

NOTICE 24-16

INTEREST EXPENSE UNDER IRC SECTION 163(j)

(AUGUST 7, 2024)

During the 2024 Legislative Session Senate Bill 410 was passed and signed into law. Section 18 of the Bill amends K.S.A. 79-32,117, which requires or permits addition and subtraction modifications to federal adjusted gross income when calculating Kansas adjusted gross income.

K.S.A. 79-32,117 includes modifications that relate to the business interest deduction allowed under Internal Revenue Code section 163(j). For tax years 2018, 2019, and 2020, Kansas was coupled with the federal code and only recognized the business interest deduction allowed under the Code.

For tax years 2021 and beyond, Kansas has now decoupled from the federal code and allows a deduction for current year's interest expense in its entirety – rather than the amount allowed under the Tax Cuts and Jobs Act. K.S.A. 79-32,117(c)(xxvi) provides a subtraction modification for the amount disallowed as a deduction pursuant to section 163(j) of the federal internal revenue code. The companion provision, found in K.S.A. 79-32,117(b)(xxvii), requires an addition modification for any amount deducted by reason of a carry forward of disallowed business interest pursuant to section 163(j) of the federal internal revenue code.

For tax years 2021 and beyond, the amended language in K.S.A. 79-32,117(b)(xxvii) and 79-32,117(c)(xxvi)(1), along with new language in (c)(xxvi)(2), clarifies that the amount disallowed refers to interest expense derived from the current year only and not carryforward of disallowed expenses from prior years. Kansas taxpayers will need to examine their business interest deduction on the federal return with the portion of the federal deduction attributable to prior year carryforward qualifying for an addition modification on the Kansas return. Any current year interest disallowed on the federal return would qualify for a subtraction modification on the Kansas return.

In addition to the subtraction modification allowed in the paragraph above for tax years 2021 and beyond, new language in K.S.A. 79-32,117(c)(xxvi)(3) also allows a taxpayer to amend their 2021 return to adjust the amount of interest deduction for that year, and in one sum receive the amount they would have received if the current-year provisions had been operating in 2018, 2019, and 2020. This interest deduction will be an amount equal to the sum of any interest expenses paid or accrued in tax years 2018, 2019, and 2020 less the sum of amounts previously allowed on the federal return as a deduction pursuant to section 163(j) of the federal internal revenue code in tax years 2018, 2019 and 2020. Taxpayers will need to amend their tax year 2021 Kansas return to claim this deduction for tax years 2018, 2019, and 2020. There is a three-year statute of limitations.

Effective July 1, 2024, the amended provisions will provide:

(b)(xxvii) For all taxable years commencing after December 31, 2020, the amount of any interest expense paid or accrued in a previous taxable year but allowed as a deduction pursuant to section 163 of the federal internal revenue code in the current taxable year by reason of the carryforward of disallowed business interest pursuant to section 163(j) of the federal internal revenue code. For purposes of this paragraph, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable pursuant to section 163 of the federal internal revenue code if the limitation pursuant to section 163(j) of the federal internal revenue code did not exist.

(c)(xxvi)(1) For all taxable years commencing after December 31, 2020, the amount of any interest expense paid or accrued in the current taxable year and disallowed as a deduction pursuant to section 163(j) of the federal internal revenue code.

(2) For purposes of this paragraph, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable pursuant to section 163 of the federal internal revenue code if the limitation pursuant to section 163(j) of the federal internal revenue code did not exist.

(3) For tax year 2021, an amount equal to the sum of any interest expenses paid or accrued in tax years 2018, 2019 and 2020 less the sum of amounts allowed as a deduction pursuant to section 163 of the federal internal revenue code in tax years 2018, 2019 and 2020.

When filing an amended 2021 tax return, please include with the amended return a copy of the federal Form 8990 for each of tax years 2018, 2019, 2020, and 2021. In addition, please include a worksheet that shows how you computed the amount of interest expense being claimed for each of tax years 2018, 2019, 2020, and 2021, and reference the corresponding line numbers on federal Form 8890.

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