

January 27, 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 2487 by Representative Sawyer, et al.

In accordance with KSA 75-3715a, the following revised fiscal note concerning HB 2487 is respectfully submitted to your committee.

HB 2487 would exempt food and food ingredients from state retail sales and compensating use tax on July 1, 2022. 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, tobacco, or certain prepared food (food sold at restaurants). Food and food ingredients would specifically include bottled water, candy, dietary supplements, food sold through vending machines, 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 decrease the distribution of state retail sales and compensating use tax revenue to the State General Fund from 83.846 percent to 81.778 percent and increase the distribution to the State Highway Fund from 16.154 percent to 18.222 percent. The bill would allow local governments to continue to charge a retail sales tax on food and food ingredients.

The bill would provide a sales tax exemption for farm products sold at a farmers' market. The bill lists the farm products that would qualify for this sales tax exemption, including fresh fruits; vegetables; mushrooms; nuts; eggs; honey or other bee products; maple syrup or maple sugar; flowers; nursery stock and other horticultural commodities; livestock food products, including meat, milk, cheese and other dairy products; food products of aquaculture, including fish, oysters, clams, mussels, and other molluscan shellfish taken from the waters of the state; products from any tree, vine, plant, and flower; or any of the products that have been processed, including baked goods made with farm products. The bill also includes a definition of a farmers' market.

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 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	--	--	(\$449,000,000)	(\$442,900,000)
Expenditure	\$287,531	\$287,531	\$525,864	\$525,864
FTE Pos.	--	--	--	8.00

The Department of Revenue estimates that HB 2487 would reduce state revenues by \$442.9 million in FY 2023. Of that total, the State General Fund is estimated to decrease by \$449.0 million in FY 2023, while the State Highway Fund is estimated to increase by \$6.1 million in FY 2023. The retail sales and compensating use tax exemption on farm products sold at farmers’ markets is 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. Exempting farm products sold at farmers’ markets would have a negligible fiscal effect on state revenue because most of those products would be included in the state sales tax exemption on food and food ingredients. 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 Policy Changes (SGF Only)</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Food and Food Ingredients	(\$449,000,000)	(\$492,200,000)	(\$502,900,000)
Foods Sales Tax Credit	--	10,300,000	10,300,000
Total SGF	(\$449,000,000)	(\$481,900,000)	(\$492,600,000)
<u>Tax Policy Changes (SHF Only)</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Food and Food Ingredients	\$ 6,100,000	\$ --	\$ 1,300,000
Total	(\$442,900,000)	(\$481,900,000)	(\$491,300,000)

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 exempting food and food ingredients would result in a reduction in state sales tax collections of \$442.9 million in FY 2023, \$492.2 million in FY 2024, and \$501.6 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 Department indicates these additional requirements could be burdensome to some retailers.

The Department of Revenue indicates that the bill has the potential to place Kansas out of compliance with the Streamlined Sales and Use Tax Agreement with new language dealing with farmers’ markets. The Department of Revenue estimates that more than \$60.4 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. This potential bill effect was not noted in the original fiscal note issued.

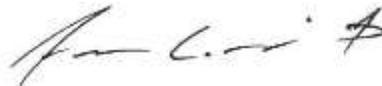
The bill would repeal the current non-refundable food sales tax credit after December 31, 2022. The current non-refundable food sales tax credit is restricted to taxpayers that earn \$30,615 or less and are over the age of 55, or disabled or blind, or have at least one dependent under the age of 18 living 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 \$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 \$525,864 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. 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 increase state revenues to the State Highway Fund as noted above. The Kansas Department of Transportation indicates that the bill would provide additional revenues 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 has the potential to alter shopping habits, especially near the border, and could increase local sales tax revenues that that are used in part to finance local governments. Any fiscal effect associated with HB 2487 is 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