 2020, section 118 of the federal internal revenue code of 1986 shall be applied as in effect on December 21, 2017.*

Net Operating Losses

K.S.A. 79-32,143 addresses net operating losses. Current law provides that net operating losses can be carried forward for ten years. Section 12 of Senate Bill 50 amends K.S.A. 79-32,143(a) to add a new subparagraph which allows Kansas income taxpayers to carry forward net operating losses indefinitely, beginning with such losses incurred in tax year 2018. Specifically, the new subparagraph provides:

(B) For net operating losses incurred in taxable years beginning after December 31, 2017, a net operating loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code, except that such net operating loss deduction may only be carried forward.

Expense Deductions

K.S.A. 79-32,143a addresses expense deductions. Section 13 of Senate Bill 50 amends K.S.A. 79-32,143a to allow individual income taxpayers to claim the expensing deduction for the costs of placing certain tangible property and computer software into service in the state beginning in tax year 2021. Specifically, new subsection (i) provides:

(i) For tax year 2021, and all tax years thereafter, the deduction allowed by this section shall be available to all taxpayers subject to the income tax imposed pursuant to K.S.A. 79-32,110, and amendments thereto, or the privilege tax imposed upon any national banking association, state bank, savings bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, and used only to determine such taxpayer's income or privilege tax liability.

A second change made in Section 13, also effective with tax year 2021, requires all taxpayers claiming the Kansas expensing deduction to offset the amount of federal expensing deduction with the amount of bonus depreciation being claimed for property pursuant to section 168(c) and the amount of expensing deduction being claimed for such property pursuant to section 179 of the Internal Revenue Code. Specifically, subsection (a) of K.S.A. 79-32,143a is amended to provide:

(a) For taxable years beginning after December 31, ~~2011~~ *2020*, a taxpayer may elect to take an expense deduction from Kansas net income before expensing or recapture allocated or apportioned to this state for the cost of the following property placed in service in this state during the taxable year: (1) Tangible property eligible for depreciation under the modified accelerated cost recovery system in section 168 of the internal revenue code, as amended, but not including residential rental property, nonresidential real property, any railroad grading or tunnel bore or any other property with an applicable recovery period in excess of 25 years as defined under section 168(c) or (g) of the internal revenue code, as amended; and (2) computer software as defined in section 197(e)(3)(B) of the internal revenue code, as amended, and as described in section 197(e)(3)(A)(i) of the internal revenue code, as amended, to which section 167 of the internal revenue code, as amended, applies. If such election is made, the amount of expense deduction for such cost shall equal the difference between the depreciable cost of such property for federal income tax purposes and the *sum of the* amount of bonus depreciation being claimed for such property pursuant to section 168(k) *and the amount of expensing deduction being claimed for such property pursuant to section 179* of the internal revenue code, as amended, for federal income tax purposes in such tax year, ~~but without regard to any expense deduction being claimed for such property under section 179 of the internal revenue code, as amended,~~ multiplied by the

applicable factor, determined by using, the table provided in subsection (f), based on the method of depreciation selected pursuant to section 168(b)(1), (2), or (3) or (g) of the internal revenue code, as amended, and the applicable recovery period for such property as defined under section 168(c) or (g) of the internal revenue code, as amended. This election shall be made by the due date of the original return, including any extensions, and may be made only for the taxable year in which the property is placed in service, and once made, shall be irrevocable. ~~If the section 179 expense deduction election has been made for federal income tax purposes for any asset, the applicable factor to be utilized is in the IRC § 168 (b)(1) column of the table provided in subsection (f) for the applicable recovery period of the respective assets.~~

TAXPAYER ASSISTANCE

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