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Adam C. Proffitt, Director

Laura Kelly, Governor

March 6, 2024

The Honorable Adam Smith, Chairperson
House Committee on Taxation
300 SW 10th Avenue, Room 346-S
Topeka, Kansas 66612

Dear Representative Smith:

SUBJECT: Fiscal Note for HB 2798 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2798 is respectfully submitted to your committee.

HB 2798 would create a procedure to allow corporate income tax rates to decrease in tax year 2027. In FY 2026, the Director of the Budget would certify to the Secretary of Revenue at the end of the fiscal year that the amount of actual corporate income tax receipts to the State General Fund that is in excess of the prior fiscal year's corporate income tax receipts. The Secretary of Revenue would be required to compute the corporate income tax rate reductions to the normal tax on corporation that would decrease receipts by the certified amount rounded down to the nearest 0.1 percent. The rate change would be required to published by the Secretary of Revenue by October 1, 2026, and would go into effect in tax year 2027. The rate reduction would remain in effect unless further reduced. Lower tax receipts would not trigger an automatic rate increase.

The bill would allow financial institutions to elect to apportion business income by the taxpayer's receipts factor for tax year 2024 and 2025. The election would be effective and irrevocable for the taxable year of the election and would be binding on all members of a unitary group of corporations. All business income would be apportioned by multiplying the business income by the receipts factor beginning on December 31, 2025 (the fiscal note assumed that this would start in tax year 2026). The bill would also create a deduction for qualified companies that see an increase in tax liability from the single sales factor.

The bill would allow a taxpayer to elect to apportion business income by multiplying the taxpayer's business income by the sales factor for tax years 2024 and 2025. The election would be effective and irrevocable for the taxable year of the election. All business income would be apportioned by multiplying the business income by the sales factor beginning on December 31, 2025 (the fiscal note assumed that this would start in tax year 2026). The bill would allow any taxpayer that previously made an election to make a new election to apportion business income by multiplying the taxpayer's business income by the sales factor. The bill would also create a deduction for qualified companies that see an increase in tax liability from the single sales factor.

The bill would allow trucking companies to use the same apportionment methods as most other companies instead of using mileage-based apportionment. The bill would also remove outdated language from previous tax years.

The Department of Revenue estimates that HB 2798 would decrease State General Fund Revenues by at least $162.4 million in FY 2025, $87.7 million in FY 2026, and $7.9 million in FY 2027.

To formulate these estimates, the Department of Revenue reviewed corporate income tax returns from tax year 2021. Companies that operate solely in Kansas would see no change from the apportionment method changes in this bill. For tax years 2024 and 2025, companies would have the option to choose between using the current thee factor apportionment method or a single sales factor when they file their return. It is assumed companies will choose the method that results in a lower tax liability. Based on tax year 2021 data, an optional single sales factor would decrease corporate tax liability by $103.2 million per tax year. For tax year 2026, the single sales factor would become mandatory, which is expected to increase tax liability by $10.4 million.

For financial institutions, data on the three-factor formula is not available. The impact on privilege tax was estimated using the impacts for corporate tax and 2021 collection data. This would be expected to decrease privilege tax liability by $9.5 million in both tax years 2025 and 2026 and increase tax liability by $1.0 million in tax year 2027.

For interstate motor carriers, three factor data is not available due to current use of mileage-based apportionment. Companies operating in multiple states were identified based on NAICS codes and the current apportionment factor used. These companies having the option to use single sales factor apportionment and basing sales on cost of performance would be expected to decrease tax collections by at least $12.2 million per tax year.

The deductions provided in the bill would take effect in tax year 2027 with the first impact being seen in late FY 2027. Limited information is available to determine this impact. Based on population size and a similar deduction in Massachusetts, this would be expected to decrease the State General Fund by a total of $223.7 million, which would likely be spread out with $22.4 million claimed per tax year over the next ten tax years that the deduction is in effect.

The corporate tax rate reduction mechanism for tax year 2027 would likely be triggered based on the fiscal note of this bill that reduces FY 2025 receipts by a greater amount than what is estimated to occur in FY 2026. Using the estimate from this fiscal note, net corporate income tax collections would decrease to $1,342.2 million in FY 2025 and then increase to $1,416.9 million in FY 2026. This increase, by itself, would result in a corporate rate decrease of 0.4 percent for tax year 2027. This fiscal note does not take into effect any reduction in corporate income tax receipts due to the rate reduction mechanism because actual receipts from FY 2025 and FY 2026 are unknown.

The estimate for FY 2025 includes 100.0 percent of tax year 2024 tax liability and 30.0 percent of tax year 2025 tax liability. The estimate for FY 2026 includes 70.0 percent of tax year 2025 tax liability and 30.0 percent of tax year 2026 tax liability.

The Department indicates that the bill would require $69,878 from the State General Fund in FY 2025 to implement the bill and to modify the automated tax system. 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. Any fiscal effect associated with HB 2798 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,

Adam C. Proffitt
Director of the Budget

cc: Bobbi Mariani, Insurance Department
Barbara Albright, Office of the State Bank Commissioner
Lynn Robinson, Department of Revenue