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MEMORANDUM

TO: Governor's Council on Tax Reform

FROM: Mark A. Burghart
Secretary of Revenue

RE: Consensus Revenue Estimate (CRE), Paycheck Protection Program Loans, S.B. 50 and American Rescue Plan Act

DATE: April 29, 2021

I. APRIL CONSENSUS REVENUE ESTIMATE

A. Fiscal Year 2021

	FY 2021 CRE 11/06/2020	FY 2021 CRE 04/20/2021	Difference	% Change
Total Receipts (Dollars in Thousands)	$7,707,700	$8,027,500	$319,800	4.1%

- an estimated $500-550 million of income and privilege tax payments were deferred from FY 2020 to FY 2021

B. Fiscal Year 2022

	FY 2022 CRE 11/06/2020	FY 2022 CRE 04/20/2021	Difference	% Change
Total Receipts (Dollars in Thousands)	$7,483,600	$7,524,800	$41,200	0.6%

- receipts were reduced $52.0 million in FY 2021 and $209.6 million in FY 2022 as a result of changes in the Paycheck Protection Program brought about by the Consolidated Appropriations Act of 2021
- the revised FY 2022 estimate represents a 6.3% decrease from the revised FY 2021 total receipts amount
- the estimated state tax impact of all of the federal stimulus programs has not been determined
- the "short memo" reporting the CRE April adjustments prepared by the Kansas Legislative Research Department and Division of the Budget is attached

II. 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 $7.0 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 paid with PPP loans
- the total $360.0 million estimated Kansas tax impact reflected in the CRE is spread among FY 2021, FY 2022 and FY 2023 as follows:

	FY 2021	FY 2022	FY 2023
Corporate Income Tax	$25,083,412	$113,926,467	$54,371,281
Individual Income Tax	$27,008,394	$95,661,160	$43,907,932
Total Impact	$52,091,806	$209,587,627	$98,279,213

III. 2021 S.B. 50

			FY 2022	FY 2023	FY 2024
Section 1-4 and 14	Marketplace Facilitator (7/1/2021) ($100,000 deminimis 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.

- S.B. 50 was vetoed on April 16, 2021
- the marketplace facilitator provision contains a $100,000 *de minimis*; the language of the bill is not that proposed by the Council which is more comprehensive and preferred
- the itemized deduction provision benefits less than 7% of taxpayers; most itemizers under the bill would be in the top 18% of income earners; the current inability to verify claimed deductions remains a major concern
- the subtraction modification for GILTI impacts a small percentage of the 38% of C corporations who actually do have Kansas taxable income

IV. AMERICAN RESCUE PLAN ACT (ARPA) – HR 1319

- ARPA funding may not be used by states to offset a reduction in net tax revenue resulting from statutory changes
- ARPA specifically 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 ARPA 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."
- by release, dated April 7, 2021, the U.S. Department of the Treasury stated that regardless of the particular method of conformity and the effect on net tax revenue, the Treasury reviews such tax changes as permissible under the Act
- further guidance from the U.S. Department of the Treasury is forthcoming
- multiple states have filed suit to set aside the tax offset provision in ARPA
- the potential negative impact on state receipts under ARPA must be taken into account when considering tax reductions, credits, deductions, etc.