

February 20, 2023

The Honorable Caryn Tyson, Chairperson  
Senate Committee on Assessment and Taxation  
300 SW 10th Avenue, Room 548-S  
Topeka, Kansas 66612

Dear Senator Tyson:

**SUBJECT:** Fiscal Note for SB 248 by Senate Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 248 is respectfully submitted to your committee.

SB 248 would eliminate the current plan that reduces and eventually sets a 0.0 percent state sales tax rate specifically on food and food ingredients and eliminates the planned changes to the distribution of overall state retail sales and compensating use tax revenue. Under current law, the state sales tax rate specifically on food and food ingredients and the distribution of overall state retail sales and compensating use tax revenue are set to be adjusted as follows:

<u>Date of Rate Change</u>	<u>Tax Rate</u>	<u>Percent to State General Fund</u>	<u>Percent to State Highway Fund</u>
Current law	4.0 %	83.0 %	17.0 %
January 1, 2024	2.0	83.0	17.0
January 1, 2025	0.0	82.0	18.0

The bill would provide a state and local sales tax exemption for healthy food for human consumption. Healthy food would include fruits and vegetables, including fresh, canned, jarred, frozen, and dried; meat, poultry, and fish; eggs; milk, including whole, fat-reduced, nonfat, evaporated, dry, soy, and almond; cheese; yogurt; tofu; infant formula; infant cereal; infant food fruits, vegetables and meats; juice; whole wheat or whole grain bread; corn or flour tortillas; pasta; brown rice, bulgur, oatmeal, and whole grain barley; breakfast cereals; beans and nuts; and peanut butter. The sales tax exemption would not apply to prepared food. The bill would increase the sales tax rate on all food items that are not considered healthy under this definition, as current law is a 4.0 percent state sales tax on all groceries, regardless of the definition of healthy foods. The bill would become effective on January 1, 2024.

Estimated State Fiscal Effect				
	FY 2023 SGF	FY 2023 All Funds	FY 2024 SGF	FY 2024 All Funds
Revenue	--	--	(\$277,200,000)	(\$284,400,000)
Expenditure	--	--	\$1,950	\$1,950
FTE Pos.	--	--	--	--

The Department of Revenue estimates that SB 248 would decrease state revenues by \$284.4 million in FY 2024. Of that total, the State General Fund is estimated to decrease by \$277.2 million in FY 2024, while the State Highway Fund is estimated to decrease by \$7.2 million in FY 2024. Given that this bill exempts tax on the identified items, rather than making the tax rate 0.0 percent, it is also estimated to decrease local sales tax revenues; however, the specific estimate of lower local sales tax revenues was not calculated by the Department of Revenue. The fiscal effect to state revenues during subsequent years would be as follows:

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>
State General Fund	(\$123,400,000)	\$5,700,000	\$5,700,000	\$5,700,000
State Highway Fund	<u>4,300,000</u>	<u>(5,700,000)</u>	<u>(5,700,000)</u>	<u>(5,700,000)</u>
	(\$119,100,000)	\$ --	\$ --	\$ --

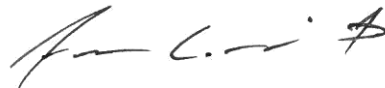
To formulate the estimates of the sales tax exemption for healthy food, the Department of Revenue assumes that 15.0 percent of all current sales tax collections are collected on these items. Since the terms in the definition of “healthy food” are not defined, it is unclear how this definition would be administered. The Department would likely need to establish definitions for the terms by the rules and regulations process which has the potential to reduce the fiscal effect of the bill by defining which food items qualify for this sales tax exemption and which do not. Additionally, since this bill will increase the sales tax rate on certain grocery items relative to current law, there is likely to be an offset to the estimated fiscal impact; however, the Department of Revenue is unable to estimate the fiscal impact related to the increased tax rate. The bill has the potential to place Kansas out of compliance with the Streamlined Sales and Use Tax Agreement. The Department estimates that more than \$80.0 million in revenues annually could be at risk and may no longer be received if Kansas loses its member status, as other members would no longer be contractually required to remit retail sales and compensating use taxes to Kansas.

According to the Department of Revenue, reissuing sales tax forms and publications would cost \$1,950 from the State General Fund in FY 2024. The Department’s budget includes funding for additional customer relations, business support, and to meet the additional accounting and audit needs related to reducing and eventually setting the state sales tax rate specifically on food and food ingredients at a 0.0 percent which is included in 2022 HB 2106. Those costs would still be necessary under the provisions of SB 248.

The Kansas Department of Transportation indicates that the bill would provide a net reduction of state revenues to the State Highway Fund, as noted above. The fiscal effect associated with SB 248 is partially reflected in *The FY 2024 Governor's Budget Report*. The Governor's tax policy recommendation would reduce the state retail sales tax and compensating use tax rate for all food and food ingredients to 0.0 percent and changes the distribution of overall state sales and compensating use tax revenue to 82.0 percent to the State General Fund and 18.0 percent to the State Highway Fund on April 1, 2023.

The Kansas Association of Counties and the League of Kansas Municipalities indicate that the bill would provide a net reduction to local sales tax collections that are used in part to finance local governments. The bill also has the potential to reduce revenues that are pledged to repay STAR bond projects; however, it is unknown what impact this bill would have on the viability of those projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt  
Director of the Budget

cc: Lynn Robinson, Department of Revenue  
Brendan Yorkey, Department of Transportation  
Wendi Stark, League of Kansas Municipalities  
Jay Hall, Kansas Association of Counties