Cargill

To: **Kansas House Taxation Committee**
From: **Don Brown, Director for U.S. State Government Relations, Cargill, Incorporated**
Re: **Written Testimony in Support of House Bill 2421 – Deduction for global intangible low-taxed income (GILTI)**
Date: **March 17, 2021**

Chairman Smith and House Taxation Committee members, Cargill appreciates the opportunity to offer written testimony in support of House Bill 2421.

Founded in 1865, Cargill's 155,000 employees across 70 countries work to achieve our purpose of nourishing the world in a safe, responsible, and sustainable way. Every day, we connect farmers with markets, customers with ingredients, and people and animals with the food they need to thrive. We connect producers and users of grains and oilseeds around the globe through origination, trading, processing, and distribution, as well as offering a range of farmer services and risk management solutions. Some of the many products we produce for our customers are cocoa and chocolate, beef, turkeys, corn sweeteners, ethanol, biodiesel, food grade salt and water softener salt, and deicing salt. We produce animal feed and premix to feed beef cattle, dairy cattle, swine, and poultry. Our aquaculture business feeds salmon, shrimp, and tilapia.

For decades, Cargill has had deep roots and operations here in Kansas, where today we employ nearly 4,500. In Kansas, our businesses include:

- Grain elevators in Atchison, Hutchinson, Salina, Topeka, and WaKeeney
- Animal feed plants in Kansas City, and Emporia, where we recently made a $4 million investment
- Salt evaporation in Hutchinson
- Office center in Olathe, which houses 150 employees
- Beef processing in Dodge City that employs over 2,500 Kansans
- Our $70 million, 188,000 square-foot headquarters for our Protein businesses, which currently house 1,100 employees in downtown Wichita
- A $90 million biodiesel facility, also in Wichita, which we opened in May of 2019

Cargill is proud of our work in Kansas, and excited about our future here. We strongly support House Bill 2421 that would provide a deduction for global intangible low-taxed income (GILTI) under section 951A of the federal internal revenue code.

Federal tax reform created a category of foreign income – Global Intangible Low Tax Income, commonly referred to as GILTI—that is now subject to U.S. tax. GILTI is defined as income exceeding what federal policymakers determined to be a normal rate of return (10 percent) on tangible assets. Even though the definition suggests that it applies to high-return intangible income, it really captures any income exceeding the deemed normal rate of return.

To avoid double taxation for U.S. federal purposes, a company's foreign taxes paid can be used to offset or even eliminate federal taxes on GILTI. Because Kansas does not allow a credit for foreign taxes, employers are double taxed on this income from foreign subsidiaries (i.e., the same income is subject to both foreign and Kansas income tax).

Further, because Kansas has chosen to tax corporations on a water's edge basis, Kansas imposes this double tax on income earned by companies outside the U.S. waters' edge without providing any apportionment factor relief (i.e., the foreign property, payroll, and sales that generate GILTI are not included in the Kansas apportionment factor).

This "taxation without factor representation" raises a serious constitutional issue with Kansas's taxation of GILTI. Under the Commerce Clause, apportionment formulas must fairly represent where income is generated. Kansas's use of only domestic activity apportionment factors to determine the percentage of worldwide income subject to tax in Kansas fails to fairly apportion income to Kansas.

Also, because of Kansas' three-factor apportionment formula, the taxpayer's property and payroll in Kansas is part of the formula. Thus, the greater a company's investment in Kansas, the greater the Kansas apportionment factor, and the greater the share of GILTI that will be subject to Kansas corporate tax. There are five points to make why Kansas not taxing this income is important to Cargill.

Number 1. This is a Competitive Issue for Cargill and other Kansas multinationals. Like our *foreign* competitors, Cargill competes for opportunities to serve farmers, customers, and consumers in markets around the world. Wherever we operate, we pay local taxes, including income taxes, export taxes, value-added taxes, and other excise and sales taxes. But many of Cargill's competitors are foreign multinational corporations that, because of U.S. tax law, are not required to include this foreign income in U.S. federal or Kansas taxable income. Thus, Kansas's taxation of GILTI is a tax on our foreign income and investments that our foreign competitors do not have to pay. This puts Cargill at a comparative disadvantage with non-U.S. multinationals as we compete for business and investments. Cargill's success depends on fair and predictable state tax policies that allow us to continue making investments here, while competing in the global marketplace.

Number 2. This is a Competitive Issue for Kansas*.* Kansas's fair and competitive tax environment allows businesses like Cargill to grow and invest here. Adopting HB 2421 will ensure Kansas's tax climate remains competitive for employers like Cargill. Without this clarifying policy, Kansas would essentially levy a tax on foreign income on companies whose global business is supporting jobs and economic gains here at home. That would be neither fair to employers, nor competitive for the state. Further, Kansas's method of apportioning GILTI penalizes those multinationals who have chosen to invest in Kansas.

Number 3. Without HB 2421, Businesses Like Cargill Would See a Major Tax Increase. Because the Kansas tax code automatically conformed to the TCJA federal changes, without enacting HB 2421, a significant amount of income earned by our foreign operations will be subject to Kansas taxation. This will result in large tax increases for Cargill every year.

Number 4. Most States Have Not Adopted Onerous Tax Increases on GILTI. Following federal enactment of the TCJA, most states have chosen not to raise taxes by including GILTI in their tax base, and Kansas is in a very small minority that taxes so much of GILTI.

Number 5: Kansas' approach for taxing GILTI will raise serious legal and policy issues and almost certainly will lead to litigation. As I mentioned previously, Kansas is using apportionment factors from a taxpayer's *domestic* business operations to apportion *foreign* income, which almost certainly will be challenged.

We urge you to pass HB 2421, which will avoid unnecessary litigation, reduce the competitive disadvantage for U.S.-based companies and prevent Kansas from becoming an outlier compared to other states that have chosen *not to raise taxes* that limit businesses' ability to compete and grow.

Thank you for allowing Cargill to offer testimony in support of House Bill 2421. Cargill respectfully requests that the Committee pass the bill out favorably.