

March 18, 2019

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

Dear Representative Johnson:

SUBJECT: Fiscal Note for HB 2388 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2388 is respectfully submitted to your committee.

Calculations for Kansas income taxes are based on the Kansas federal taxable income, which is calculated by adding or subtracting certain types of income from the federal taxable income. HB 2388 would allow a taxpayer to make an election to add the bonus depreciation deduction amount to income for Kansas corporation income tax purposes beginning in tax year 2018. Additionally, all federal deductions from the first-year depreciation allowance from the bonus depreciation provisions would be added back for Kansas corporation income tax purposes beginning in tax year 2018 for property that is put in to service in the applicable tax year.

Under current law, a taxpayer's net operating losses can be carried forward up to ten tax years following the taxable year of the net operating loss. The bill would extend the net operating loss carried forward period to 20 years beginning in tax year 2018. The amount of the net operating loss deduction would be the lesser of the aggregate Kansas net operating loss carryover to that tax year or 100.0 percent of Kansas taxable income computed without the allowable net operating loss deduction.

The Department of Revenue indicates HB 2388 would reduce State General Fund revenue beginning in FY 2020; however, the Department does not have data to make a precise estimate of the fiscal effect. The Department indicates that Kansas conforms to the federal treatment for the bonus depreciations provisions of the federal Tax Cuts and Jobs Act of 2017, which allows 100.0 percent depreciation on property in service by tax year 2022. Kansas corporation taxpayers would only elect to opt out or decouple from this provision if it decreases the taxpayers' total tax liability for a certain period of time, which has the potential to reduce future State General Fund collections. The Department does not have data to estimate the number of taxpayers that would choose this election or the amount of taxes that would be saved or increased by corporation income taxpayers with this proposed policy change.

To formulate the fiscal effect of allowing 100.0 percent Kansas net operating loss deduction and extending the net operating loss carried forward to 20 years, the Department of Revenue reviewed net operating loss deductions for Kansas corporation tax returns from tax year 2016. The Department estimates that approximately 2,992 corporation taxpayers would reduce overall corporation income tax liability over the carried forward period by \$5.2 million from allowing 100.0 percent net operating loss deduction from Kansas income. The Department estimates that this would reduce State General Fund revenues by approximately \$500,000 in FY 2020, \$1.0 million in FY 2021, and \$1.6 million in FY 2022. Extending the net operating loss carried forward period to 20 years would have no fiscal effect until tax year 2029 or FY 2030. In tax year 2016, corporations claimed approximately \$1.0 billion in net operating loss deductions, which represents approximately \$70.0 million in reductions of future tax liability. Assuming similar results in tax year 2018 and if 2.0 percent of the amount of net operating loss deductions is not utilized until after the 10th taxable year, then the bill would reduce State General Fund revenues by approximately \$1.4 million in tax year 2029 or FY 2030.

The Department of Revenue indicates that it would require a total of \$399,615 from the State General Fund in FY 2020 to implement the bill and to modify the automated tax system. The bill would require the Department to hire 1.00 new FTE position to review, process, and audit additional income tax returns. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue and outside contract programmer services. 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 2388 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "L. L. Campbell", written in a cursive style.

Larry L. Campbell
Director of the Budget

cc: Lynn Robinson, Department of Revenue