

March 16, 2015

The Honorable Marvin Kleeb, Chairperson
House Committee on Taxation
Statehouse, Room 185-N
Topeka, Kansas 66612

Dear Representative Kleeb:

SUBJECT: Fiscal Note for HB 2389 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2389 is respectfully submitted to your committee.

HB 2389 would modify the net operating loss deduction for Kansas income tax purposes. The bill would allow a Kansas net operating loss to be carried back three years if a net operating loss incurred from the sale at a loss of a historic hotel that was improved using funds borrowed on both the historic hotel and farmland, and previously, the farmland was sold at a gain to pay off the mortgage of the historic hotel. The bill requires that the historic hotel be located in a community with less than 2,500 citizens and be within 20 miles of the farmland. The bill would be retroactive to tax year 2006.

The Department of Revenue indicates HB 2389 would allow a single taxpayer to claim a refund for Kansas income taxes paid on the capital gains of farmland sold in a year prior to 2006, to help offset the capital loss that occurred from the sale of a small business in tax year 2006. The loss incurred by this taxpayer is a "capital loss." The Internal Revenue Service allows this type of capital loss to be claimed in the year it occurs. If it was a net operating loss, the IRS would allow a carry back and a carry forward of the loss. For Kansas income tax purposes, net operating losses for individual income taxpayers were repealed effective in tax year 2013. Prior to tax year 2013, net operating losses were allowed to be carried forward, but could not be carried back to any prior tax year. This bill would create a retroactive exception to those rules for one individual income taxpayer. The Department of Revenue indicates the bill would decrease state revenues to the State General Fund; however, without a waiver of confidentiality from the taxpayer as to such information, the Department cannot provide the specific amount of revenue loss.

The Department indicates that the bill would require \$35,100 from the State General Fund in FY 2016 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

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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. Any fiscal effect associated with HB 2389 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Jack Smith, KDOR