Senate Select Committee on Federal Tax Code Legislation
Testimony in Support of Senate Bill 22
Presented by David Rankin, Senior Vice President of Taxation and Business Development

Thursday, January 31, 2019

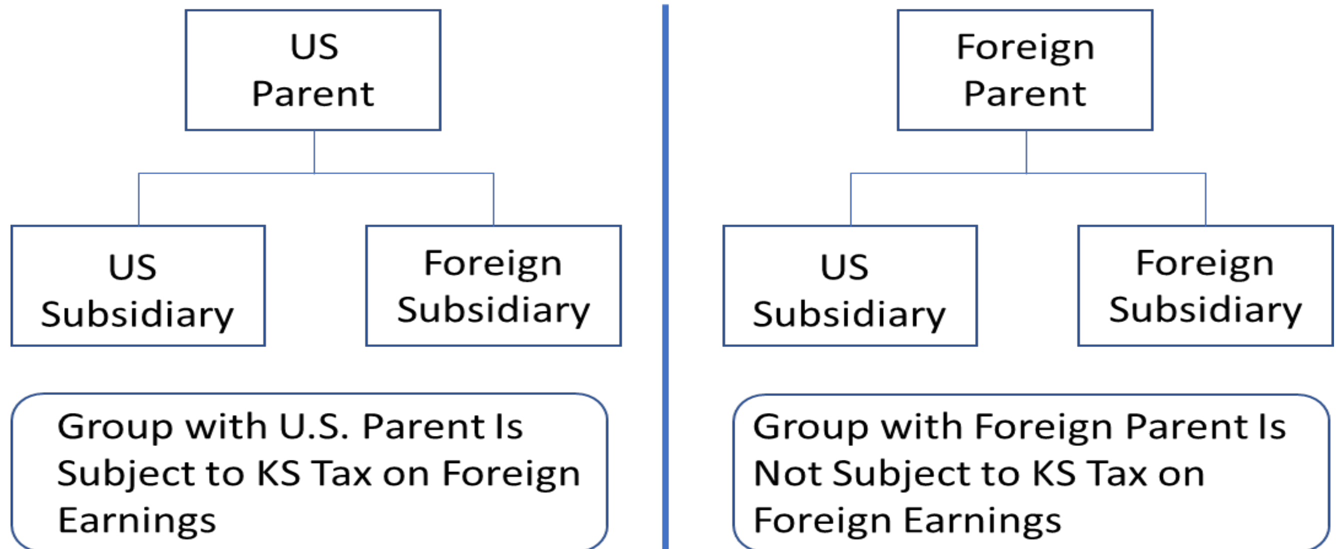
Madam Chair and members of the committee, my name is David Rankin, Senior Vice President of Taxation and Business Development for Seaboard Corporation. Seaboard Corporation is a global agribusiness and transportation company. We are one of two Fortune 500 companies headquartered in Kansas. Seaboard employs more than 800 employees in Kansas.

The Tax Cuts and Jobs Act ("TCJA") fundamentally changed the federal taxation of foreign business income from a worldwide taxation system to a territorial system reflective of today's global environment. The change to a territorial tax system leveled the playing field for U.S. companies when evaluating whether to reinvest foreign earnings in the United States or internationally, while the old system was biased toward reinvesting foreign earnings outside the United States. The TCJA also significantly reduced the federal corporate income tax rate from 35% to 21%. Congress enacted several provisions in the TCJA to help pay for the corporate income tax rate reduction by broadening the federal tax base, including changes to Internal Revenue Code ("IRC") Sections 965(a), 951A, 163(j), 118, and 162(r).

Kansas has historically tied its taxable income to federal taxable income. Absent an update to Kansas law, the federal changes to the above listed provisions will cause Kansas taxable income to not fairly reflect the economic substance of a taxpayer's operations. The federal government has chosen to disallow tax deductions for certain payments, interest under §163(j) and FDIC premiums under §162(r), as a funding mechanism for the lower federal tax rate. While taxpayers will likely receive greater benefit at the federal level from the rate reduction than detriment from the disallowed deductions, at the state level the disallowed deductions have not been offset by a related reduction in state income tax rates. The federal deduction disallowance provisions result in tax increases at the state level.

New IRC Section 951A was enacted to ensure a minimum level of foreign income tax is paid on the earnings of foreign subsidiaries of U.S. parent companies. The federal provision imposes tax at the statutory rate of 21% but allows a 50% tax deduction which reduces the effective tax rate to 10.5%. Foreign taxes paid are added to taxable income but reduced by a deduction equal to 50% of the income inclusion. The deductions are contingent on a taxpayer having positive taxable income so taxpayers with losses will not receive the 50% deductions. Finally, a foreign tax credit is allowed for 80% of the foreign taxes paid. If the foreign tax rate exceeds 13.125%, no incremental U.S. tax is due. Because Kansas does not allow a foreign tax credit, U.S. parent companies with foreign subsidiaries will be forced to pay incremental Kansas

income tax even if no incremental U.S. income tax is imposed. Further, the provision treats similarly situated taxpayers differently based on the place of incorporation. A global enterprise with a U.S. parent company will be subject to the additional Kansas tax while the same global enterprise with a foreign parent company will not be subject to the Kansas tax.



We operate in competitive markets with small margins. It seems counter-productive to penalize U.S. based companies for growing their international operations relative to a similar foreign owned competitor which would avoid the additional Kansas tax.

The IRC Section 965 repatriation tax operates in a similar manner by including 30 years of foreign profits in taxable income in a single year but taxing that income at a reduced federal tax rate and allowing a foreign tax credit. If the average foreign tax rate paid over the years had exceeded 35%, the U.S. shareholder would not owe any additional US income tax, but the earnings would be taxed in Kansas. The lack of a state level foreign tax credit causes a distortion between the relative tax imposed for federal purposes and state purposes.

In prior years, the income now taxed under Internal Revenue Code Sections §965 and §951A was not subject to Kansas corporate income tax. We believe Kansas should decouple from these provisions to prevent the state from taxing foreign income that has not historically been subject to corporate income tax.

We ask this committee and the legislature to support SB22. We are happy to answer questions at the appropriate time.