

March 17, 2022

REVISED

The Honorable Adam Smith, Chairperson
House Committee on Taxation
Statehouse, Room 346-S
Topeka, Kansas 66612

Dear Representative Smith:

SUBJECT: Revised Fiscal Note for HB 2711 by House Committee on Taxation

In accordance with KSA 75-3715a, the following revised fiscal note concerning HB 2711 is respectfully submitted to your committee.

HB 2711 would reduce the state retail sales and compensation use tax rate from 6.5 percent to 6.3 percent beginning on July 1, 2022. The bill would set the state retail sales and compensation use tax rate on food and food ingredients at 3.5 percent beginning on July 1, 2022. If the balance of the Budget Stabilization Fund is \$100.0 million or greater on July 1, 2023, and on each future July 1st, the Director of Legislative Research would certify to the Secretary of Revenue and the Director of the Budget that the ending balance requirement was satisfied. Upon each certification, the Secretary of Revenue would reduce the state retail sales and compensating use tax rates on food and food ingredients by 1.2 percent the following January 1st. Once the state rate on food and food ingredients is reduced to 0.0 percent, then the rate would be set permanently at 0.0 percent and no further reductions would occur. Once the state sales tax rate becomes 0.0 percent on food and food ingredients, local governments and Washburn University would still be able to charge a local sales tax on food and food ingredients.

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, bottled water, candy, dietary supplements, food sold through vending machines, soft drinks, tobacco, or certain prepared food (generally food sold at restaurants). The bill would provide specific definitions for bottled water, candy, dietary supplements, food sold through vending machines, prepared food, and soft drinks. Beginning on July 1, 2022, the bill would decrease the distribution of state retail sales and compensating use tax revenue to the State General Fund from 83.846 percent to 82.381 percent and increase the distribution to the State Highway Fund from 16.154 percent to 17.619 percent.

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 you all year whom you claim as a personal exemption. The bill would make this tax credit refundable beginning in tax year 2023. The bill would repeal the refundable food sales tax credit after the state sales tax rate becomes 0.0 percent on food and food ingredients.

Estimated State Fiscal Effect				
	FY 2022 SGF	FY 2022 All Funds	FY 2023 SGF	FY 2023 All Funds
Revenue	--	--	(\$336,200,000)	(\$333,500,000)
Expenditure	\$287,531	\$287,531	\$525,264	\$525,264
FTE Pos.	--	--	--	8.00

The Department of Revenue estimates that HB 2711 would reduce state revenues by \$333.5 million in FY 2023. Of that total, the State General Fund is estimated to decrease by \$336.2 million in FY 2023, while the State Highway Fund is estimated to increase by \$2.7 million in FY 2023. Local sales tax revenues from food and food ingredients are not estimated to be affected under those provisions of this bill. The fiscal effect to state revenues during subsequent years would be as follows:

<u>Tax Changes (SGF)</u>	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
Sales Tax	(\$391,800,000)	(\$478,100,000)	(\$564,900,000)	(\$620,900,000)
Foods Sales Tax Credit	<u>(39,300,000)</u>	<u>(39,700,000)</u>	<u>(40,100,000)</u>	<u>10,300,000</u>
	(\$431,100,000)	(\$517,800,000)	(\$605,000,000)	(\$610,600,000)
 <u>Tax Changes (SHF)</u>	 <u>FY 2024</u>	 <u>FY 2025</u>	 <u>FY 2026</u>	 <u>FY 2027</u>
Sales Tax	(\$6,700,000)	(\$22,500,000)	(\$38,400,000)	(\$47,500,000)
Total	(\$437,800,000)	(\$540,300,000)	(\$643,400,000)	(\$658,100,000)

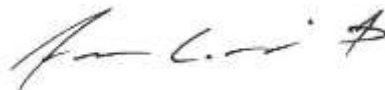
To formulate the estimates of the sales tax exemption for food and food ingredients, the Department assumes that 15.0 percent of all current sales tax collections are collected on food and food ingredients. The Department estimates that reducing the food and food ingredients sales tax rate and reducing the overall state retail sales and compensation use tax rate would result in a reduction in state sales tax collections of \$333.5 million in FY 2023, \$398.5 million in FY 2024, and \$500.6 million in FY 2025. In the original fiscal note issued, the fiscal effect on lower sales tax collections was only attributed to the reducing the rate on food and food ingredients; however, the amounts also included the fiscal effect of reducing the overall state retail sales and compensation use tax rate. The estimate assumes the Budget Stabilization Fund balance threshold outlined in the bill would be met each year reducing the state sales tax rate on food and food ingredients to 2.3 percent on January 1, 2024, 1.1 percent on January 1, 2025, and 0.0 percent on January 1, 2026. Retailers would be required to collect retail sales or compensating use tax at two different rates depending on the products sold. The Department indicates these additional requirements could be burdensome to some retailers.

The bill would make the current non-refundable food sales tax credit refundable beginning in tax year 2023. The Department of Revenue indicates that 69,307 taxpayers claimed \$9,966,464 in non-refundable food sales tax credits in tax year 2020. Under current law, \$10.3 million in non-refundable food sales tax credit would be claimed in State General Fund refunds in FY 2024 and in future fiscal years. Making this tax credit refundable is estimated to result in additional tax credits to be claimed of \$39.3 million in FY 2024, \$39.7 million in FY 2025, and \$40.1 million in FY 2026. Once the state sales tax rate becomes 0.0 percent on food and food ingredients, then repealing the food sales tax credit would save approximately \$10.3 million in State General Fund refunds in FY 2027 and in future fiscal years.

The Department indicates that the bill would require \$287,531 from the State General Fund in FY 2022 to implement the bill and to modify the automated tax system. The bill would require \$525,264 from the State General Fund in FY 2023 and in future fiscal years for the ongoing costs for the Department to hire 8.00 new FTE positions to provide customer relations and business support and meet additional accounting and audit needs. Additional IT costs would likely be required in future fiscal years to make adjustments to the state sales tax rate on food and food ingredients, allow the food sale tax credit to be refundable, and eventually eliminate the food sales tax credit. 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 provide a net reduction in 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 the Kansas Association of Counties indicate the bill would have no fiscal effect on local governments. Any fiscal effect associated with HB 2711 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,



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