

Report of the Special Committee on Taxation to the 2022 Kansas Legislature

CHAIRPERSON: Senator Caryn Tyson

VICE-CHAIRPERSON: Representative Adam Smith

OTHER MEMBERS: Senators Tom Holland, Dan Kerschen, Rick Kloos, and Mark Steffen; and Representatives Francis Averkamp, Jim Gartner, Henry Helgersen, Les Mason, and Barbara Wasinger

STUDY TOPIC

The Committee is directed to study tax exemptions and abatements.

Special Committee on Taxation

REPORT

Conclusions and Recommendations

The Special Committee on Taxation recommends the Legislature:

- Use State General Fund ending balances and current receipts in excess of expenditures to pay down state debt and not for any increase to ongoing state expenditures;
- Consider constitutional amendment proposals restricting the growth of government;
- Consider repealing all tax credits, exemptions, and abatements that are not currently being used and have not been used for several years;
- Devise a system of taxation that is equal and fair across the spectrum of forms of energy production;
- Review Kansas income taxation of retirement income to resolve systematic inequities and review income taxation of Social Security benefits to eliminate marriage penalties;
- Evaluate the existing Kansas property tax circuit breaker programs and consider adding an additional program or expanding existing programs; and
- Restrain the growth of state government spending and employment and, while noting that existing state obligations and debts must be paid, lower taxes and transition the Kansas Public Employees Retirement System to a defined contribution system.

Proposed Legislation: The Special Committee on Taxation recommends the House Committee on Taxation and Senate Committee on Assessment and Taxation prepare resolutions advising the 2022 Legislature to use State General Fund ending balances to pay down state debt and not expand ongoing government spending. The Committee also recommends necessary legislation to implement all other Committee recommendations.

BACKGROUND

The Special Committee on Taxation (Committee) was created by the Legislative Coordinating Council (LCC) to study tax exemptions and abatements. The Committee was directed to make recommendations to the Legislature on any improvements or changes that should be considered.

The Committee was authorized by the LCC to meet for two days.

COMMITTEE ACTIVITIES

The Committee met at the Statehouse for a two-day meeting on November 29 and 30, 2021.

Consensus Revenue Estimates

A senior economist from the Kansas Legislative Research Department (KLRD) outlined the consensus revenue estimating process, its history, and its operation in conjunction with the state budgetary cycle. He noted the historical margin between the estimates and actual state receipts. The senior economist presented the most recent economic and revenue forecasts of the Consensus Revenue Estimating Group, made in November 2021, and the implications of those estimates for the projected State General Fund ending balances in FY 2022 and subsequent years.

Energy Sector Tax Overview

Kansas Department of Revenue officials presented information concerning tax incentives related to the energy sector. The presentation also included information concerning severance taxes, income taxes, retail sales taxes, and property taxes.

Multistate Tax Comparisons

The senior economist from KLRD presented information comparing the total and per capita state and local tax burdens of Kansas, neighboring states, and the nation. The presentation included information on separate and combined state and local property, sales, and income taxes.

Credit Card Surcharge Prohibitions

An assistant revisor of statutes from the Office of Revisor of Statutes presented information on the Kansas statutory prohibition on sellers imposing a surcharge on purchases made using credit or debit cards. The presentation included information on statutory history and legal analysis contained in a Kansas Attorney General opinion. The revisor also discussed recent legislation concerning the prohibition and a recent federal district court case that determined the prohibition to be unconstitutional as applied to a company selling and using computer software allowing merchants to display prices that include surcharges made on purchases using credit and debit cards.

Tax and Expenditure Limitations

The senior economist from KLRD presented information on statutory and constitutional limitations of other states on taxation and

expenditures, including constraints on actual and approved revenues and expenditures. The limitations were linked to economic statistics and projections of revenues.

Liquor Taxes

The senior economist from KLRD presented information detailing liquor taxes in Kansas. Kansas liquor taxes are imposed using a three-tier system, with a volume-based excise tax applied at the wholesale level and sales price-based excise tax applied at the retail level. An additional sales price-based excise tax is applied to drinks sold by caterers, private clubs, and drinking establishments.

Income Taxation of Social Security Benefits and Retirement Income

The senior economist from KLRD presented information regarding how Kansas income taxes apply to Social Security benefits and retirement income. The Committee reviewed the \$75,000 threshold at which all federally taxable Social Security benefits become taxable and recent legislative proposals to modify the threshold or otherwise modify the taxation of benefits. The Committee also reviewed the tax consequences of various retirement plans and recent legislative proposals to exempt such income from the Kansas income tax.

Residential Property Tax Relief Mechanisms

The senior economist from KLRD presented information regarding residential property tax relief mechanisms in Kansas and other states. The presentation centered on property tax relief based on income, tax burden, or other qualifications (“circuit breakers”) and property tax freeze and assessment freeze programs. The Committee also reviewed recent legislative proposals to expand the Kansas circuit breaker programs to incorporate a tax freeze component.

Recent Itemized Deductions Policy Changes

The senior economist from KLRD presented information regarding recent state and federal changes to itemized deductions from individual income taxes. Kansas legislation enacted in 2013, 2015, and 2017 modified the percentage of

federally allowed itemized deductions to be claimed by Kansas taxpayers. Federal legislation enacted in 2017 doubled the standard deduction and capped the amount of state and local taxes allowed to be deducted as an itemized deduction. SB 50, enacted in 2021, permitted Kansas taxpayers to itemize at the state level, even if they take the standard deduction at the federal level.

Implementation of 2021 SB 13

Office of Revisor of Statutes staff presented an overview of the provisions of 2021 SB 13 (law), and Kansas Department of Administration officials presented information concerning the implementation of the law and potential follow-up legislation. SB 13, among other things, removed the property tax lid and established notice and public hearing requirements for certain taxing subdivisions seeking to collect property taxes in excess of the subdivision's revenue-neutral rate. The Kansas Department of Administration staff noted that the agency has convened working groups regarding the implementation of the law and to collect feedback from local units of government regarding potential changes to the requirements. Example forms created by the Kansas Department of Administration also were provided to Committee members.

Local Sales Tax Laws and Distribution Formulas

Kansas Department of Revenue officials presented information detailing the various local sales taxes authorized in Kansas, including those levied by cities, counties, and special districts. The presentation also included information on the apportionment formula distributing revenues of countywide sales taxes to counties and cities within the counties and information on 2021 SB 87 (pending legislation), which would provide for an option to disregard that formula and allow counties to retain all sales tax revenues pursuant to future tax elections.

CONCLUSIONS AND RECOMMENDATIONS

Committee discussion frequently returned to a theme of using caution in adopting state taxing and spending policies, as such policies impact both the State's abilities to carry out the functions of

government and the livelihood of the citizens of the state.

The Committee first recommended the Legislature exercise substantial caution in planning for ongoing budgeting of the current receipts in excess of expenditures and large State General Fund ending balances. Committee members noted the progress of the COVID-19 pandemic could still alter the course of the State's receipts, and the level of state receipts could currently be inflated by federal fiscal stimulus.

The Committee recommended the Legislature consider repealing all tax credits, exemptions, and abatements that are not currently being used and have not been used for several years.

In regard to the presentation on the taxation of the energy sector, the Committee recommended the Legislature devise a system of taxation that is equal and fair across the spectrum of forms of energy production.

The Committee discussed the implementation of limitations on the growth of state government spending, taxation, and state government employment. The Committee specifically noted South Carolina policy linking the growth of state employees to the rate of state population growth. The Committee recommended the Legislature consider constitutional amendment proposals to restrain the growth of government.

The Committee discussed the income taxation of Social Security benefits and retirement income and noted Kansas imposes a marriage penalty on Social Security benefits and may inequitably tax certain public sector retirement programs. The Committee recommended the Legislature review and address these issues.

The Committee discussed providing income tax relief by increasing the standard deduction amounts for all tax filers.

The Committee discussed the existing Kansas property tax circuit breaker programs and recommended the Legislature evaluate the existing programs and consider adding an additional program or expanding the existing programs.

In the context of using caution in adopting state fiscal policy regarding the State's current receipts in excess of expenditures and large State General Fund ending balances, the Committee recommended the Legislature restrain the growth of state government spending and employment and, while noting that existing state obligations and debts must be paid, lower taxes and transition the Kansas Public Employees Retirement System to a defined contribution system.

The Committee noted the ultimate objective of each of these recommendations is to use tax uniformity and equality to lower the overall tax burden of the state.

While not recommending any specific legislation, the Committee did recommend the Legislature consider resolutions urging caution in adopting state fiscal policy and appropriate bills to carry out the recommendations of the Committee.

The Committee additionally recommended the House Committee on Taxation and Senate Committee on Assessment and Taxation author resolutions guiding the implementation of these recommendations.

Minority Report

While generally encouraged by the Special Committee on Taxation's collective desire to adopt responsible and sustainable fiscal policy for the state, I am concerned about several of the Committee's conclusions and recommendations and state my opposition to those recommendations in this report.

I support the Committee recommendations to consider repealing tax credits, exemptions, and abatements that are not in use and to evaluate the existing Kansas property tax circuit breaker programs and consider expanding the existing programs or adding an additional program.

However, I believe the other Committee recommendations are either too restrictive, would impede the ability of the Kansas Legislature and Governor to respond to future fiscal needs of the State, or wrongly prioritize the tax policy needs of the state and such recommendations should not be pursued by the Kansas Legislature.

Representative Jim Gartner