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Sam Brownback, Governor

March 13, 2012

The Honorable Les Donovan, Chairperson
Senate Committee on Assessment and Taxation
Statehouse, Room 123-E
Topeka, Kansas 66612

Dear Senator Donovan:

SUBJECT: Fiscal Note for SB 430 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 430 is respectfully submitted to your committee.

SB 430 would reduce individual income tax rates based on the amount of actual State General Fund tax receipts that are collected above the amount of receipts that were collected in the previous fiscal year. The State General Fund tax receipts that would be tracked under this bill would be the individual and corporate income taxes, financial institution privilege taxes, retail sales taxes, compensating use taxes, cigarette and tobacco product taxes, cereal malt beverage and liquor gallonage taxes, liquor enforcement taxes, liquor drink taxes, corporate franchise taxes, annual franchise fees, and mineral severance taxes.

Beginning with FY 2013, the bill would require the Director of the Budget and the Director of Legislative Research to certify to the Secretary of Revenue any amount of actual State General Fund tax receipts that are collected in any fiscal year that exceeds the amount of State General Fund tax receipts that were collected in the previous fiscal year. The Secretary of Revenue would be required to use the certified amount to calculate the percentage increase in State General Fund tax receipts and would be required to reduce the individual income tax rates in the current tax year by the same percentage for each income tax category and bracket.

If any individual income tax rate for any income tax category or bracket is calculated to be below 0.4 percent, then the rate would be zero. Rates would not be adjusted in any fiscal year when the actual State General Fund tax receipts are less than the amount collected in the previous fiscal year. Any reductions in individual income tax rates would be reported to the Chairperson of the Senate Committee on Assessment and Taxation, the Chairperson of the House Committee on Taxation, and the Governor. The new rates would also be published in the *Kansas Register* prior to September 15 in any year in which there is a reduction.

The bill would change the following income tax credits from refundable to non-refundable: Small Employer Healthcare Credit, Disabled Access Credit, Community Service

Contribution Credit, Kansas Earned Income Credit, Telecommunications Credit, Food Sales Tax Credit, and Historic Site Contribution Credit. The bill would also eliminate the ability to receive a refundable credit for a net operating farm loss.

The bill would reduce the state individual income tax brackets and rates, beginning in tax year 2013, to the following:

Taxable Income-Married Individuals Filing Jointly	Tax Amount
$30,000 and below	3.25%
Over $30,000	$975 plus 5.95% of excess over $30,000

Taxable Income-All Other Individuals	Tax Amount
$15,000 and below	3.5%
Over $15,000	$487.50 plus 5.95% of excess over $15,000

The bill would reduce the corporate normal tax from 4.0 percent to 3.95 percent beginning in tax year 2013. The bill would repeal the current two-year severance tax exemption on new pool oil and gas wells, except for oil wells generating 50 barrels or fewer per day.

The bill would expand the definition of nexus to include "click-thru" provisions in which a retailer doing business in this state would be responsible for collecting and remitting the compensating use tax. Such retailer would be someone who enters into an agreement with one or more Kansas residents for a commission or other consideration, directly or indirectly, refers potential customers by a link on an internet website, by telemarketing, by an in-person or oral presentation. The bill specifies that gross receipts from such sales within Kansas must exceed $10,000 during the prior 12 months. Provisions are included in the bill for the retailer to submit proof that they do not have nexus.

The bill also provides that any ruling, agreement or contract between a retailer and the state's executive branch or state agency agreeing that a retailer is not required to collect sales and use tax in this state despite the presence of a warehouse, distribution center or fulfillment center is null and void unless specifically approved by a majority vote in each of the houses of the Legislature. The bill further provides that any vendor selling or leasing tangible personal property to the state is required to register as a retailer for Kansas sales tax purposes.

Estimated State Fiscal Effect				
	FY 2012 SGF	FY 2012 All Funds	FY 2013 SGF	FY 2013 All Funds
Revenue	--	--	($30,800,000)	($30,800,000)
Expenditure	--	--	--	--
FTE Pos.	--	--	--	--

The Department of Revenue estimates that SB 430 would decrease State General Fund revenues by $30.8 million in FY 2013. The decrease in revenues and how the November 4, 2011 consensus revenue estimate for FY 2013 would be affected are shown in the following table:

Effect on FY 2013 Consensus Revenue Estimates
(Dollars in Thousands)

Receipt Description	Consensus Revenue Estimates (Nov. 4, 2011)	Change in Revenue FY 2013	Proposed Adjusted CRE FY 2013
Motor Carrier	$ 21,000	$ --	$ 21,000
Income Taxes:			
Individual	3,065,000	(46,100)	3,018,900
Corporate	240,000	(800)	239,200
Financial Institutions	24,000	--	24,000
Excise Taxes:			
Retail Sales	2,200,000	--	2,200,000
Compensating Use	335,000	--	335,000
Cigarette	92,000	--	92,000
Corporate Franchise	6,000	--	6,000
Severance	102,800	16,100	118,900
All Other Excise Taxes	96,000	--	96,000
Other Taxes	141,000	--	141,000
Total Taxes	$6,322,800	($ 30,800)	$6,292,000
Other Revenues:			
Interest	$ 7,400	$ --	$ 7,400
Transfers	(90,300)	--	(90,300)
Agency Earnings	51,500	--	51,500
Total Other Revenues	($ 31,400)	$ --	($ 31,400)
Total Receipts	$6,291,400	($ 30,800)	$ 6,260,600

The fiscal effect to state revenues during subsequent years would be as follows:

	FY 2014	FY 2015	FY 2016	FY 2017
State General Fund	($184,300,000)	($285,100,000)	($288,200,000)	($293,700,000)

To formulate these estimates, the Department of Revenue reviewed data on current individual and corporate income tax collections, tax credits, and severance tax tax collections. The Department estimates that reducing individual income tax rates and making certain income tax credits non-refundable, which would begin in tax year 2013, would reduce State General Fund revenues by $46.1 million in the last part of FY 2013 and would reduce State General Fund revenues by $200.6 million in FY 2014. Reducing the corporate normal tax rate is estimated to reduce State General Fund revenues by $800,000 in FY 2013 and by $2.5 million in FY 2014. Eliminating the current two-year severance tax exemption on new pool oil and gas wells is estimated to generate $16.1 million in FY 2013 and $18.8 million in FY 2014. The Department estimates that the bill would reduce State General Fund revenues by $30.8 million in FY 2013 ($16.1 million in additional severance taxes minus $46.1 million lower individual income taxes minus $800,000 in lower corporate income taxes) and by $184.3 million in FY 2014 ($18.8 million in additional severance taxes minus $200.6 million in lower individual income taxes minus $2.5 million in lower corporate income taxes).

According to the Department of Revenue, expanding the definition of nexus to include "click-thru" provisions would increase state sales and use tax collections, but the amount is estimated to be negligible.

The Department indicates that the administrative costs associated with implementing the bill would not be needed until FY 2014. The Department indicates that the bill would require $69,490 from the State General Fund in FY 2014 to implement the bill and to modify the automated tax system. The bill would create $96,000 in savings by eliminating salaries and wages associated with 2.00 FTE positions that would no longer be needed to administer, process, and track the Food Sales Tax Credit in 2014. These savings would be offset in FY 2014 by $165,490 in additional costs associated with one-time computer programming costs. The required programming for this bill by itself (3,408 hours of in-house programming and 1,920 hours of implementation) 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.

The Earned Income Tax Credit Program is used as the primary state match for the federal Temporary Assistance for Needy Families (TANF) Program. Eliminating the ability of this tax credit from being refunded to taxpayers has the potential to require additional state matching funds devoted to state child welfare and poverty programs through the budget process to count toward the state maintenance of effort requirements and avoid any federal TANF penalties. Any fiscal effect associated with SB 430 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

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

cc: Steve Neske, Revenue
Tom Day, KCC