

March 16, 2011

The Honorable Richard Carlson, Chairperson
House Committee on Taxation
Statehouse, Room 274-W
Topeka, Kansas 66612

Dear Representative Carlson:

SUBJECT: Fiscal Note for HB 2392 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2392 is respectfully submitted to your committee.

HB 2392 would allow the Director of Accounts and Reports to enter into an agreement with the federal Department of the Treasury for participation in the Treasury Offset Program (TOP). Under the agreement, the State of Kansas would provide TOP with state tax and nontax debts in which federal payments to individuals and vendors would be matched. If a successful match is made, an administrative setoff (the matching of federal payments against state tax or nontax debts) would occur. In addition, State of Kansas payments to individuals and vendors would be reviewed against federal nontax obligations. If a match occurred, the payments would be intercepted to apply against the federal nontax obligations.

While the Department of Administration already has a state debt setoff program in place, new processes would have to be developed to manage and maintain TOP due to different federal requirements. Under the current Setoff Program, debts are placed in the Kansas Debt Recovery System (KDRS) and state payment files are matched against KDRS. If a match occurs, the payment is suspended. Under TOP, federal debts would not be maintained in KDRS, but rather payment files from the state's accounting system would be sent nightly to the Department of the Treasury. The Treasury would then perform the matching process, and notify the state of any monies available to intercept. While the Department of the Treasury states that this process would take two hours, SMART (the state's accounting system) processing would be delayed while the matching process takes place, and SMART programs would need to be modified to continue processing, less the amount of federal offset. However, the Department of Administration does not have an estimate for the costs for the modifications to SMART.

In addition, separate and new processes outside the current setoff program would need to be developed to track and remit the collections made on behalf of the Department of the Treasury, and to notify debtors that their state payment has been intercepted for a federal debt. All state payments would be subject to TOP, with the exception of the majority of income tax

refunds and other state payments exempted by statutory authority. The Department of Revenue issues the majority of the income tax refunds from its own tax system and not through SMART.

The “due process notification” requirement for TOP would be different than those of the current setoff program. Due process requirements under the TOP program would occur prior to the debt being submitted to the federal system. Under the current setoff program, debts are matched upon, and then a “notice of intent” is sent to the individual whose payment is being held. Within the “notice of intent,” the appeals process is explained. State agencies wishing to submit debts to the TOP Program would have to change their business practices to provide notice of the debt and the intent to use the federal offset program in accordance with federal rules and regulations. State agencies would also have to review federal law and regulations concerning their particular debts to determine if additional due process requirements are needed. The current setoff process would not be used to notify the debtors or agencies making payments. A separate process would need to be established and maintained to manage the notification process. In addition, state agencies wishing to submit debts to TOP would have to certify to the federal Financial Management System (FMS) that the debt is past due, legally enforceable, and the creditor agency has provided the debtor with a notice and an opportunity to review in accordance with applicable laws.

There is no fee associated with participation in TOP as a payment agency; however, TOP would charge a fee for each successful offset. TOP would deduct the offset fees from the total amount of funds collected and credit the agency’s account with the net offset amount. The creditor agency may add any costs associated with collecting a debt to the amount of the debt, as authorized by federal law. TOP now includes an indicator to provide for the fee amount being charged to the debtor automatically if the agency is allowed to pass this cost to the debtor. TOP would estimate the fee charged to the creditor agency on an annual basis, based on the projected volume of offsets and corresponding costs, in accordance with activity based costing, and will provide supporting information regarding the calculation of the fee as requested.

Because of the different requirements of both offset programs, a separate debt file would have to be maintained for submission to the Department of the Treasury. As this process would be new for the State of Kansas, additional staff would be required to manage and maintain this reciprocating process. The Department of Administration does not have an estimate of the number of staff or associated costs required for TOP; the agency notes that further study would be required to determine the actual resources necessary to manage and maintain this program after implementation. Other unknown costs are the actual costs or impacts to the state financial system. Modification would be required for this process, such as new outbound and inbound interfaces to handle submitting the payment file and the return of identified matches, setting up a credit memo process similar to the process used for the current setoff program. An agency notification process would also be required. In addition, the two-hour match process by TOP would add a two-hour delay to the nightly batch processes, potentially delaying system availability for users the following morning.

According to the Kansas Department of Revenue, enactment of HB 2392 could increase tax revenue to the State General Fund by up to \$1.7 million in FY 2012 and \$3.5 million in FY

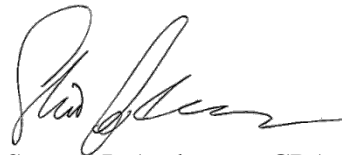
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2013. The agency assumes a six-month lead time to implement the legislation. The Department notes that it recently participated in a test with the Department of the Treasury, which indicated that Kansas could have collected approximately \$320,000 in one month if the state would have been part of the reciprocal offset agreement with the federal government. The Department estimated the additional revenues to the State General Fund from the results of the test. Any administrative costs to the Department would depend on the number of taxpayers contacting the Department regarding offsets. Any fiscal effect associated with HB 2392 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Pat Higgins, Administration