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February 3, 2025

The Honorable Susan Estes, Chairperson
House Committee on Education
300 SW 10th Avenue, Room 218-N
Topeka, Kansas 66612

Dear Representative Estes:

SUBJECT: Fiscal Note for HB 2156 by House Committee on K-12 Education Budget

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2156 is respectfully submitted to your committee.

HB 2156 would provide a refundable tax credit, known as the Education Opportunity Tax Credit, for taxpayers with eligible dependent children not enrolled in a public school. The bill would allow a tax credit of $8,000 for each dependent child enrolled full time during the tax year in a private school accredited by the State Board of Education. In addition, a child attending a private school that is recognized by a national or regional accrediting agency that is recognized by the State Board of Education for the purpose of satisfying the teaching performance assessment for professional licensure or is working in good faith toward such accreditation would also be eligible. Also, the bill would allow a $4,000 tax credit for each dependent child enrolled full time during the tax year in a nonaccredited private school.

For Tax Year 2025 and subsequent years, the maximum number of tax credits under the Education Opportunity Tax Credit program would be $125.0 million, with certain exceptions. For future years after Tax Year 2025 where the annual amount of tax credits claimed is equal to or greater than 90.0 percent of the total tax credits available, the following tax year's cap would increase by 25.0 percent. The Department of Revenue (KDOR) would be required to publish on its website information identifying any increases in the maximum total amount of tax credits.

If the number of applications exceeds the available tax credit, the Secretary of Revenue would give priority to taxpayers who have previously received a tax credit. A taxpayer could not receive a tax credit with HB 2156 where a dependent child received a scholarship with the Tax Credit for Low Income Students Scholarship Program (TCLISSP).

KDOR would be required to provide an eligible taxpayer the opportunity to either claim and receive the education opportunity tax credit in advance during the tax year or to claim the tax credit on the annual income tax form. If the taxpayer chooses to claim the tax credit in advance, the taxpayer may file an application at any time during the tax year on a form prescribed by KDOR.

KDOR may consult with the Department of Education only for the purpose of determining whether a dependent child of a taxpayer is enrolled in a public school during the tax year for which the credit is claimed. By making a claim for the education opportunity tax credit, the taxpayer acknowledges that the KDOR may receive this information. On or before January 15 of each year, KDOR would be required to prepare and submit to the Legislature a report on the tax credit for the second preceding tax year. The report would include the total amount of credits claimed and any information on known fraudulent claims for the credit.

Any person who intentionally files a false claim for the tax credit would be required to pay any unpaid balance of tax due plus interest and could be subject to a misdemeanor punishable to a fine of up to $1,000 or imprisoned in the county jail of not less than 30 days, and up to one year, or both a fine and imprisonment penalty. In any legal proceeding challenging the application of this section to a taxpayer receiving the tax credit, the State of Kansas would bear the burden of establishing that the law is necessary and does not impose any undue burden on the on the taxpayer. No liability would arise on the part of KDOR, the State of Kansas, or any public school or school district based on the award of a tax credit that would be authorized by HB 2156.

If any part of the bill would be challenged in a state court as violating either the state or federal constitutions, taxpayers claiming the tax credit would be permitted to intervene for the purposes of defending the tax credit's constitutionality. However, for the purposes of judicial administration, a court may require that all taxpayers file a joint brief if they are not required to join any brief filed on behalf of any named state defendant. The provisions of HB 2156 would be considered severable. Any tax credits received by a taxpayer would be subtracted from federal adjusted gross income for the purposes of Kansas income taxes.

The main fiscal effect of HB 2156 in any given tax year would be the tax credits claimed by parents of students attending accredited and non-accredited private schools, which would reduce revenues to the State General Fund. According to the Department of Education, there were 26,395 students in private schools in Kansas. The Department does not have attendance estimates for non-accredited private schools.

The Department of Revenue estimates that the maximum credits allowed by the bill of $125.0 million would be claimed during Tax Year 2025. This estimate is based upon the fact that the number of accredited private school students, without factoring in non-accredited private school students, would exceed the amount of tax credits allowed by the bill ($8,000 X 26,395 students = $211,160,000). Student count data is from the Department of Education. Further, if 90.0 percent or more of the total tax credits in Tax Year 2025 would be claimed, the Tax Year 2026 cap would increase by $31.3 million to $156.3 million ($125.0 million X 125.0% = $156.3 million), in which all tax credits would likely be claimed.

Because tax years and fiscal years overlap, the Department of Revenue has estimated the fiscal effect of the bill by fiscal year. For FY 2026, the Department estimates that revenues to the State General Fund would be reduced by $281.3 million, including $125.0 million for Tax Year 2025 and $156.3 million for Tax Year 2026. The Department explains that since the tax credit can be claimed at any time, the fiscal effect for both Tax Year 2025 and Tax Year 2026 is anticipated to be experienced in FY 2026. For FY 2027, the reduction is anticipated to be $195.4 million ($156.3 million X 125.0% = $195.4 million). For FY 2028, the reduction is estimated to increase by $48.8 million to $244.1 million ($195.4 million X 125% = $244.1 million).

The Division of the Budget notes that the bill would provide no mechanism in Tax Year 2025 (FY 2026) to address which taxpayers would receive the tax credit, if the number of taxpayers would claim credits greater than the cap. In subsequent years, the bill would provide a priority for taxpayers that previously received the tax credit.

The bill would prohibit parents of students participating in the TCLISSP from claiming the tax credit authorized by the bill. According to the Department of Education's "Tax Credit for Low Income Students Scholarship Program—January 2025 Report to the Legislature," there were 2,360 students that received scholarship under this program totaling $7.2 million during the 2023-2024 school year. The average scholarship received by students was $3,065 ($7,233,672 total amount of scholarships / 2,360 students = $3,065). The Division estimates that some of these parents likely would switch from the TCLISSP to the tax credit authorized by the bill, as the tax credit would be refundable and available at any time during the tax year. However, the number of parents who would make this change cannot be estimated.

The Department of Revenue indicates that the bill would require $271,306 from the State General Fund in FY 2026 to implement the bill and to modify the automated tax system. The bill would require the Department to hire 1.00 new FTE position to answer questions from taxpayers and to assist with the administration of this new program. The Department estimates that ongoing expenses for salaries and wages for the 1.00 FTE position and overhead expenses would total $72,181 from the State General Fund in FY 2027. 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 Department of Education reports that in Tax Year 2024, there were $7,839,995 in contributions to Scholarship Granting Organizations (SGO) with $5,504,239 in tax credits claimed. If the demand for TCLISSP would be reduced with parents switching to the tax credit with this bill, it is not known if the number of contributions to SGOs would change, which could change the amount of tax credits claimed with the TCLISSP.

The Department of Administration indicates that adjusting state income tax collections has the potential to have a fiscal effect on the amount of revenue collected from its debt setoff program.

This program intercepts individual income tax refunds and homestead tax refunds and applies those amounts to debts owed to state agencies, municipalities, district courts, and state agencies in other states. Debts include, but are not limited to child support, taxes, educational expenses, fines, services provided to the debtor, and court ordered restitution. As the dollar amounts of refunds are increased, the amount available for possible debt setoffs is also increased. However, the Department is unable to make an estimate of the amount of debts setoffs that will be intercepted because of the enactment of the bill. Any fiscal effect associated with HB 2156 is not reflected in *The FY 2026 Governor's Budget Report*.

Sincerely,

Adam C. Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Gabrielle Hull, Department of Education