

January 25, 2022

The Honorable Caryn Tyson, Chairperson  
Senate Committee on Assessment and Taxation  
Statehouse, Room 548-S  
Topeka, Kansas 66612

Dear Senator Tyson:

**SUBJECT:** Fiscal Note for SB 339 by Senate Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 339 is respectfully submitted to your committee.

SB 339 would exempt food and food ingredients, including food sold at restaurants, from state retail sales and compensation use tax on January 1, 2023. Food and food ingredients would be defined as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients would not include alcoholic beverages or tobacco. Food and food ingredients would specifically include bottled water, candy, dietary supplements, food sold through vending machines, prepared food (food sold at restaurants), and soft drinks. The bill would provide specific definitions for bottled water, candy, dietary supplements, food sold through vending machines, prepared food, and soft drinks. The bill would not adjust the distribution of state retail sales and compensating use tax revenue, which would remain the same as current law: 83.846 percent to the State General Fund and 16.154 percent to the State Highway Fund.

Under current law, Kansas residents with qualifying income of \$30,615 or less are able to claim the non-refundable food sales tax credit if the taxpayer is 55 years of age or older, or is blind or disabled, or has a dependent child under 18 who lived with the resident all year and whom the resident claims as a personal exemption. The bill would repeal the non-refundable food sales tax credit beginning in tax year 2023.

Estimated State Fiscal Effect				
	FY 2022 SGF	FY 2022 All Funds	FY 2023 SGF	FY 2023 All Funds
Revenue	--	--	(\$268,100,000)	(\$319,800,000)
Expenditure	--	--	\$812,795	\$812,795
FTE Pos.	--	--	--	8.00

The Department of Revenue estimates that SB 339 would reduce state revenues by \$319.8 million in FY 2023. Of that total, the State General Fund is estimated to decrease by \$268.1 million in FY 2023, while the State Highway Fund is estimated to decrease by \$51.7 million in FY 2023. The bill would have no fiscal effect on local sales tax revenues. The fiscal effect to state revenues during subsequent years would be as follows:

<u>Tax Policy Changes (SGF Only)</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Food and Food Ingredients	(\$268,100,000)	(\$655,700,000)	(\$668,200,000)
Foods Sales Tax Credit	--	10,300,000	10,300,000
Total SGF	(\$268,100,000)	(\$645,400,000)	(\$657,900,000)
<u>Tax Policy Changes (SHF Only)</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Food and Food Ingredients	(\$ 51,700,000)	(\$ 126,300,000)	(\$128,700,000)
Total	(\$319,800,000)	(\$771,700,000)	(\$786,600,000)

To formulate the estimates of the sales tax exemption for food and food ingredients (including food sold at restaurants), the Department assumes that 24.0 percent of all current sales tax collections are collected on food and food ingredients (including food sold at restaurants). The Department estimates that exempting food and food ingredients (including food sold at restaurants) would result in a reduction in state sales tax collections of \$319.8 million in FY 2023, \$782.0 million in FY 2024, and \$796.9 million in FY 2025. Retailers would be required to collect retail sales or compensating use tax at two different rates depending on the products sold. The bill would require food retailers to file two returns each month, one for food sales only subject to the local tax (similar to the current utility return) and the current return for items subject to the state and local sales tax. The Department indicates these additional requirements could be burdensome to some retailers.

The bill would repeal the current non-refundable food sales tax credit after December 31, 2022. The current non-refundable food sales tax credit is restricted to taxpayers that earn \$30,615 or less and are over the age of 55, or disabled or blind, or have at least one dependent under the age of 18 living with them the entire year. Under the provisions of the federal Tax Cut and Jobs Act of 2017, the IRS no longer collects the number of dependent exemptions claimed on federal income tax returns, which places the burden to verify and audit dependent exemption data for the current food sales tax credit on the Department of Revenue. The Department of Revenue indicates that 69,307 taxpayers claimed \$9,966,464 in non-refundable food sales tax credits in tax year 2020. Repealing this tax credit would save approximately \$10.3 million in State General Fund refunds in FY 2024 and in future fiscal years.

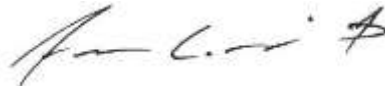
The Department indicates that the bill would require \$812,795 from the State General Fund in FY 2023 to implement the bill and to modify the automated tax system. The bill would require that the Department hire 8.00 new FTE positions to provide customer relations and business support and meet additional accounting and audit needs. Ongoing administrative costs of \$525,864 from the State General Fund for the salaries and wages for the 8.00 FTE positions would be required in FY 2024 and in future fiscal years. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. In addition, 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, additional expenditures for outside contract programmer services beyond the Department's current budget may be required.

The Kansas Department of Transportation indicates that the bill would reduce state revenues to the State Highway Fund as noted above. The Kansas Department of Transportation indicates that when the state receives lower State Highway Fund dollars it may be required to make corresponding reductions to planned expenditures for projects funded under the comprehensive transportation plan.

The League of Kansas Municipalities and Kansas Association of Counties indicates the bill eliminates the state sales tax on food and food ingredients while allowing local governments to continue to charge a sales tax on food and food ingredients, including food sold at restaurants, has the potential to alter shopping habits, especially near the border, and could increase local sales tax revenues that are used in part to finance local governments. The fiscal effect associated with SB 339 is not reflected in the in *The FY 2023 Governor's Budget Report*.

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 Municipalities  
Jay Hall, Association of Counties