

February 21, 2022

REVISED

The Honorable Adam Smith, Chairperson  
House Committee on Taxation  
Statehouse, Room 346-S  
Topeka, Kansas 66612

Dear Representative Smith:

**SUBJECT:** Revised Fiscal Note for HB 2616 by House Committee on Taxation

In accordance with KSA 75-3715a, the following revised fiscal note concerning HB 2616 is respectfully submitted to your committee.

HB 2616 would set the state retail sales and compensation use tax on food and food ingredients at 4.3 percent beginning on July 1, 2022. If the 7.5 percent ending balance requirement is met in FY 2023, then the state food sales tax rate would be reduced to 2.1 percent beginning on October 1, 2023. If the 7.5 percent ending balance requirement is met in FY 2024, then the state food sales tax rate would be reduced to 0.0 percent beginning on October 1, 2024. Once the state sales tax rate becomes 0.0 percent on food and food ingredients, local governments would still be able to charge a local sales tax on food and food ingredients.

Food and food ingredients would be defined as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients would not include alcoholic beverages, bottled water, candy, dietary supplements, food sold through vending machines, soft drinks, tobacco, or certain prepared food (food sold at restaurants). The bill would provide specific definitions for bottled water, candy, dietary supplements, food sold through vending machines, prepared food, and soft drinks. The bill would not adjust the distribution of state retail sales and compensating use tax revenue, which would remain the same as current law: 83.846 percent to the State General Fund and 16.154 percent to the State Highway Fund.

Estimated State Fiscal Effect				
	FY 2022 SGF	FY 2022 All Funds	FY 2023 SGF	FY 2023 All Funds
Revenue	--	--	(\$125,700,000)	(\$149,900,000)
Expenditure	\$287,531	\$287,531	\$525,264	\$525,264
FTE Pos.	--	--	--	8.00

The Department of Revenue estimates that HB 2616 would reduce state revenues by \$149.9 million in FY 2023. Of that total, the State General Fund is estimated to decrease by \$125.7 million in FY 2023, while the State Highway Fund is estimated to decrease by \$24.2 million in FY 2023. Local sales tax revenues from food and food ingredients are not estimated to be affected under those provisions of this bill. In the original fiscal note issued, language was included that the Streamlined Sales Tax Agreement requires once a taxable item is exempt from state sales taxes, it would also be exempt from local sales taxes, which remains valid. However, setting the state sales tax on food and food ingredients at 0.0 percent is not interpreted as an exemption allowing local governments to continue charging a sales tax on those items. The fiscal effect to state revenues during subsequent years would be as follows:

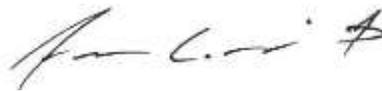
	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
State General Fund	(\$232,800,000)	(\$375,200,000)	(\$428,500,000)	(\$436,700,000)
State Highway Fund	<u>(44,900,000)</u>	<u>(72,300,000)</u>	<u>(82,600,000)</u>	<u>(84,100,000)</u>
	(\$277,700,000)	(\$447,500,000)	(\$511,100,000)	(\$520,800,000)

To formulate the estimates of the sales tax exemption for food and food ingredients, the Department assumes that 15.0 percent of all current sales tax collections are collected on food and food ingredients. The Department estimates that reducing the food and food ingredients sales tax rate would result in a reduction in state sales tax collections of \$149.9 million in FY 2023, \$277.7 million in FY 2024, and \$447.5 million in FY 2025. Retailers would be required to collect retail sales or compensating use tax at two different rates depending on the products sold. The Department indicates these additional requirements could be burdensome to some retailers.

The Department indicates that the bill would require \$287,531 from the State General Fund in FY 2022 to implement the bill and to modify the automated tax system. The bill would require \$525,264 from the State General Fund in FY 2023 and in future fiscal years for the ongoing costs for the Department to hire 8.00 new FTE positions to provide customer relations and business support and meet additional accounting and audit needs. 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.

The Kansas Department of Transportation indicates that the bill would reduce state revenues to the State Highway Fund as noted above. The Kansas Department of Transportation indicates that when the state receives lower State Highway Fund dollars it may be required to make corresponding reductions to planned expenditures for projects funded under the comprehensive transportation plan. The League of Kansas Municipalities and the Kansas Association of Counties indicate the bill would have no fiscal effect on local governments. Any fiscal effect associated with HB 2616 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt  
Director of the Budget

cc: Jay Hall, Association of Counties  
Lynn Robinson, Department of Revenue  
Brendan Yorkey, Department of Transportation  
Wendi Stark, League of Municipalities