



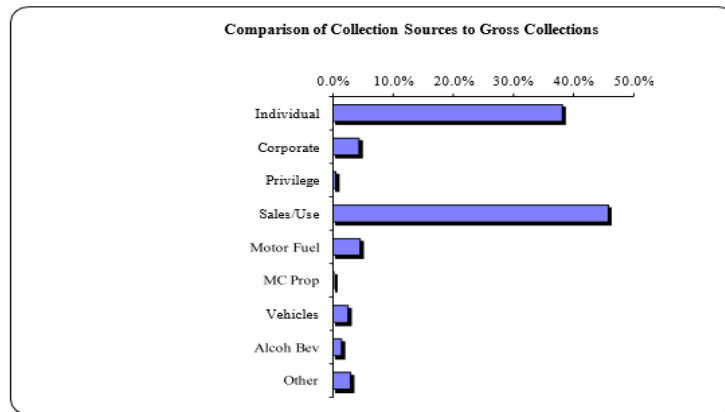
## MEMORANDUM

TO: Governor’s Council on Tax Reform  
 FROM: Mark A. Burghart  
 Secretary of Revenue  
 RE: Conformity and Decoupling Issues – 2021 S.B. 22  
 DATE: January 29, 2021

### I. STATE TAX COLLECTIONS BY SOURCE

2021 S.B. 22 amends multiple provisions of the Kansas income tax act affecting individual and corporate taxpayers. To give some perspective as to the bill’s impact on state finances, the tables set forth below provide the most recent revenue collections by major tax source, including those negatively impacted by the bill. The bill currently resides in the Senate Committee on Assessment and Taxation where various proposed amendments will be worked next week. Those amendments could lower the fiscal note.

**Gross Total Collections and by Source**  
 Collections by Department of Revenue

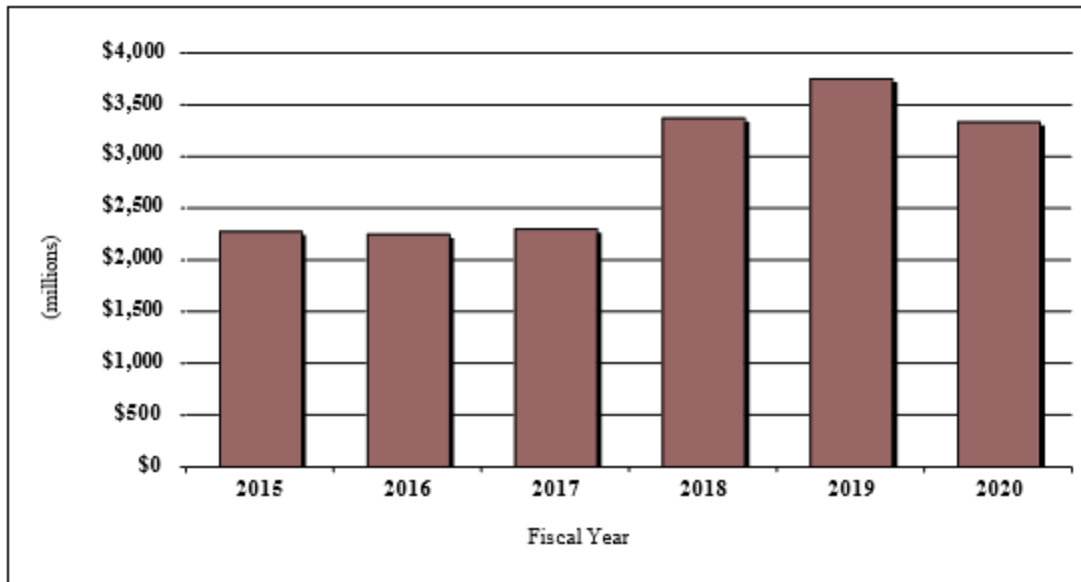


Source	Fiscal Year 2019	Fiscal Year 2020	Percent Change	Percent of FY2020 Total
Individual Income Taxes	\$4,264,995,212	\$3,858,361,789	-9.5%	38.0%
Corporate Income Taxes	\$472,787,133	\$439,616,865	-7.0%	4.3%
Privilege Taxes	\$50,453,974	\$48,123,588	-4.6%	0.5%
State and Local Sales and Use Taxes	\$4,534,091,413	\$4,632,424,770	2.2%	45.7%
Motor Fuel Taxes	\$464,448,938	\$457,330,447	-1.5%	4.5%
Property Taxes: Commercial Vehicle Fee*	\$11,856,678	\$12,501,595	5.4%	0.1%
Division of Vehicles	\$259,287,020	\$254,567,409	-1.8%	2.5%
Alcoholic Beverage Control	\$152,018,682	\$144,809,699	-4.7%	1.4%
Other Taxes and Fees	\$335,992,443	\$295,883,316	-11.9%	2.9%
Total	\$10,545,931,493	\$10,143,619,478	-3.8%	100.0%

\*Corporate Franchise Tax repealed effective Tax Year 2011; Motor Carrier Property Tax repealed and replaced with Commercial Vehicle Fee effective January 1, 2014.

Other taxes and fees include: bingo; corporate franchise tax; dry cleaning; transient guest; cigarette; tobacco; controlled substances; estate; oil, gas, oil assess conservation fee and gas assessment conservation fee, gas oil and sand royalties; car line; bonds; licenses; and fees.

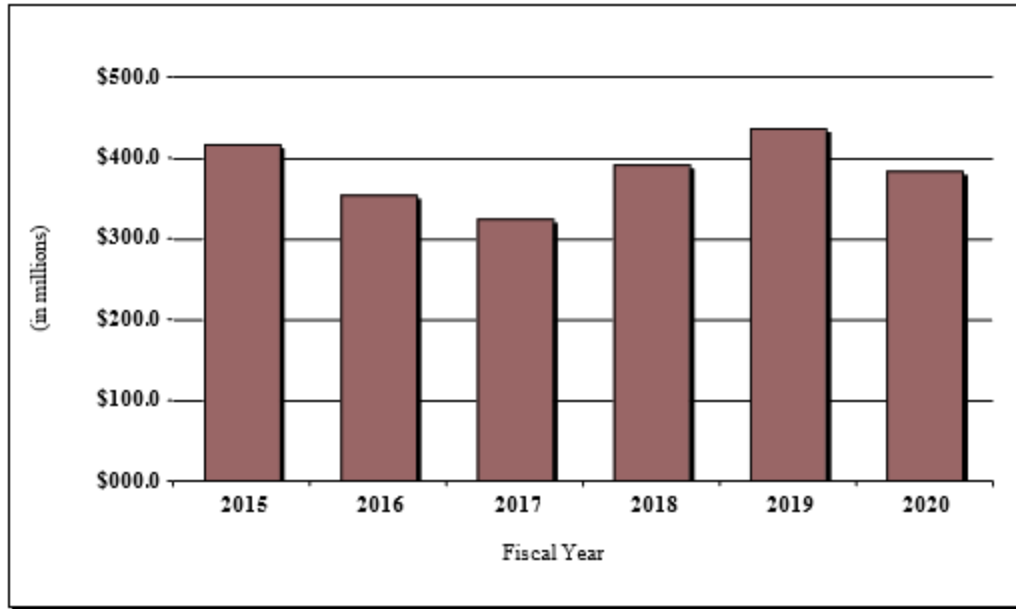
## Individual Income Tax Amount to the State General Fund after Refunds



<u>Fiscal Year</u>	<u>Amount Collected</u>	<u>Percent Change</u>
2015	\$2,277,540,835	2.7%
2016	\$2,248,935,698	(1.3%)
2017	\$2,304,027,340	2.4%
2018	\$3,374,420,399	46.5%
2019	\$3,755,710,444	11.3%
2020	\$3,338,185,250	-11.1%

## Corporate Income Tax Amount to the State General Fund after Refunds

The tax is levied on the portion of a corporation's adjusted federal taxable income allocated to Kansas.

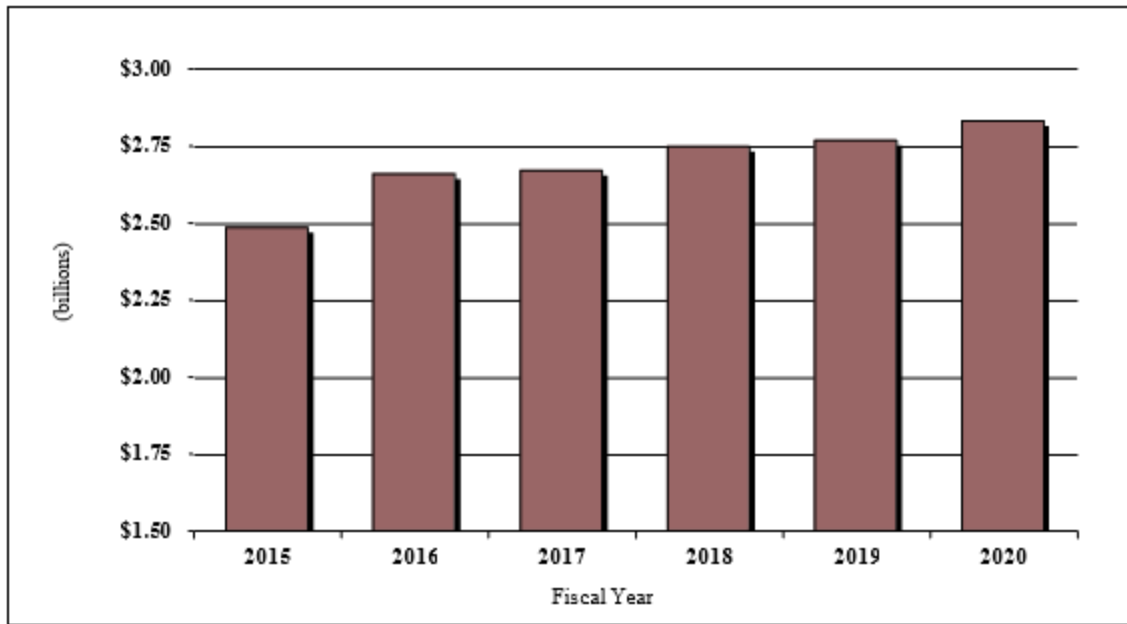


<u>Fiscal Year</u>	<u>Amount Collected</u>	<u>Percent Change</u>
2015	\$417,399,546	4.5%
2016	\$354,725,599	-15.0%
2017	\$324,956,280	-8.4%
2018	\$392,439,745	20.8%
2019	\$437,400,155	11.5%
2020	\$384,407,313	-12.1%

## State Retailers' Sales and Compensating Use Taxes Amount to State General Fund

Statewide retailers' sales and compensating use taxes are applied to the sale of tangible personal property, and to specified services at retail. The compensating use tax includes consumers' use, retailers' use, and auto lease tax. Beginning July 1, 2010 (Fiscal Year 2011) the tax rate increased to 6.3%; effective July 1, 2013 (Fiscal Year 2014) the tax rate decreased to 6.15%; and effective July 1, 2015 (Fiscal year 2016) the tax rate increased to 6.5%. In Fiscal Year 2020, the state gained \$41.3 million from the Streamline Sales Tax Project.

On June 21, 2018, the United States Supreme Court issued its decision in the case of *South Dakota v. Wayfair, Inc. et al.* In its decision the Court overturned the requirement established in prior rulings that a remote seller must have a physical presence in a state before that state could require the remote seller to collect that state's sales and/or use tax. On August 1, 2019, the Department released Notice 19-04 – Sales Tax Requirements for Retailers Doing Business in Kansas. The notice instructed those remote sellers who were not already registered with the Kansas Department of Revenue to register, collect and remit the sales or use tax beginning October 1, 2019. Since August 1, 2019, the Department observed an increase of over 50% in the registrations of remote seller accounts.



<u>Fiscal Year</u>	<u>State Sales</u>	<u>State Use</u>	<u>State Total</u>	<u>Percent Change</u>
2015	\$2,132,776,805	\$352,175,950	\$2,484,952,755	1.6%
2016	\$2,273,941,413	\$384,992,097	\$2,658,933,510	7.0%
2017	\$2,285,870,437	\$384,654,260	\$2,670,524,697	0.4%
2018	\$2,341,693,269	\$406,513,522	\$2,748,206,791	2.9%
2019	\$2,335,435,774	\$431,966,955	\$2,767,402,729	0.7%
2020	\$2,352,523,422	\$479,059,757	\$2,831,583,179	2.3%

## II. 2021 S.B. 22

### Summary Table of Fiscal Impact

	FY 2022	FY 2023	FY 2024
Expensing Deduction	\$2.3	\$2.4	\$2.5
UI Fraud	\$0.0	\$0.0	\$0.0
NOL	-\$100.3	-\$20.1	-\$20.1
Limitation on Deduction for Interest	-\$56.1	-\$37.5	-\$38.6
Limitation on Deduction for FDIC Premiums	-\$2.5	-\$1.3	-\$1.3
GILTI (2020 and After)*	-\$48.9	-\$23.5	-\$23.7
GILTI (2018-2019)	-\$56.8		
Deduction for Meal Expenditure	-\$3.0	\$0.0	-\$3.1
Allowing Itemized Deductions	-\$60.9	-\$61.5	-\$62.1
Capital Contributions	Negligible	Negligible	Negligible
Total	-\$326.2	-\$141.5	-\$146.5

\* Individuals are allowed to deduct GILTI income before any deduction. We are unable to determine the impact for this allowance at this time.

The Department is unable to determine the impact of the PPP provisions as we are unable to measure the amount of loans that will not be forgiven at the federal level.

## III. CONSEQUENCES OF NONCONFORMING

When the Council reviewed the history of Kansas conformity during its meeting on October 15, 2019, it was noted that there were three compelling reasons to maintain federal conformity:

1. simplicity of returns and compliance for the taxpayer;
2. elimination of unfairness to the taxpayer; and
3. ease of administration.

Other tax review commissions have recommended that Kansas maintain its policy of conformity whereby the computation of state income tax liability begins with federal adjusted gross income for individuals and federal taxable income for corporations. The prior commissions warned that any departure from this policy should be taken only for the most compelling of reasons. See Final Report of Recommendations, Kansas Tax Review Commission, June 1985, p. INC. 9 and Report and Recommendations of the Governor's Task Force on Tax Reform, January 1985, p. 12.

One of the principal benefits of conforming to the Internal Revenue Code relates to the audit function performed by the Internal Revenue Service (IRS). Through an exchange agreement with the IRS, the Kansas Department of Revenue is able to rely on the IRS to verify the accuracy of the data reported by taxpayers. By nonconforming or decoupling from the Internal Revenue Code, Kansas loses its ability to verify taxpayer income and expense information. As an example, if taxpayers are allowed to itemize on their Kansas return while still claiming the standard deduction on their federal return, an estimated 200,000 Kansas individual income tax returns would be filed for which there is no effective means of determining the accuracy of any claimed itemized deductions. The Department would need to increase its workforce to provide the required audit capability for individual income tax returns which is currently unnecessary because of federal conformity and the information exchange agreement with the IRS.

The justifications for conformity cited by the original Federal Conformity Advisory Committee in 1966 are every bit as applicable today. Decoupling will increase complexity and its related compliance costs as well as the costly burden of administrating the tax. As noted by prior tax review commissions, any attempt to decouple should be taken for only the most compelling of reasons with a full understanding that the tax administration and compliance costs will increase.

I would be happy to try to answer any questions you may have.