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Steven J. Anderson, CPA, MBA, Director

Division of the Budget

Sam Brownback, Governor

February 9, 2011

The Honorable Richard Carlson, Chairperson
House Committee on Taxation
Statehouse, Room 274-W
Topeka, Kansas 66612

Dear Representative Carlson:

SUBJECT: Fiscal Note for HB 2161 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2161 is respectfully submitted to your committee.

Under current law, the retail sales tax rate is calculated based on where the good is delivered. HB 2161 would allow retailers the ability to choose the method of calculating the retail sales tax rate based on where the business is located or based on where the good is delivered. The retailer would be required to choose which method of sales tax collection that would be used for all sales.

Estimated State Fiscal Effect				
	FY 2011 SGF	FY 2011 All Funds	FY 2012 SGF	FY 2012 All Funds
Revenue	--	--	($8,600,000)	($9,730,000)
Expenditure	--	--	$36,300	$36,300
FTE Pos.	--	--	--	--

The Department of Revenue estimates that HB 2161 would decrease state revenues by $9,730,000 in FY 2012. Of that total, the State General Fund is estimated to decrease by $8,600,000 in FY 2012, while the State Highway Fund is estimated to decrease by $1,130,000 in FY 2012. This bill also is estimated to decrease local revenues by $3,240,000 in FY 2012. The decrease in revenues and how the November 2, 2010 consensus revenue estimate for FY 2012 would be affected are shown in the following table:

Effect on FY 2012 Consensus Revenue Estimates
(Dollars in Thousands)

Receipt Description	Consensus Revenue Estimates (Nov. 2, 2010)	Change in Revenue FY 2012	Proposed Adjusted CRE FY 2012
Motor Carrier	$ 27,000	$ --	$ 27,000
Income Taxes:			
Individual	2,705,000	--	2,705,000
Corporate	275,000	--	275,000
Financial Institutions	21,000	--	21,000
Excise Taxes:			
Retail Sales	2,090,000	--	2,090,000
Compensating Use	295,000	(8,600)	286,400
Cigarette	97,000	--	97,000
Corporate Franchise	8,000	--	8,000
Severance	94,300	--	94,300
All Other Excise Taxes	96,400	--	96,400
Other Taxes	127,000	--	127,000
Total Taxes	$5,835,700	($ 8,600)	$5,827,100
Other Revenues:			
Interest	$ 11,800	$ --	$ 11,800
Transfers	(93,700)	--	(93,700)
Agency Earnings	56,800	--	56,800
Total Other Revenues	($ 25,100)	$ --	($ 25,100)
Total Receipts	$5,810,600	($ 8,600)	$5,802,000

To formulate these estimates, the Department of Revenue reviewed data on retail sales tax and compensating use tax collections. Kansas is currently a full member state in the Streamlined Sales and Use Tax Agreement. This bill would place the state out of compliance with the Agreement and could result in the potential loss of up to $35.0 million in FY 2012, which is the estimated amount of state and local compensating use tax revenue to be remitted in FY 2012 by out-of-state retailers due to our involvement with the Agreement. Retailers registering under the Agreement are under contract to collect and remit compensating use tax for member states. No such reporting and collection requirement exists for sales to non-member states. Remote retailers without nexus in the taxing state are not legally required to collect compensating use tax on sales to customers in that state.

For FY 2010, Kansas received $29,630,000 in state and local use taxes from remote retailers. That amount is projected to reach $35.0 million in FY 2012. Of the $29,630,000 received from remote retailer state and local use tax collections in FY 2010, $8.3 million in state and local use taxes were received from remote retailers registered under the Agreement and under contract to collect those taxes for Kansas. It is estimated those collections will grow to $13.0 million in FY 2012. Those revenues would be at risk and would likely no longer be received if Kansas loses its member status, as members would no longer be contractually required to remit compensating use taxes on remote sales to Kansas. There is also the risk that additional compensating use tax revenues currently being collected by other remote retailers not registered under the Agreement may decline by an unknown amount, potentially as much as another $22.0 million in state and local use tax revenue, once they learn that Kansas is no longer a member state of the Agreement.

The Department of Revenue indicates the bill would require $36,300 in administrative costs to implement the bill. The bill would require modifications to the automated tax system, testing, and notifying retailers of the new method available for calculating the retail sales tax rate. The changes to the automated tax system include the addition of a sourcing indicator to each retailer's account to enable the Department to track the sourcing method being used. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. However, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, expenditures for outside contract programmer services beyond the Department's current budget may be required. Any fiscal effect associated with HB 2161 is not reflected in *The FY 2012 Governor's Budget Report*.

The League of Kansas Municipalities indicates that the bill will affect the amount of revenue collected by local governments based on the method that retailers choose to collect the retail sales tax. However, the League is unable to provide a precise estimate of the fiscal effect.

Sincerely,

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Steve Neske, Revenue
Larry Baer, League of KS Municipalities
Melissa Wangemann, KS Association of Counties