

# Tax Issues/Bills from '19

Start '20 Session

<u>Bills in Conference</u>		Last Version	Current Status
HB 2160 - WB co sales tax <---> 4 more co sales tax + bullion exempt <i>Johnson, Mason, Gartner &lt;---&gt; Tyson, Kerschen, Holland</i>		Sen A&T	Conf

## 2019 House Tax Bills in Senate

### 2019 Senate Tax Bills in House

SB 104 - Taxpayer Protection Act, Golden Years, expensing	SCOW	H Tax
SB 125 -- ROZ Program 5-Year Sunset Extension	As Intro	H Tax
SB 135 -- Adding 8 new counties to ROZ Program	Sen A&T	H Tax
SB 178 -- Sales exempt nonprofit hospice; future exempt repeal mandate	SCOW	H Tax

### Other Potentially Conference-able Issues/Bills

SB 22 -- Income Tax Issues; Internet Sales Tax; Sales Tax on Food	HCOW	Vetoed
HB 2033 -- Income Tax; Internet; Food Sales Tax; Co sales tax issues	CCR	Vetoed

SESSION OF 2019

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2160**

As Amended by Senate Committee on  
Assessment and Taxation

**Brief\***

HB 2160, as amended, would make a number of changes to local sales tax authorization statutes and create a sales tax exemption for certain coins and bullion.

***Local Sales Tax Authority***

The bill would increase the maximum local sales tax rate that could be imposed by Thomas County from 1.50 percent to 1.75 percent, provided all taxes levied in excess of 1.00 percent remain earmarked for financing a courthouse, jail, law enforcement center, or other county administrative facility. Any specially earmarked tax imposed by the bill would be required to sunset when the project costs had been fully paid. An election would be required for an increase in the current Thomas County sales tax, which is 1.50 percent.

The bill would extend from five years to ten years the sunset on any 0.5 percent tax imposed by Russell County for economic development initiatives or public infrastructure projects.

The bill would renew existing sales tax authority for Jackson County to impose, subject to voter approval, a countywide sales tax of 0.4 percent to finance public infrastructure projects. As under continuing law, any such tax imposed would sunset after seven years.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would allow Dickinson County to impose, subject to voter approval, a countywide sales tax of 0.5 percent to finance roadway construction and improvement. This authorization would require any such tax imposed to sunset after ten years, instead of five years as in current law.

The bill would extend the authority of Wabaunsee County to impose a 0.5 percent retail sales tax for an additional period not to exceed 15 years, subject to voter approval.

### ***Sales Tax Exemption***

The bill would provide a sales tax exemption for all sales of gold or silver coins and gold, silver, platinum, or palladium bullion.

### **Background**

The bill was introduced by the House Committee on Taxation at the request of Representative Highland on behalf of constituents.

In the House Committee hearing on February 13, 2019, Representative Highland testified as a proponent. Representatives from the Kansas Association of Counties and the Wabaunsee County Commission District 1 also testified as proponents, stating the current authority of Wabaunsee to impose the 0.5 percent additional retail sales tax would sunset in 2022 and the bill would authorize Wabaunsee County to hold an election extending the retail sales tax. No neutral or opponent testimony was provided.

The House Committee amended the bill to remove a provision authorizing Wabaunsee County to conduct subsequent elections to extend the 0.5 percent retail sales tax at intervals not exceeding 15 years.

The Senate Committee amended the bill to insert the contents of House Bill 2033, as amended by the House Committee of the Whole, except the provision concerning Finney County and to insert the provision concerning the sales tax exemption for coins and bullion.

On January 24, 2019, the House Committee on Taxation amended HB 2033 by inserting the contents of HB 2040 into HB 2033 and removing redundant sections. The following provides the backgrounds of both bills.

### ***HB 2033***

HB 2033 was introduced by Representative Adam Smith on January 15, 2019.

In a hearing before the House Committee on Taxation on January 23, 2019, Representative Adam Smith testified as a proponent of HB 2033. He spoke to Thomas County's need for a new consolidated Criminal Justice Center to house the Courts, the County Attorney, the Sheriff's Office, the jail, and the Colby Police Department. He noted that a November 2017 Thomas County election approved a one-half cent increase in sales tax and that the bill would levy an additional one-fourth cent increase. Representatives from the Kansas Association of Realtors and Thomas County also testified as proponents. Representative Awerkamp, Representative Waymaster, and a representative of Dickinson County provided written-only proponent testimony. No neutral or opponent testimony was provided.

The House Committee of the Whole adopted a technical amendment to make changes to the bill's introductory clause.

**HB 2040**

HB 2040 was introduced by Representative Hineman on the behalf of Garden City and Finney County on January 16, 2019.

In a hearing before the House Committee on Taxation on January 23, 2019, representatives from Finney County, Garden City, and the Kansas Association of Counties testified as proponents of HB 2040. The representative from Finney County testified the bill would approve a November 2017 joint Finney County and Garden City election approving a 0.3 percent increase in sales tax for 15 years. The representative noted Finney County is the retail hub of southwest Kansas. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue (Department) indicates the bill would affect local sales tax collections and would have no fiscal affect on state revenues. The Department also indicates costs associated with implementation of the bill could be absorbed within the Department's existing resources.

A revised fiscal note on the bill as amended by the Senate Committee indicated enactment of the bill would result in an annual reduction of state revenues of \$7,840, including \$6,574 from the State General Fund.

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 104**

As Amended by Senate Committee of the Whole

**Brief\***

SB 104, as amended, would enact the Kansas Taxpayer Protection Act (Taxpayer Protection Act), enact the Golden Years Homestead Property Tax Freeze Act (Tax Freeze Act), allow disabled veteran renters to claim the property tax refunds under the current Homestead Property Tax Refund Act (Homestead), and allow individual income taxpayers to claim the expense deduction.

***Kansas Taxpayer Protection Act***

The bill would require paid tax return preparers to sign any income tax return prepared by or substantially prepared by the preparer and to include the preparer's federal preparer tax identification number on any such return. Any failure to do so would subject the preparer to a civil penalty of \$50 per return with a maximum of \$25,000 in civil penalties per preparer per year. Any civil penalties assessed could be appealed pursuant to the Kansas Administrative Procedure Act. Any penalties collected would be deposited in the State General Fund.

The bill would authorize the Secretary of Revenue (Secretary) to enjoin any person from acting as a paid tax preparer by seeking a temporary or permanent order from a court of competent jurisdiction enjoining such conduct. Under the bill, an injunction could be issued by a court if the preparer has engaged in any of the following conduct:

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- Prepared a return that understates the taxpayer's liability due to an "unreasonable position," as that term is defined in the Internal Revenue Code;
- Prepared a return that understates the taxpayer's liability due to "willful or reckless conduct," as that term is defined in the Internal Revenue Code;
- Fails to, when required, furnish a signed copy of the return including the preparer's federal preparer tax identification number, retain a copy of the return, or be diligent in determining eligibility for tax benefits;
- Negotiates a check issued to the taxpayer by the Kansas Department of Revenue without the permission of the taxpayer;
- Engages in any conduct subject to any criminal penalty provided for in Chapter 79 of the *Kansas Statutes Annotated* or amendments thereto;
- Misrepresents the preparer's education, experience, or eligibility to practice tax preparation;
- Guarantees the payment of any tax refund or the allowance of any tax credit; or
- Engages in any other fraudulent or deceptive conduct that substantially interferes with proper administration of Kansas tax laws.

The bill would allow the Secretary to seek the assistance of the Attorney General or the Attorney General's designee in pursuing such injunctions, and the Secretary would be required to publish an annual report concerning such injunctions on the website of the Kansas Department of Revenue.

The bill would provide that any person, whether or not a resident of Kansas, submits to the jurisdiction of the courts of the State of Kansas for purposes of such injunctions by engaging in any conduct that could give rise to a cause of action under the Taxpayer Protection Act. The bill would provide that legal actions brought under the Taxpayer Protection Act would be brought in the district court of Shawnee County. The Secretary would be permitted to enter into consent judgments with respect to violations of the Taxpayer Protection Act in lieu of actions seeking injunctions under the Taxpayer Protection Act.

The bill would authorize the Secretary to promulgate rules and regulations necessary to carry out the provisions of the Taxpayer Protection Act.

#### ***Golden Years Homestead Property Tax Freeze Act***

The bill would establish a new property tax circuit breaker refund program (refund program) beginning in tax year 2019 that would provide refunds of a portion of property taxes paid on qualifying residential homestead property equivalent to the total property tax increase over the base year. For taxpayers qualifying at the time of enactment, tax year 2018 liability would be deemed as the base year. For all other taxpayers, the base year would be the first year in which they are eligible to claim the refund provided by the Tax Freeze Act.

In order to qualify for the refund program, the bill would require taxpayers to have a household income of less than \$50,000 and be 65 years of age or older or a disabled veteran. The value of the qualifying residential homestead property also would have to be less than \$350,000. Qualifying taxpayers would be ineligible to claim a Golden Years refund if they are seeking to claim either of the two existing circuit breaker programs: the Homestead Property Tax Refund or the Selective Assistance for Effective Senior Relief (SAFESR) Refund. The bill would allow surviving spouses of qualified

individuals to continue in the Golden Years program unless they subsequently remarry. Golden Years claims would be required to be filed by April 15, relative to refund amounts determined by the previous property tax year's liability.

Under the bill, disabled veterans would include Kansas residents honorably discharged from active service in any branch of the armed forces of the United States or Kansas National Guard who have been determined to have a 50 percent permanent disability sustained while on active duty.

Beginning with the second year of the program, the Director of Taxation would be required to send county clerks electronic records by October 15 of each year containing names of eligible claimants who have received refunds under the Tax Freeze Act for the prior year.

Under the bill, the Director of Taxation would have authority to apply refunds to any state tax liability of the qualified individual or other member of the household. Remaining refunds would first be applied to any delinquent property taxes on the homesteads and then to any current property tax liability.

The bill would grant the Secretary broad authority to adopt rules and regulations necessary for administration of the Tax Freeze Act.

#### ***Disabled Veteran Renters***

The bill would also allow disabled veterans who are renters to claim refunds under the current Homestead program under the statutory presumption that 15.0 percent of qualifying rental payments would be deemed the equivalent of property taxes paid for purposes of that program. (Note: Legislation enacted in 2012 had removed all renters from the Homestead program.)

### ***Expense Deduction***

The bill would allow individual income taxpayers to begin claiming the expense deduction (provided by KSA 2018 Supp. 79-32,143a) for the costs of placing certain tangible property and computer software into service in the state beginning in tax year 2019.

### **Background**

#### **SB 104**

SB 104 was introduced by the Senate Select Committee on Federal Tax Code Implementation at the request of Senator Longbine.

At the Senate Committee on Assessment and Taxation hearing, a representative of H&R Block testified in support of the bill. No other testimony was provided.

The Senate Committee amended SB 104 to clarify the provisions of the bill would not apply to individuals licensed as Certified Public Accountants (CPAs). H&R Block had recommended this clarification, noting CPAs are regulated by the Kansas Board of Accountancy.

The Senate Committee of the Whole amended SB 104 to include the provisions of SB 91 regarding the Tax Freeze Act and disabled veteran renters; and to include the provisions related to the expense deduction. The relevant background for SB 91 is included below.

#### ***SB 91 (Tax Freeze Act, Disabled Veteran Renters)***

SB 91 was introduced by Senators Holland, Baumgardner, Doll, Faust-Goudeau, Haley, Hawk, Lynn, Pettey, and Sykes.

During the Senate Committee on Assessment and Taxation hearing on February 14, Senator Holland appeared as the lead proponent. Other proponents included Senators Baumgardner and Faust-Goudeau, representatives of the Kansas Association of Realtors and the Kansas Silver Haired Legislature, and two private citizens. The Sedgwick County clerk submitted written-only testimony in opposition to the bill. Written-only neutral testimony was submitted by representatives of the AARP, Johnson County Board of County Commissioners, Kansas Association of Counties, and the League of Kansas Municipalities.

SB 91, as introduced, would have prevented taxpayers with homesteads subject to mortgages or other security interests from qualifying for refunds under the Golden Years program and restored the ability of all renters otherwise qualified under the income and demographic tests to claim traditional Homestead refunds. On February 25, the Senate Committee amended the bill to remove the prohibition against property subject to liens being eligible for Golden Years refunds and to limit the restoration of Homestead refunds to only those renters who are disabled veterans.

#### ***Fiscal Information***

##### ***SB 104, as Introduced***

According to the fiscal note prepared by the Division of the Budget on SB 104, as introduced, the Department of Revenue indicates the fines provided for by the bill have the potential to increase State General Fund revenues; however, the Department was unable to estimate the amount of such increase. The costs associated with enactment of the bill are estimated to be negligible and could be absorbed within existing resources. The Office of the Attorney General indicates the Taxpayer Protection Act has the potential to increase litigation costs beginning in FY 2020, but did not estimate the amount of such an increase.

*Senate Committee of the Whole Amendments*

A representative of the Department of Revenue stated the Tax Freeze Act, disabled veteran renters, and expense deduction provisions would be expected to have the following impact on State General Fund receipts.

**(DOLLARS IN MILLIONS)**

	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>
Golden Years Refunds	\$ (4.5)	\$ (9.1)	\$ (13.6)
Disabled Veteran	(0.5)	(0.5)	(0.5)
Renters Refunds			
Expense Deductions	(9.0)	(9.0)	(9.0)
<b>Total</b>	<b>\$ (14.0)</b>	<b>\$ (18.6)</b>	<b>\$ (23.1)</b>

Note: Totals may not add due to rounding.

Administrative costs associated with Senate Committee of the Whole amendments to SB 104 were not immediately available.

Any fiscal effect associated with enactment of SB 104 is not reflected in *The FY 2020 Governor's Budget Report*.

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 125**

As Recommended by Senate Committee on  
Assessment and Taxation

**Brief\***

SB 125 would extend the Rural Opportunity Zone Program by five years. The deadline for a participant to begin participation in the student loan repayment portion of the program would be extended to July 1, 2026, and the individual income tax credit portion of the program would be extended through tax year 2026. A requirement for the Department of Commerce to provide an annual report concerning the program would also be extended an additional five years.

**Background**

The bill was introduced by Senators Hilderbrand, Alley, Baumgardner, Berger, Billinger, Bowers, Doll, Estes, Givens, Goddard, Hawk, Longbine, Masterson, Olson, Petersen, Pyle, Rucker, Skubal, Suellentrop, Taylor, and Wilborn. At the Senate Committee hearing on the bill, Senator Hilderbrand and representatives of the City of Fort Scott and Crawford County Board of Commissioners testified in support of the bill. Written-only testimony in support of the bill was provided by the Kansas Hospital Association and Pittsburg State University. No opponent or neutral testimony was provided.

According to the fiscal note prepared by the Division of the Budget, enactment of the bill would reduce State General Fund revenues by \$2.6 million in fiscal year 2022 and \$3.0 million in fiscal year 2023 because of the extension of the

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income tax credit. The Department of Revenue indicates it would require \$52,750 from the State General Fund to implement the bill and modify the automated tax system. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 135**

As Amended by Senate Committee on  
Assessment and Taxation

**Brief\***

SB 135 would expand the list of eligible counties for participation in the Rural Opportunity Zone (ROZ) Program to include Atchison County, Cowley County, Crawford County, Dickinson County, Ford County, Franklin County, Miami County, and Pottawatomie County.

**Background**

The bill was introduced by Senators Hilderbrand, Alley, Hardy, Olson, Petersen, and Pyle. At the Senate Committee on Assessment and Taxation hearing, Senators Hilderbrand and Wilborn and a representative of the Crawford County Board of Commissioners testified in support of the bill. Written-only proponent testimony was provided by the Kansas Association of Counties, Kansas Hospital Association, Pittsburg Chamber of Commerce, and Pittsburg State University. No neutral or opponent testimony was provided.

On February 2, the Senate Committee amended the bill to include Ford County and Miami County as eligible counties.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue estimates enactment of the bill would be expected to reduce fiscal year 2020 State General Fund receipts by

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\$472,000 and may require approximately \$63,000 from the State General Fund for the state obligations of the student loan repayment portion of the ROZ Program. Additionally, the Department of Commerce indicates it is at maximum work capacity for reviewing applications for the ROZ Program and indicates it would require an additional 1.0 FTE position for the additional applications. A revised fiscal note for the amended bill was not immediately available. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 178**

As Amended by Senate Committee of the Whole

**Brief\***

SB 178, as amended, would provide a sales tax exemption for purchases made by nonprofit integrated community care organizations, which would be defined by the bill.

“Nonprofit integrated community care organization” would be defined as any entity that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, certified to participate in Medicare as a hospice focused on providing care to the aging and indigent population across multiple counties, and approved by the Kansas Department for Aging and Disability Services to provide services under the Program of All-Inclusive Care for the Elderly.

An additional provision of the bill would mandate that legislative enactments establishing new sales tax exemptions on or after January 1, 2020, repeal or suspend existing exemptions with an equal or greater fiscal impact.

**Background**

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Midland Care Connection.

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During the Senate Committee hearing, a representative of Midland Care Connection testified in support of the bill. No opponent or neutral testimony was provided.

The Senate Committee of the Whole amended the bill on March 20, 2019, to add the provision that would require repeal of extant sales tax exemptions under certain circumstances on and after January 1, 2020, when new exemptions are added.

According the fiscal note prepared by the Division of the Budget on the bill as introduced, the Department of Revenue estimates enactment of the bill would reduce all funds receipts by \$257,000 in fiscal year 2020, of which \$215,500 would come from the State General Fund. The remaining \$41,500 reduction would be in State Highway Fund receipts. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 22**

As Amended by House Committee of the Whole

**Brief\***

SB 22, as amended, would make several changes to Kansas income tax provisions in response to federal income tax changes enacted late in 2017; reduce the state sales tax rate by 1.0 percent on certain purchases of food; and enact a number of provisions in response to a U.S. Supreme Court decision authorizing states and local units to collect sales and compensating use taxes on certain transactions made through out-of-state retailers and marketplace facilitators who have an economic presence (nexus) in Kansas.

***Individual Income Tax***

The bill would remove a restriction under current law preventing Kansas individual income taxpayers from itemizing deductions for state income tax purposes unless they also itemize deductions for federal income tax purposes.

Beginning with tax year 2018, the bill would provide an option to take Kansas itemized deductions regardless of whether itemized deductions or the standard deduction are claimed for federal tax purposes. Language in the bill would authorize the filing of amended returns through December 31, 2019, for purposes of this provision's retroactive applicability to tax year 2018.

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### ***Business Income Tax***

The bill would stipulate for tax year 2017 and thereafter, Kansas would not be taxing deferred foreign income, defined to include income under section 965(a) of the federal Internal Revenue Code (Code) (certain repatriation income). The bill would require certain deductions used in determining federal adjusted gross income for the repatriated income to be added back for Kansas income tax purposes prior to the determination of Kansas adjusted gross income.

For tax year 2018 and thereafter, global intangible low taxed income (GILTI) under section 951A of the federal Code would not be subject to the Kansas income tax. The bill would require certain related deductions claimed prior to the determination of federal adjusted gross income to be added back prior to the determination of Kansas adjusted gross income.

Kansas similarly would exempt for tax year 2018 and thereafter certain disallowed business interest under section 163(j) of the federal Code in effect on January 1, 2018, while deductions attributable to a carry-forward of such disallowed business income under the federal Code in effect on that date would be required to be added back for all years beginning with tax year 2018.

The bill further would provide for tax year 2018 and thereafter certain capital contributions, as determined under federal Code section 118, would be excluded from the Kansas income tax.

Finally, for tax year 2018 and thereafter, amounts attributable to the disallowance of Federal Deposit Insurance Corporation premiums paid by certain large financial institutions would be excluded from Kansas income taxation.

Specific language in the bill would clarify the retroactive application of several of these sections, which would effectively authorize the filing of amended returns to claim

refunds during the three-year statute of limitations available under current law.

#### ***Sales Tax on Food***

The bill would reduce the sales tax rate on certain food and food ingredients from 6.5 percent to 5.5 percent beginning October 1, 2019. The reduction would extend to substances sold for ingestion or chewing by humans and consumed for their taste or nutritional value. The reduction would apply to any items eligible to be purchased with food stamps issued by the U.S. Department of Agriculture.

#### ***Internet Sales and Use Tax***

The bill would enact the Kansas Main Street Parity Act (KMSPA) designed to clarify the applicability of Kansas sales and use tax provisions to certain out-of-state retailers and marketplace facilitators. Generally, such entities would be required, beginning October 1, 2019, to collect tax if they have more than \$100,000 in total gross sales sourced to Kansas.

Specifically excluded from the definition of “marketplace facilitators” would be platforms and forums providing certain Internet advertising services and those entities selling or charging for rooms, lodging, or accommodations for occupancy provided by hotels, motels, and inns.

Related to the KMSPA provisions, the bill would repeal a requirement under current law (KSA 79-3221o) that Kansas individual income tax forms contain a line allowing taxpayers to voluntarily remit unpaid use taxes as part of their income tax reconciliation.

## **Background**

SB 22, as amended, includes provisions of HB 2261 and HB 2352. The following provides background information on each bill.

### ***SB 22 (Individual and Business Income Tax)***

SB 22, as introduced, which dealt with the individual and business income tax provisions in the wake of the 2017 federal tax law changes, was introduced on January 17 by the Senate Committee on Federal and State Affairs at the request of Senator Masterson.

In the Senate Select Committee on Federal Tax Code Implementation hearing on January 29, a representative of the Kansas Chamber appeared as the lead proponent, stating the legislation would return to taxpayers certain additional Kansas income tax receipts that had been and would continue to be collected as a result of enactment of the federal Tax Cuts and Jobs Act in 2017. Two representatives of Ernst and Young also appeared as proponents and explained how other states had been treating repatriated and GILTI income. A number of additional proponents appeared during continuation of the hearing on January 30, including representatives of Cargill and the Kansas Bankers' Association, who spoke primarily in favor of the bill's business income tax provisions. A representative of the Kansas Association of Realtors expressed support for the provision authorizing individual income taxpayers to itemize deductions for Kansas tax purposes regardless of whether deductions have been itemized for federal purposes. Additional proponents appearing on January 31 included representatives of the Council on State Taxation, Seaboard Corporation, and Spirit Aerosystems, all of whom spoke in favor of the business income tax provisions.

Written-only proponent testimony was submitted from several groups, including Bombardier, Inc., the Kansas Beer

Wholesalers Association, and the Overland Park Chamber of Commerce.

Written-only neutral testimony was submitted by the Kansas Association of School Boards and the Kansas National Education Association.

Written-only opponent testimony was submitted by the Kansas Center for Economic Growth.

On January 31, the Senate Select Committee adopted amendments recommended by the Kansas Chamber, whose representative stated the provisions were technical in nature and had been agreed to by legal analysts in the Kansas Department of Revenue (KDOR).

On February 25, the House Committee on Taxation amended the bill to incorporate the 1.0 percent rate reduction on food and food ingredients (provisions present in HB 2261) and the Internet sales and use tax provisions (provisions present in HB 2352).

On March 7, the House Committee of the Whole amended the bill to change the definition of food purchases eligible for the rate decrease to generally apply to items eligible for food stamps, effectively clarifying the reduction would be extended to vending machine sales, which would not have been impacted under the original provisions of HB 2261.

Although a fiscal note on SB 22, as amended by the House Committee of the Whole, was not immediately available, on March 7, KDOR verbally indicated the combined provisions of the bill would have the following impact on receipts.

	(Dollars in Millions)		
	FY 2020	FY 2021	FY 2022
<b>Individual Income Tax Provisions</b>			
Itemized Deduction Option	\$ (50.1)	\$ (60.3)	\$ (60.9)
<b>Business Income Tax Provisions</b>			
Repatriation	\$ (10.5)	\$ (0.4)	\$ (0.2)
GILTI	(70.9)	(24.7)	(24.2)
Limitation on Interest Deductions	(53.1)	(25.5)	(30.6)
FDIC Premium Deductions	(2.7)	(1.3)	(1.3)
Capital Contributions	negligible	negligible	negligible
<i>Subtotal-Business Income Tax</i>	<i>\$ (137.2)</i>	<i>\$ (51.9)</i>	<i>\$ (56.3)</i>
<b>Sales Tax Rate Decrease on Food (all funds)</b>			
State General Fund Share	\$ (36.5)	\$ (55.4)	\$ (56.3)
State Highway Fund Share	(7.0)	(10.7)	(10.8)
<i>Subtotal-Food Sales Tax Decrease</i>	<i>\$ (43.5)</i>	<i>\$ (66.1)</i>	<i>\$ (67.1)</i>
<b>Internet Sales Tax Provisions (all funds)</b>			
State General Fund Share	\$ 18.2	\$ 27.7	\$ 28.2
State Highway Fund Share	3.5	5.4	5.5
<i>Subtotal-Internet Sales Tax</i>	<i>\$ 21.7</i>	<i>\$ 33.1</i>	<i>\$ 33.7</i>
<b>TOTAL</b>	<b><u>\$ (209.1)</u></b>	<b><u>\$ (145.2)</u></b>	<b><u>\$ (150.6)</u></b>
<i>Total State General Fund Share</i>	<i>\$ (205.6)</i>	<i>\$ (139.9)</i>	<i>\$ (145.3)</i>
<i>Total State Highway Fund Share</i>	<i>(3.5)</i>	<i>(5.3)</i>	<i>(5.3)</i>

According to the fiscal note prepared by the Division of the Budget on SB 22, as introduced, KDOR expects to incur an additional \$0.820 million in FY 2020 administrative costs to implement the bill's income tax provisions beyond the amount recommended for the agency in *The FY 2020 Governor's Budget Report*. The Department of Administration indicates collections for its debt setoff program could increase by an indeterminate amount to the extent that more individual income tax refunds would be available for potential interception as a result of the bill's enactment. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.

### ***HB 2261 (Sales Tax on Food)***

During the House Committee on Taxation hearing on HB 2261, proponents included Representative Tim Hodge and representatives of the Kansas National Education Association, KC Healthy Kids, and the Kansas Food Dealers Association. Opponents included representatives of the Kansas Farm Bureau, the Kansas Chamber, and the Kansas Restaurant and Hospitality Association. Neutral testimony was provided by representatives of Kansas Action for Children and the Kansas Appleseed Center for Law and Justice.

According to the fiscal note prepared by the Division of the Budget on HB 2261, KDOR expects to incur an additional \$2.864 million in additional administrative costs. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.

### ***HB 2352 (Internet Sales and Use Tax)***

During the House Committee on Taxation hearing, a representative of the League of Kansas Municipalities testified in favor of HB 2352. Representatives of a number of cities and the Overland Park Chamber of Commerce provided written-only proponent testimony. A representative of the Kansas Chamber gave neutral testimony, indicating he would be working with the Department of Revenue and the Office of Revisor of Statutes on a number of clarifying amendments. No opponent testimony was provided.

During informational briefings earlier in the session, staff of KDOR had explained other states had adopted legislation similar to HB 2352 in response to a June 2018 decision by the U.S. Supreme Court (*South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_) authorizing states to compel out-of-state retailers to collect and remit sales and use taxes on transactions involving taxable goods shipped in across state lines.

The House Committee adopted many of the amendments suggested by the Kansas Chamber representative as part of a package presented during House Committee deliberations on February 25, when the provisions of HB 2352 were inserted into SB 22.

Although updated administrative costs associated with the House Committee amendments were not immediately available, according to the fiscal note prepared by the Division of the Budget on HB 2352, as introduced, KDOR expects to incur an additional \$0.506 million in FY 2020 administrative costs.

SESSION OF 2019

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2033**

As Agreed to May 2, 2019

**Brief\***

HB 2033 would clarify the Finney County sales tax authority and the role of the Kansas Department of Revenue (KDOR) in implementing local sales taxes; implement two changes relating to expensing deductions for income tax purposes; make several changes to Kansas income tax provisions in response to federal income tax changes enacted late in 2017; reduce the state sales tax rate under certain circumstances based on growth in compensating use tax receipts; and enact a number of provisions in response to a U.S. Supreme Court decision authorizing states and local units to collect sales and compensating use taxes on certain transactions made through out-of-state retailers and marketplace facilitators who have an economic presence (nexus) in Kansas.

***Finney County and Local Sales Tax Provisions***

One provision would retroactively ratify the results of a 2017 election in Finney County seeking to increase that county's sales tax by 0.3 percent and would clarify the county has such rate authority. The tax imposed by the election would be for purposes of an interlocal agreement between the county and Garden City regarding certain infrastructure upgrades and would sunset after 15 years.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kird>

The bill would require the Director of Taxation (Director) to confirm all provisions of law applicable to the authorization of local sales taxes have been followed prior to causing collections to commence. Should the Director discover a city or county did not comply with the authorization law after collections have commenced, collections would cease until such error has been remedied.

### ***Expensing Deductions***

The bill would allow individual income taxpayers to begin claiming the expensing deduction (provided by KSA 2018 Supp. 79-32,143a) for the costs of placing certain tangible property and computer software into service in the state beginning in tax year 2019. A second change, also effective with tax year 2019, would require all taxpayers claiming the Kansas expensing deduction to offset the amount of federal expensing deduction claimed pursuant to Section 179 of the federal Internal Revenue Code (Code).

### ***Individual Income Tax Itemized Deductions***

The bill would remove a restriction in current law preventing Kansas individual income taxpayers from itemizing deductions for state income tax purposes unless they also itemize deductions for federal income tax purposes. Beginning with tax year 2019, the bill would provide an option to take Kansas itemized deductions regardless of whether itemized deductions or the standard deduction are claimed for federal tax purposes.

### ***Business Income Tax***

The bill would stipulate, for tax year 2017 and thereafter, Kansas would not be taxing deferred foreign income, defined to include income under section 965(a) of the Code (certain repatriation income). The bill would require certain deductions

used in determining federal adjusted gross income for the repatriated income to be added back for Kansas income tax purposes prior to the determination of Kansas adjusted gross income.

For tax year 2018, 95 percent of global intangible low taxed income (GILTI) under section 951A of the Code would not be subject to the Kansas income tax. All such income would be exempt in tax year 2019 and thereafter. The bill would require certain related deductions claimed prior to the determination of federal adjusted gross income to be added back prior to the determination of Kansas adjusted gross income.

The bill further would provide for tax year 2019 and thereafter certain capital contributions, as determined under Code section 118, would be excluded from the Kansas income tax.

For tax year 2019 and thereafter, amounts attributable to the disallowance of Federal Deposit Insurance Corporation premiums paid by certain large financial institutions would be excluded from Kansas income taxation.

Another provision would allow Kansas income taxpayers to carry forward net operating losses for 20 years, beginning with such losses incurred in tax year 2018. Current law provides for net operating losses to be carried forward for 10 years.

Specific language in the bill would clarify the retroactive application of several of these sections, which would effectively authorize the filing of amended returns to claim refunds during the three-year statute of limitations available under current law.

### ***Marketplace Facilitators and Use Tax***

The bill would enact the Kansas Main Street Parity Act (KMSPA) designed to clarify the applicability of Kansas sales and use tax provisions to certain out-of-state retailers and marketplace facilitators. Generally, such entities would be required to collect tax, beginning October 1, 2019, if they have more than \$100,000 in total gross sales sourced to Kansas.

Specifically excluded from the definition of "marketplace facilitators" would be platforms and forums providing certain Internet advertising services and those entities selling or charging for rooms, lodging, or accommodations for occupancy provided by hotels, motels, and inns.

Related to the KMSPA provisions, the bill would repeal a requirement (KSA 2018 Supp. 79-3221o) that Kansas individual income tax forms contain a line allowing taxpayers to voluntarily remit unpaid use taxes as part of their income tax reconciliation.

### ***Sales Tax on Food***

The bill would provide for formulaic reductions in the state sales tax rate (currently 6.5 percent) on certain food and food ingredients beginning July 1, 2020, and on each January 1 thereafter based on annual growth in compensating use tax receipts of more than 3 percent above such receipts in FY 2018, which would be established as the base year. The formulaic provisions would require a certification to the KDOR, which would then publish any food sales tax reduction that would have been triggered, rounded to the nearest 0.1 percent. Food and food ingredients generally would include those substances sold for ingestion or chewing by humans and consumed for their taste or nutritional value, and would specifically include soft drinks, candy, food sold through vending machines, and bottled water. Alcohol, tobacco, and

dietary supplements would be excluded from the food definition.

### **Conference Committee Action**

The second Conference Committee agreed to the provisions of HB 2033 as passed by the Senate, regarding Finney County and the KDOR role in implementing local sales taxes, with these additions: the expensing provisions from SB 196, the carryforward provisions from HB 2388, selected provisions from SB 22, and linking potential food sales tax reductions to certain growth in use taxes.

### **Background**

The bill would include certain provisions from the bills listed above. (No hearing was held on SB 196, although the subject matter of expensing had been approved by the Senate as part of SB 104.)

### ***HB 2033 (Local Sales Tax Authority)***

HB 2033, as introduced, would have provided additional local sales tax authority for Thomas, Jackson, Russell and Dickinson counties. HB 2033 was introduced by Representative Adam Smith on January 15, 2019. In the House Committee on Taxation hearing on January 23, 2019, Representative Smith testified as a proponent of HB 2033. He spoke to Thomas County's need for a new consolidated Criminal Justice Center to house the Courts, the County Attorney, the Sheriff's Office, the jail, and the Colby Police Department. He noted that a November 2017 Thomas County election approved a one-half cent increase in sales tax and the bill would levy an additional one-fourth cent increase. Representatives from the Kansas Association of Realtors and Thomas County also testified as proponents. Representatives Awerkamp and Waymaster and a representative of Dickinson

County provided written-only proponent testimony. No neutral or opponent testimony was provided.

On January 24, the House Committee on Taxation amended the bill to include the provisions of HB 2040 relating to Finney County. On February 7, the House Committee of the Whole adopted a technical amendment. On March 20, the Senate Committee on Assessment and Taxation amended the bill to remove the provisions relating to the four counties in the original bill (leaving only Finney County) and inserted such provisions into HB 2160. The Senate Committee also amended the bill to include language regarding local sales tax authorization and the requirements of the Director.

***HB 2040 (Sales Tax Authority for Garden City and Finney County)***

HB 2040 was introduced by Representative Hineman on behalf of Garden City and Finney County on January 16, 2019. In the House Committee on Taxation hearing on January 23, 2019, representatives from Finney County, Garden City, and the Kansas Association of Counties testified as proponents of HB 2040. The representative from Finney County testified the bill would approve a November 2017 joint Finney County and Garden City election approving a 0.3 percent increase in sales tax for 15 years. The representative noted Finney County is the retail hub of Southwest Kansas. No neutral or opponent testimony was provided.

***HB 2388 (NOL Carryforwards)***

HB 2388 was introduced by the House Committee on Taxation at the request of Sprint. During the public hearing in the House Committee on March 18, representatives of Sprint and the Kansas Chamber appeared as proponents. Written-only proponent testimony was provided by a representative of CenturyLink. No other conferees appeared or submitted testimony.

The original bill also contained provisions that would have allowed taxpayers to make elections to add certain bonus depreciation amounts to income, and to allow loss carryovers from prior years to offset up to 100 percent of taxable income (as opposed to 80 percent under current law). The House Committee on Taxation amended the bill on March 21 to remove these provisions.

### **SB 22**

SB 22, as introduced, which dealt with the individual and business income tax provisions in the wake of the 2017 federal tax law changes, was introduced on January 17 by the Senate Committee on Federal and State Affairs at the request of Senator Masterson.

In the Senate Select Committee on Federal Tax Code Implementation hearing on January 29, a representative of the Kansas Chamber appeared as the lead proponent, stating the legislation would return to taxpayers certain additional Kansas income tax receipts that had been and would continue to be collected as a result of enactment of the federal Tax Cuts and Jobs Act in 2017. Two representatives of Ernst and Young also appeared as proponents and explained how other states had been treating repatriated and GILTI income. A number of additional proponents appeared during continuation of the hearing on January 30, including representatives of Cargill and the Kansas Bankers' Association, who spoke primarily in favor of the bill's business income tax provisions. A representative of the Kansas Association of Realtors expressed support for the provision authorizing individual income taxpayers to itemize deductions for Kansas tax purposes regardless of whether deductions have been itemized for federal purposes. Additional proponents appearing on January 31 included representatives of the Council on State Taxation, Seaboard Corporation, and Spirit Aerosystems, all of whom spoke in favor of the business income tax provisions. Written-only proponent testimony was submitted from several groups,

including Bombardier, Inc., the Kansas Beer Wholesalers Association, and the Overland Park Chamber of Commerce. Written-only neutral testimony was submitted by the Kansas Association of School Boards and the Kansas National Education Association.

Written-only opponent testimony was submitted by the Kansas Center for Economic Growth.

On January 31, the Senate Select Committee adopted amendments recommended by the Kansas Chamber, whose representative stated the provisions were technical in nature and had been agreed to by KDOR legal analysts.

On February 25, the House Committee on Taxation amended the bill to incorporate the 1.0 percent rate reduction on food and food ingredients (provisions present in HB 2261) and the Internet sales and use tax provisions (provisions present in HB 2352).

On March 7, the House Committee of the Whole amended the bill to change the definition of food purchases eligible for the rate decrease to generally apply to items for which Supplemental Nutrition Assistance Program benefits could be used, effectively clarifying the reduction would be extended to vending machine sales, which would not have been impacted under the original provisions of HB 2261.

SB 22 was approved by the House on March 8 and by the Senate on March 14 before being vetoed by the Governor on March 26. That veto was sustained on May 1.

#### ***Selected Fiscal Information***

Based on use tax receipts in FY 2018 and on the April 18, 2019, Consensus Revenue Estimate, the Department of Revenue determined that future use tax receipts, which would include additional revenues from the KMSPA, would not trigger a food tax reduction on July 1, 2020, but would be

expected to reduce the food tax rate to 6.0 percent on January 1, 2021, and to 5.4 percent on January 1, 2022.

Based on those assumptions and on remaining provisions of the bill with identifiable fiscal notes, the bill would be expected to have the following impact on State General Fund receipts:

Individual Itemized Deduction Option	(Dollars in Millions)		
	FY 2020	FY 2021	FY 2022
Repatriation	\$ (10.5)	\$ (0.4)	\$ (0.2)
GILTI	(61.7)	(24.7)	(24.2)
FDIC Premium Deductions	(1.9)	(1.3)	(1.3)
Capital Contributions	negligible	negligible	negligible
NOL Carryforwards – 20 years	0.0	0.0	0.0
Net Changes to Expensing	2.1	2.2	2.3
<i>Total Business Provisions</i>	<i>\$ (72.0)</i>	<i>\$ (24.2)</i>	<i>\$ (23.4)</i>
Marketplace Facilitator Use Tax (all funds)	\$ 21.7	\$ 33.1	\$ 33.6
State General Fund Share	18.2	27.8	28.2
State Highway Fund Share	3.5	5.3	5.4
Sales Tax Rate Cut on Food (all funds)	\$ 0.0	\$ (14.2)	\$ (36.8)
State General Fund Share	0.0	(11.9)	(30.9)
State Highway Fund Share	0.0	(2.3)	(5.9)
<i>Grand Total</i>	<i>\$ (85.8)</i>	<i>\$ (65.6)</i>	<i>\$ (87.5)</i>
<i>Total State General Fund Share</i>	<i>(89.3)</i>	<i>(68.6)</i>	<i>(87.0)</i>
<i>Total State Highway Fund Share</i>	<i>3.5</i>	<i>3.0</i>	<i>(0.5)</i>

Administrative costs on the bill were not immediately available.

local sales tax; income tax reform; expensing; itemized deductions; marketplace facilitators; food sales tax

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