# PRELIMINARY MINUTES

## 2022 SPECIAL COMMITTEE ON TAXATION

December 12, 2022
Room 548-S—Statehouse

### Members Present

Representative Adam Smith, Chairperson
Senator Caryn Tyson, Vice-chairperson
Senator Renee Erickson
Senator Tom Holland
Senator Virgil Peck
Senator Gene Suellentrop
Representative Mike Amyx
Representative Tom Kessler
Representative Les Mason
Representative Carl Turner
Representative Jerry Stogsdill, appointed substitute member to the committee

### Members Absent

Representative Vic Miller

### Staff Present

Edward Penner, Kansas Legislative Research Department (KLRD)
Eric Adell, KLRD
Lindsay Archer, KLRD
Adam Siebers, Office of Revisor of Statutes
Amelia Kovar-Donohue, Office of Revisor of Statutes
Charles Reimer, Office of Revisor of Statutes
Lea Gerard, Committee Assistant

### Conferees

Mark Burghart, Secretary of Revenue, Kansas Department of Revenue
Craig Johnson, Executive Director, Streamlined Sales Tax Governing Board
Fred Nicely, Senior Tax Counsel, Council on State Taxation
Pat Reynolds, Senior Tax Counsel, Council on State Taxation

## MONDAY, DECEMBER 12
## ALL DAY SESSION

### Call to Order and Welcome

Chairperson Smith welcomed members, staff, and guests to the Committee meeting.

### Streamlined Sales and Use Tax Agreement – Kansas Legislative History

Edward Penner, Senior Economist, KLRD, provided an overview of the legislative history relating to the Streamlined Sales and Use Tax Agreement. (Attachment 1). He noted enactment of 2000 SB 59, a sales tax omnibus bill. One of its provisions was the Streamlined Sales Tax System for the 21st Century Act, which authorized the Kansas Department of Revenue (KDOR) to discuss and agree with other states to develop a tax system to include remote sellers. SB 472, enacted during the 2002 Legislative session, authorized KDOR to sign a multistate agreement and prepare for implementation. The bill also required KDOR to identify changes in statutes and regulations to meet the agreement compliance requirements. He noted HB 2005 enacted in 2003 contained several changes required to implement the Streamlined Agreement, which had been adopted November 12, 2002. Substitute for SB 147, enacted in 2004, provide an 18-month transitory period for retailers to adapt to the new system. During the 2007 Legislative session, Senate Sub. for HB 2171 was enacted, which contained numerous sales tax provisions, including the first Kansas statutory changes made in response to Streamlined Agreement amendments. SB 430 enacted in the 2010 session included liability protection for retailers acting in good faith and liability protection elimination if an audit reveals intent to evade tax, as required by a further amendment to the Streamlined Agreement. Mr. Penner stood for questions from the Committee.

### Streamlined Sales and Use Tax Agreement – Kansas Department of Revenue Overview

Mark Burghart, Secretary of Revenue, presented information on the Streamlined Sales and Use Tax Agreement. Secretary Burghart introduced Amy Kramer, Financial Economist, KDOR, who gathered data for the memorandum from various sources including the Streamlined Agreement.(Attachment 2) He noted the Streamlined Sales and Use Tax Agreement in Kansas was to deal with the issue of out-of-state retailers not being required to collect and remit compensating use tax on sales into the State of Kansas. In 1967, the U.S. Supreme Court issued an opinion titled *National Bellas Hess v. Department of Revenue* that prohibits a state from collecting and remitting compensating use tax on sales if the retailer has no physical presence within the state. In 1992, the U.S. Supreme Court ruled in *Quill Corporation v. North Dakota* that a corporation is not required to pay sales and use taxes to a state if there is no physical connection. In 2018, the U.S. Supreme Court ruled in *South Dakota v. Wayfair* to allow states to require businesses without a physical presence in a state but having more than 200 transactions or $100,000 of in-state sales to collect and remit sales tax on transactions into the state. The decision overturned the court's previous decisions on the topic. He noted in 1999, the Streamlined Sales and Use Tax Project was created by the National Governor's Association and the National Conference of State Legislatures to develop a simple, modern, and business-friendly sales tax system that was adopted in November 2002.

In 2003, the Kansas Legislature enacted the Streamlined Sales and Use Tax Agreement Conformity Act to conform the Kansas tax code to the Agreement. Secretary Burghart noted in calendar year (CY) 2021, Kansas collections from Streamline-registered sellers exceeded $68.0 million and are expected to exceed $80.0 million in CY 2022. Mr. Burghart noted the annual fee for Kansas to be in Streamline is approximately $35,000. Retailers utilizing Streamline may contract with a certified service provider (CSP) to perform the seller's sales tax functions. Kansas received collections of nearly $40.0 million from CSP-contracted retailers with an average compensation rate of 4.91 percent or approximately $2.0 million. Secretary Burghart and Ms. Kramer stood for questions from Committee members.

**Streamlined Sales and Use Tax Agreement: Overview, Background, Objectives, and Business Perspective**

Craig Johnson, Executive Director, Streamlined Sales Tax, provided a presentation on Streamlined Sales Tax, the *Wayfair* decision, and the importance of membership.(Attachment 3) At the request of Mr. Johnson, Fred Nicely, Senior Tax Counsel, Council on State Taxation (COST), and Pat Reynolds, Senior Tax Counsel, COST, who participated via Webex, introduced themselves to the Committee members. They noted the COST objective is to preserve and promote equitable and nondiscriminatory state and local taxation. Both stated they have been long-time supporters of Streamline and the simplicity in uniformity that Streamline brings forth for purposes of not just members but also small businesses around the country.

In response to a question, Mr. Reynolds stated one of the biggest obstacles for Colorado to join Streamline is the number of home rule jurisdictions that exist within the state. The local jurisdictions administer and impose their own sales tax and Streamline requires a single administrator of sales tax at both the state and local level which is a big impediment for Colorado to join Streamline. He indicated there have been discussions with Missouri about joining Streamline and there is a good possibility this can happen in the future. Mr. Nicely stated COST's members would like to have all 45 states that impose state sales tax to be part of the Streamline Agreement.

Mr. Johnson stated with respect to Colorado not being a member and Kansas constituents having economic nexus laws in place, Kansas constituents must comply with Colorado's laws which means they must file all individual returns with the home rule jurisdictions in Colorado unless they are going to challenge the home rule jurisdictions. The litigation Colorado is facing is because of undue burdens and the complexities in place now.

In response to questions, Mr. Johnson stated the Streamline Agreement governing board itself is made up of representatives of all the member states and each member state gets one vote. The organization has a paid staff of 4.75 employees for Streamline, and the rest of the organization is supported by the member states. He noted each state is allowed to appoint up to four delegates and the delegates for the State of Kansas are KDOR staff, Senator Tyson, and Representative Croft. Mr. Johnson stated the governing board staff assist states as they administer a simple and more uniform sales and use tax system.

Mr. Nicely provided information on what makes some states' sales tax burdensome: separate and local tax administration, unclear rules on who has the right to tax a transaction, too many tax rates within each state and locality, and different state and local tax bases.

Mr. Johnson replied to questions from Committee members regarding associate membership, non-member participation, and how they interact with the Governing Board and Agreement.

Mr. Johnson provided information regarding the CSP, who uses a certified automated system to determine the tax base of a transaction, state and local tax rates, and tax due to each jurisdiction. The CSP generates and files returns, makes required remittances, and meets other requirements set by Streamlined Sales Tax Governing Board.

Mr. Johnson provided a list of congressional bills that had been introduced, noting only one of the bills received a vote, the Marketplace Fairness Act. The Senate passed the bill with a vote of 69 to 27 and the bill died in the House due to legislative leaders having different ideas on how to approach the issue.

In *South Dakota v. Wayfair*, the Supreme Court noted the following three features about South Dakota's law that appeared to be designed to prevent discrimination against or undue burdens upon interstate commerce:

- Transactional safe harbor;
- No retroactive application; and
- Membership in the Streamlined Sales and Use Tax Agreement.

On June 21, 2018, the U.S. Supreme Court ruled in favor of South Dakota, giving states authority to impose sales tax obligations on out-of-state sellers based on level of economic activity in that state. All 45 states with a state sales tax have adopted an economic nexus provision.

## Lunch

Chairperson Smith recessed the meeting at 12:15 p.m. and reconvened the meeting at 1:15 p.m.

## Follow-up Items from Previous Meeting

Mr. Penner provided an overview of follow-up information requested at the November 18, 2022, Special Committee on Taxation meeting. (Attachment 4)

### *Item 1, APEX Detail*

The Committee requested details on the impact of the Attracting Powerful Economic Expansion (APEX) project and the Panasonic Agreement. Mr. Penner indicated there was a split of the estimated revenue impact between the corporate rate reduction and the APEX agreement incentives. When the Committee met November 18, 2022, the corporate rate reduction was not yet certified from the Department of Commerce to KDOR, Kansas Legislative Research Department, and Division of Budget. The rate had subsequently been certified and will go into effect for tax year 2024. He noted the timing of first $25 million is firmed up for the APEX tax rate reduction, but the timing of the Panasonic agreement incentive is dependent upon when the company makes various tax filings.

***Item 2 (a and b), Social Security Benefits and Retirement Income***

Mr. Penner stated in response to the Committee's request regarding exempting tax on Social Security and retirement benefits from the November 18, 2022, meeting, KDOR provided the estimated fiscal impact per Kansas Adjusted Gross Income (KAGI) (based on KAGI in tax year 2020) for Tax Year 2023. The information was split out by KAGI Income brackets, number of returns, fiscal impact, and the average fiscal impact for each bracket. He noted this is based on KAGI; if this was federal adjusted gross income, everything below $75,000 would be zeroed out.

***Item 3, In and Out Migration by Age***

Mr. Penner provided information in response to a request regarding the Kansas migration pattern inflow outflow as it relates to individuals 65 years of age and older. Also included were data for all ages from the Internal Revenue Service (IRS). The data were for year 2020 versus 2019, which was the most recent IRS data for the migration of revenue by age group.

***Item 4, In and Out Migration by Destination***

Mr. Penner provided information in response to a request regarding migration by destination, specifically, where Kansas taxpayers are going to or coming from as they migrate. Mr. Penner stated Missouri is the state with the largest migration to and from Kansas. He indicated this is not actual taxpayer data but is information from the Census Bureau and for 2019 versus 2018.

***Item 5, 2019 SB174 Testimony, and Item 6, KPERS Beneficiaries by State***

In response to a request from Representative Vic Miller is the testimony from the 2019 Legislative Session regarding SB 174. Representative Miller indicated the testimony might be beneficial information because it includes certain migratory information, news articles, but also includes Kansas Public Employees Retirement System (KPERS) data in terms of where KPERS beneficiaries currently reside and the amount of total benefits going to those individuals for CY 2017. Also provided is information on taxpayers that tie in with Social Security benefits. Mr. Penner noted the number of retirees and monthly KPERS retirement benefits data has been updated for calendar year 2021 on the following page.

***Item 7, Residential Parcel Count Data***

Representative Vic Miller requested the residential parcel count data back to 1992 and the Property Valuation Division, KDOR, could provide data only back to 1998.

***Item 8, Proposed Statutory Language to Address KREAB Approval of Property Valuation Courses***

A possible recommendation for a statutory change related to appraisal courses and their approval by the Kansas Real Estate Board was provided by Director David Harper, Property Valuation Division, KDOR. The language was provided to the Revisors to be used as a bill draft for the 2023 Legislative session.

Mr. Penner stated KDOR provided updated versions of spreadsheets that were provided at the November 18, 2022, meeting of the Special Committee on Taxation as requested by the Committee. The updated spreadsheets were provided to the Committee digitally. Mr. Penner stood for questions from Committee members.

**Discussion and Recommendations**

Chairperson Smith opened the floor for discussion regarding Streamlined Sales Tax, inactive and unused provisions and taxing authorities and entities, taxation of Social Security benefits and retirement income, and property valuation uniformity.

Following are the Committee recommendations for the 2023 Legislative Session:

- Remove the tax cliff and marriage penalty regarding income taxation of Social Security benefits.
- Provide for equity of taxation of retirement income, specifically certain plans for the Kansas Board of Regents with no tax being paid on retirement income.
- Provide for improved property tax uniformity throughout the state. Review property tax valuation on personal property and businesses.
- Clarify statutes to specify the voting procedure or the Kansas delegation to the Streamlined Sales and Use Tax Agreement.
- Evaluate the $100,000 threshold of taxable sales for use taxes prior to remote sellers being required to collect and remit use taxes to consider equity of the policy on in-state businesses and consider implementing a similar policy for in-state retailers.
- Consider re-adding the compensating use tax line to the Kansas individual income tax return.
- Evaluate any expired and unused taxing provisions and consider them for repeal.

**Adjourn**

Chairperson Smith adjourned the meeting at 3:00 p.m.

Prepared by Lea Gerard

Edited by Edward Penner

Approved by the Committee on:

July 18, 2023
(Date)