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MEMORANDUM

TO: Governor's Council on Tax Reform

FROM: Mark A. Burghart
Secretary of Revenue

RE: SGF Receipts, 2021 Return Processing, Paycheck Protection Program Fiscal Note,
Legislative Developments and American Rescue Plan Litigation

DATE: April 2, 2021

I. STATE GENERAL FUND RECEIPTS THROUGH MARCH 2021

- Total tax-only receipts for March were \$590.0 million which was \$52.2 million or 9.7% above the estimate and \$66.6 million or 12.7% over March 2020. For comparison purposes, one should note that March 2020 was in the early stage of the COVID-19 pandemic. See Exhibit A.

	<u>March 2021</u>	<u>March 2020</u>	<u>Change</u>
Individual Income Tax	\$255.2	\$247.3	3.2%
Corporate Income Tax	\$ 25.3	\$ 18.4	37.4%
Sales Tax	\$194.2	\$179.4	8.2%
Compensating Use Tax	\$ 42.6	\$ 34.7	22.6%

- Cumulative 2021 tax-only receipts are \$6.0 billion which is \$232.6 million over the estimate and \$740.6 million or 14.0% over the first 9 months of 2020; an estimated \$500-550 million of the overage is due to the deferral of income tax payments from FY 2020 to FY 2021.

II. 2021 TAX RETURN PROCESSING

- 852,862 individual income tax returns have been processed in CY 2021
- 498,176 individual income tax refunds totaling \$214.4 million have been issued thus far in CY 2021
- the average individual income tax refund is \$430
- 195,176 individual income balance due payments totaling \$123.2 million have been received
- the average balance due payment is \$631
- approximately 11.4% fewer returns have been filed in CY 2021 than at the same time in CY 2020; the deadline for filing 2020 individual income tax returns has been extended to May 17, 2021 to coincide with the federal extension

III. FISCAL NOTE FOR EXPENSE DEDUCTIONS RELATED TO FORGIVEN PAYCHECK PROTECTION PROGRAM (PPP) LOANS

- forgiven PPP loans are not subject to federal income tax
- qualified expenditures paid with forgiven PPP loans under the Coronavirus Aid, Relief and Economic Security (CARES) Act and Consolidated Appropriations Act of 2021 are deductible for federal income tax purposes
- more than \$5 billion in PPP loans have been issued to Kansas businesses
- under rolling conformity, Kansas also excludes forgiven PPP loans from taxable income and allows the deduction of qualified PPP expenses
- the total estimated Kansas tax impact spread among FY 2021, FY 2022 and FY 2023 is:

Corporate Income Tax	(\$193,381,160)
Individual Income Tax	(\$166,577,487)
Total Impact	(\$359,958,647)

IV. DIGITAL GOODS AND MARKETPLACE FACILITATOR BILLS

1. Digital Goods

- H.B. 2230 – Governor’s Council on Tax Reform proposal
- bill remains in the House Committee on Taxation
- Fiscal Note: FY22 is \$42.7 million; FY23 is \$48.9 million

2. Marketplace Facilitators

- H.B. 2395 – Governor’s Council on Tax Reform proposal
- a hearing was held by the House Committee on Taxation on March 16
- no *de minimis* is specified for marketplace facilitators or remote sellers
- Fiscal Note: FY22 is \$43.1 million; FY23 is \$49.4 million
- S.B. 50 – originally requested by the Kansas Chamber of Commerce
- \$100,000 *de minimis* threshold for marketplace facilitators and remote sellers
- contents of H.B. 2421 amended into S.B. 50
- increased the standard deduction amounts by \$500
- the Senate concurred with the House amendments

			FY 2022	FY 2023	FY 2024
Section 1-4 and 14	Marketplace Facilitator (7/1/2021) (\$100,000 de minimis for MPF and remote sellers)	SGF	\$35.5	\$41.7	\$44.1
		SHF	\$6.9	\$8.1	\$8.6
Section 5	UI Fraud		\$0.0	\$0.0	\$0.0
Section 6	Corporate tax return due date (TY 2020) (1 month following federal)		\$0.0	\$0.0	\$0.0
Section 7	Remove compensating use tax line on individual return (TY 2022)		\$0.0	\$0.0	\$0.0
Section 8	Limitation on Deduction for Interest (TY 2021)		-\$30.6	-\$37.5	-\$38.6
	GILTI* (TY 2021)		-\$24.2	-\$23.5	-\$23.7
	Deduction for Meal Expenditure (TY 2021)		\$0.0	\$0.0	-\$3.0
Section 9-10	Increase in standard deduction (TY 2021) (S-\$3,500, MFJ-\$8,000, HoFH-\$6,000) and Allowing itemized deductions (TY 2021)		-\$82.9	-\$83.7	-\$84.6
Section 11	Capital contributions (TY 2021)		Negligible	Negligible	Negligible
	Deduction add back for GILTI (estimate included in GILTI above)		-	-	-
	Dividends include repatriation net of deduction (TY 2021)		\$0.0	\$0.0	\$0.0
	Limitation on Deduction for FDIC Premiums (TY 2021)		-\$1.3	-\$1.3	-\$1.3
Section 12	NOL deduction carryforward indefinitely (TY 2018) (impact not until FY 2030 and around \$1.86 million at that time)		\$0.0	\$0.0	\$0.0
Section 13	Expensing Deduction (TY2021) (allow for individuals and change calculation)		\$2.3	\$2.4	\$2.5
	Total SGF		-\$101.2	-\$101.9	-\$104.6
	Total SHF		\$6.9	\$8.1	\$8.6
	Total		-\$94.3	-\$93.8	-\$96.0
	* Individuals are allowed to deduct GILTI income before any deduction. We are unable to determine the impact for this allowance at this time.				

V. AMERICAN RESCUE PLAN (ARP) ACT – HR 1319

- one of the provisions of ARP is the subject of litigation filed by 16 states
- ARP provides: “In general – A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.”
- the “covered period” begins March 3, 2021 and ends December 31, 2024
- by letter dated March 16, 2021, twenty-one attorneys general wrote to Treasury Secretary Janet Yellen seeking assurance that ARP does not prohibit States from generally providing tax relief
- by letter dated March 23, 2021, Secretary Yellen responded noting “Nothing in the Act prevents States from enacting a broad variety of taxes. The Act simply provides that funding received under the Act may not be used to offset a reduction in net tax revenue resulting from certain changes in state law.”
- further guidance from the Department of the Treasury is forthcoming
- 13 attorneys general filed suit in federal district court in Alabama on March 31 seeking to strike down the “tax cut” provision; Ohio, Missouri and Arizona have filed separate suits