

March 9, 2022

The Honorable Caryn Tyson, Chairperson
Senate Committee on Assessment and Taxation
Statehouse, Room 548-S
Topeka, Kansas 66612

Dear Senator Tyson:

SUBJECT: Fiscal Note for SB 495 by Senate Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 495 is respectfully submitted to your committee.

SB 495 would enact the Salt Parity Act. The bill would allow a S corporation or partnership to annually elect to be subject to income tax at the entity level for the taxable period beginning in tax year 2022. The S corporation or partnership would make the election on the return filed by the S corporation or partnership. The filing of the return would be binding on all electing passthrough entity owners. The election would only be allowed in a taxable year where there is a limitation on state and local tax deductions allowed to individuals under the federal Internal Revenue Code. An electing pass-through entity would be subject to a tax in an amount equal to 5.7 percent of the sum of each electing pass-through entity owner's distributive share of the electing pass-through entity's income attributable to the state. Any excess income tax credit, net operating loss, or other modification would be allowed to be carried forward on the electing pass-through entity's return but would only be utilized in a year in which the electing pass-through entity has made the election, except that any limitation for an income tax credit, the net operating loss, or any other modification would apply to the electing pass-through entity.

The bill would allow the electing pass-through entity owners to not be liable for the income tax in their separate or individual capacities, and the electing pass-through entity's income attributable to the state would not be taken into account by the electing pass-through entity owners. A nonresident individual or fiduciary whose only source of income from this state is income from an electing pass-through entity under the Salt Parity Act would not be required to file an income tax return. The Secretary of Revenue would have the power to write rules and regulations to implement the bill.

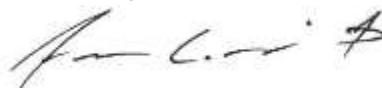
Calculations for Kansas income taxes are based on the Kansas adjusted gross income, which is calculated by adding or subtracting certain types of income from the federal adjusted gross income. The bill would allow the amount equal to the electing pass-through entity owner's

distributive share of the electing pass-through entity's income attributable to the state that is taxed under the provisions of the Salt Parity Act to be subtracted from income for Kansas income tax purposes beginning in tax year 2022. Additionally, the amount equal to the electing pass-through entity owner's distributive share of the electing pass-through entity's losses attributable to the state that are taxed under the provisions of the Salt Parity Act would be added back for Kansas income tax purposes beginning in tax year 2022.

The Department of Revenue indicates SB 495 would implement what is commonly referred to as a SALT (state and local tax) cap workaround. This legislation is in response to the changes made at the federal level through the 2017 Tax Cuts and Jobs Act. In the Tax Cuts and Jobs Act, the federal government limited the amount of state and local taxes that an individual could deduct to \$10,000 for joint and individual filers and a \$5,000 for married couples filing separate. The federal cap applies to tax years 2018 through 2025. The bill would create a new tax regime for Kansas pass-through entities (limited liability companies, partnerships, and S corporations) for the purpose of allowing owners of pass-through entities an opportunity to avoid the federal \$10,000 state and local tax deduction cap when computing their individual federal income taxes. The workaround is achieved by shifting the incidence of state and local taxes from the owners of the pass-through entities to the pass-through entities themselves, which are not subject to the federal deduction cap. The legislation only impacts individual taxpayers who receive income from a pass-through entity and allows only those taxpayers to lower their federal income taxes. The Department indicates that there are approximately 102,000 pass-through entities in Kansas. The Department does not have the data necessary on applicable pass-through entities to estimate the fiscal effect of the SALT Parity Act.

The Department of Revenue indicates that it would require a total \$302,030 from the State General Fund in FY 2023 to implement the bill and to modify the automated tax system. The bill would require the Department to hire 2.00 new FTE positions to answer questions from taxpayers. The Department estimates that ongoing expenses for salaries and wages for the 2.00 FTE positions and overhead expenses would total \$121,231 from the State General Fund in FY 2024. 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 SB 495 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue