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MEMORANDUM

TO: Representative Adam Smith, Chairperson
2022 Special Committee on Taxation

FROM: Kansas Department of Revenue

RE: Streamlined Sales and Use Tax Agreement

DATE: December 12, 2022

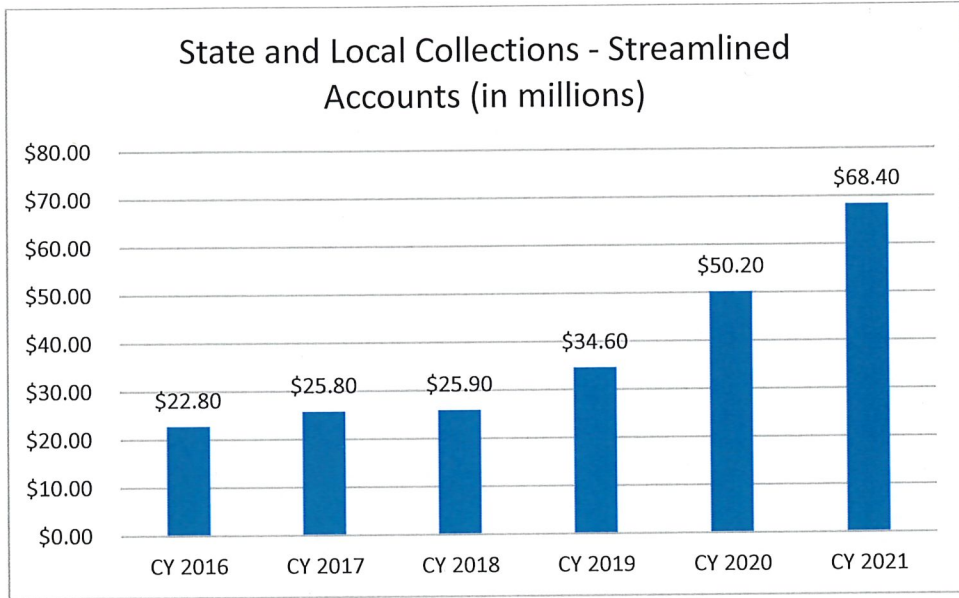
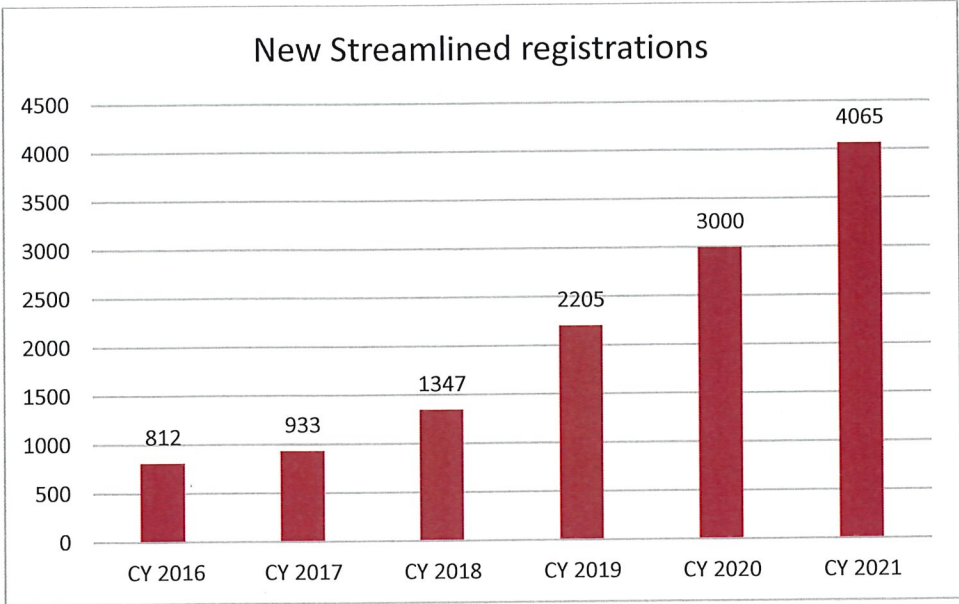
In the fall of 1999, the Streamlined Sales and Use Tax Project was created by the National Governor's Association (NGA) and the National Conference of State Legislatures (NCSL) to develop a simpler, modern, and more business-friendly sales tax system. The result was the Streamlined Sales and Use Tax Agreement (SSUTA) adopted in November 2002.

The goal of the Streamlined Sales Tax Governing Board is to minimize costs and administrative burdens on retailers, particularly retailers operating in multiple states. The Agreement focuses on improving sales and use tax administration in ten areas:

1. State-level administration of sales and use tax collections;
2. Uniformity in the state and local tax bases;
3. Uniformity of major tax base definitions;
4. Central, electronic registration system for all member states;
5. Simplification of state and local tax rates;
6. Uniform sourcing rules for all taxable transactions;
7. Simplified administration of exemptions;
8. Simplified tax returns;
9. Simplification of tax remittances; and
10. Protection of consumer privacy.

The 2003 Kansas Legislature enacted the Streamlined Sales and Use Tax Agreement Conformity Act to conform the Kansas tax code to the agreement. In CY 2021, Kansas collections from Streamlined registered sellers exceeded \$68 million and are expected to exceed \$80 million in CY 2022. As of November 2022, Kansas had 9,412 open Streamlined sales and use tax accounts. The Streamlined dues for the last five fiscal years are as follows:

FY 2019	–	\$35,745
FY 2020	–	\$36,016
FY 2021	–	\$17,901
FY 2022	–	\$35,805
FY 2023	–	\$34,929



Currently, 23 states have enacted legislation conforming to the Agreement including Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. One state, Tennessee, is an associate member complying with nearly all parts of the Agreement.

Legal Considerations

Prior to 2018, states could not require remote sellers, or those retailers without a physical presence in the state, to collect and remit sales and use tax on behalf of the state. In 2018 the United States Supreme Court (SCOTUS) decision in *South Dakota v. Wayfair, Inc., et.al.* removed the “physical presence” requirement. However, SCOTUS did not rule on the overall constitutionality of South Dakota’s law. SCOTUS specifically indicated other violations of the Commerce Clause might be present in the South Dakota law. Since those potential issues had not yet been litigated or briefed, they were not addressed by the Court.

The Supreme Court identified three features of South Dakota’s law that appear to be designed to prevent discrimination against or undue burdens upon interstate commerce. Kansas currently has all three of these features as well.

1. A transactional safe harbor (de minimus filing thresholds) (2021 SB 50);
2. The law not being applied retroactively (K.S.A. 79-3702 and KDOR Notice 19-04); and
3. Membership in the Streamlined Sales and Use Tax Agreement (K.S.A. 79-3665).

If Kansas were to withdraw from Streamlined, Kansas would forfeit one significant and compelling feature specifically mentioned in the SCOTUS ruling to use as a defense if the state’s remote sales and use tax collection authority were to be challenged.

Impact on Retailers

Retailers utilizing the Streamlined filing structure may file directly or contract with a Certified Service Provider (CSP) to perform the seller’s sales tax functions. States compensate the CSP a percentage of collections in exchange for this service. In CY 2021, Kansas received collections of nearly \$40 million from CSP contracted retailers with an average compensation rate of 4.91%, or about \$2 million. This compensation rate has been renegotiated from an average compensation rate of 6.41% in 2020. Kansas has been adding 200-300 sellers per month who are utilizing this service. The tax amount collected from CSPs and compensation amount for the last five fiscal years are as follows:

Year	Tax Amount	Compensation Amount to CSP	Avg Comp Percentage
2021	\$39,799,791.02	\$1,953,349.63	4.91%
2020	\$23,195,000.51	\$1,485,967.06	6.41%
2019	\$10,772,801.49	\$670,954.40	6.23%
2018	\$4,706,387.03	\$305,443.66	6.49%
2017	\$3,044,011.04	\$305,443.66	6.49%

In addition, sellers with a physical presence in Kansas can utilize CSP services. In this situation, Kansas does not compensate the CSP. In-state sellers utilizing this service are not reflected in the above numbers. Using a CSPs certified systems improves the accuracy of the calculations and collections and reduces the necessary costs associated with enforcement activities by Kansas and other member states. Businesses utilizing this service receive specific relief from liability for the sales processed through CSP software.

Impact on Customers

Streamlined membership also provides a benefit to customers. Exiting the Agreement would eliminate the use of the Streamlined Uniform Exemption Certificate, which would result in an additional burden on customers to reissue state-specific certificates. In addition, leaving the Streamlined system may result in losing significant out-of-state filers and shifting the burden of reporting compensating use tax to the consumer. Beginning with tax year 2022, the compensating use tax line item on the K-40 will be eliminated (2021 SB 50). The existing method for consumers to report compensating use tax owed and not collected by a retailer would be to open a consumers' compensating use tax account. This would be burdensome for most consumers.

Impact on the Kansas Department of Revenue

Membership in Streamlined Sales Tax provides out-of-state retailers that may otherwise not voluntarily collect sales or use tax a simplified means of reporting this Kansas tax. The Kansas Department of Revenue (Department) has a voluntary disclosure program, of which about 10% of participants are attributed to Streamlined. Exiting Streamlined would shift the burden of identifying these businesses and working with them on compliance to the Department's limited auditing and legal resources.

One of the primary functions of the CSPs is providing retailers technical support on how to interface the rate and boundary databases with their web-based shopping carts. In the absence of the CSPs, this burden would be shifted to the Department. Additionally, modifications would need to be made in the Division of Vehicles systems that interface with the rate and boundary databases.

Leaving the Streamlined Project would require the Department to modify processes such as billing and automated legal actions in the Revenue Recovery Bureau.