



## MULTISTATE TAXES

# Kansas Legislature overrides Governor veto to enact significant indirect and income tax law changes

### Tax Alert

## Overview

On May 3, 2021, the Kansas State Legislature voted to override Governor Kelly's veto of [Senate Bill 50](#) ("KS SB 50") imposing sales/use tax collection requirements as of July 1, 2021 on marketplace facilitators and remote sellers who exceed the \$100,000 sales threshold. The bill also amends income tax law regarding conformity to certain Tax Cuts and Jobs Act ("TCJA") provisions, corporate return due dates, and net operating loss carryforward provisions. This Alert summarizes the more significant provisions of KS SB 50.

## Income tax provisions

- Global Intangible Low Tax Income (GILTI) – For taxable years commencing after December 31, 2020, the law provides for a subtraction from federal taxable income of 100% of GILTI, as defined in section 951A of the Internal Revenue Code ("IRC"), before any deductions allowed under section 250(a)(1)(B) of the IRC.
- For taxable years commencing after December 31, 2020, there shall be added to federal taxable income any deduction claimed under section 250(a)(1)(B) of the IRC.
- Section 163(j) Business Interest Limitation – For taxable years commencing after December 31, 2020, a subtraction from federal taxable income will be allowed for business interest expense to the extent such interest is limited for federal purposes under section 163(j). Correspondingly, any carryforward claimed for federal purposes in tax years 2021 and beyond which is related to the disallowance of interest expense in tax years prior to 2021 will need to be reported as an addition modification for Kansas purposes.
- Net Operating Loss Carry Forward Extension – the law provides that 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 as allowed under the IRC except that the loss may only be carried forward.

- Business Meal Expenses – For taxable years commencing after December 31, 2020, a subtraction is allowed for the amount disallowed as a deduction under section 274 of the IRC for meal expenditures, to the extent such expenditures were deductible under the IRC as in effect on December 31, 2017.
- Capital Contributions – For taxable years commencing after December 31, 2020, the law provides that for corporate income tax purposes, section 118 of the IRC shall be applied as in effect on December 31, 2017, meaning that such contributions will be non-taxable for Kansas purposes as they were for federal purposes in pre-TCJA years.
- Corporate Tax Return Filing Deadline – the law extends the deadline for the filing of Kansas corporation income tax returns to one month after the due date established under federal law effective for tax years commencing after December 31, 2019. The bill also provides that no late-filing penalty will be assessed on taxpayers filing state corporation income tax returns when the return is filed within one month after the taxpayer has received an extension to file a federal return by the Internal Revenue Service.

## Indirect tax provisions

- Effective July 1, 2021, out-of-state retailers are required to collect sales/use taxes if their cumulative gross receipts from sales to customers in Kansas exceed \$100,000 in the current or immediately preceding calendar year. Retailers who exceed the threshold for the first time in the current calendar year are only required to collect tax on sales in excess of \$100,000.
- Marketplace facilitators must collect sales, use, and transient guest taxes and 911 fees if sales of property or taxable services, on their own behalf or on behalf of one or more marketplace sellers exceed \$100,000. Marketplace facilitators who exceed the threshold for the first time in the current calendar year are only required to collect tax on sales in excess of \$100,000.
- The marketplace facilitator collection requirement is effective July 1, 2021 for sales/use taxes. The effective date for marketplace facilitators to collect prepaid wireless 911 fees is April 1, 2022.
- Marketplace facilitators may be eligible for a waiver if they demonstrate, to the satisfaction of the Kansas Department of Revenue, that substantially all of their marketplace sellers already are collecting and remitting taxes to the department. If such waiver is granted, the taxes levied shall be collected by the marketplace seller.
- Marketplace facilitators may contract with marketplace sellers to have the marketplace seller collect and remit tax, subject to certain criteria.
- Marketplace facilitators shall report marketplace sales (i.e., sales by its marketplace sellers which it facilitates on its marketplace) either combined with its direct sales on its standard sales tax return or on a separate form to be published by the state.
- No class action lawsuit may be brought against a marketplace facilitator in Kansas on behalf of customers arising from or in any way related to an overpayment of tax collected on sales facilitated by the

marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.

- A marketplace facilitator may be relieved of liability for failure to collect and remit the correct amount of tax to the extent that the error was due to incorrect or insufficient information given by the marketplace seller.

## Get in touch

[Bill Lowenstein](#)

[Collin Koenig](#)

[Rick Heller](#)

[Lindsay McAfee](#)



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30 Rockefeller Plaza  
New York, NY 10112-0015  
United States

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