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To: Representative Richard Carlson, Chairman  
Members of the House Taxation Committee

From: Callie Jill Denton  
Director of Public Policy

Date: March 13-14, 2012

RE: HB 2763 Concerning taxation; imposing a consumption tax (OPPOSED)

The Kansas Association for Justice (KsAJ) is a professional association of attorneys. KsAJ opposes HB 2763, which imposes a consumption tax on professional legal services provided by attorneys. The services provided by attorneys are distinguishable from other consumer services and should not be subject to taxation.

**Professional Legal Services are Unique from Other Consumer Services.**

**Confidentiality.** Under Rule 1.6 of Rule 226 of the Kansas Rule of Professional Conduct, attorneys owe a duty of confidentiality to clients and must protect all client information. The duty of confidentiality is unique to the legal profession and makes legal services distinct from other taxable consumer services.

Regulation, auditing, and enforcement by the Department of Revenue would intrude upon the attorney-client relationship. Clients would be discouraged from being candid with their attorney if they believed the confidential relationship could be breached.

Another problem relating to confidentiality and auditing are confidentiality agreements, which help expedite the resolution of disputes. The amount of a settlement, frequently a confidential term of a settlement, would also be revealed through a sales tax audit. The confidentiality term would be nullified and a settlement amount could potentially be revealed publicly, in contravention of the agreement of the parties.

**Constitutional Right to Counsel, Access to Courts.** Citizens have a constitutional right to access the court, and in most cases need professional legal services to do so. In civil disputes and criminal matters, citizens have a constitutional right to trial by jury. In criminal matters, the

accused has a right to the advice of counsel. A tax on legal services is an impermissible burden on such rights.

**Regulated by the Judicial Branch.** Attorneys, and the practice of law, are regulated by the judicial branch. If an attorney is not compliant with the standards of conduct and practice in Kansas, the attorney may be prohibited from engaging in the practice of law by the Supreme Court.

HB 2763 creates a separation of powers conflict between the executive and judicial branches because Kansas-licensed attorneys would also be regulated by the Department of Revenue and the Court of Tax Appeals. If an attorney is not compliant with the provisions of HB 2763, the attorney's sales tax registration could be revoked and—in effect—the attorney could be prohibited from engaging in the practice of law. Even a delay in obtaining a valid sales tax registration could jeopardize the representation of the attorney's clients, or compel the attorney to work without charging fees or for charging other litigation costs that might be subject to sales tax.

**“Misery Tax” for Small Business, Individuals.**

**Legal services a necessity, not luxury.** Taxing Kansans in need of legal assistance at times of misfortune is a poor public policy. A tax on legal services would likely come at a time when citizens may be at a particularly vulnerable point in their lives: facing divorce; domestic abuse; serious physical injury or the death of a loved one; accusation of criminal offenses; or bankruptcy. Kansans seeking legal services at such times are seeking them out of necessity, not luxury.

**Greater Harm to Small Business and Individuals.** In civil matters, the tax burden of HB 2763 on individuals and small business is disproportionately harsh. Large corporations can afford to escape the tax by employing in-house attorneys and litigators to both defend and file claims on their behalf. But private citizens and small businesses must hire attorneys when faced with a dispute. They cannot evade the tax and they are forced to bear the cost. HB 2763 creates the unbalanced situation where one side of a dispute pays tax on the professional services of their legal counsel, while the other side of the same dispute does not.

HB 2763 would erode the amount injured Kansans receive from juries, in a settlement agreement, or under the workers compensation act. Many KsAJ members represent Kansans that have suffered bodily injuries and who have been unable to resolve their disputes except through litigation. Yet under HB 2763, the injured Kansan would be forced to pay tax on the professional legal services required to pursue a meritorious claim and obtain a fair and just award.

**For all of these reasons, the Kansas Association for Justice respectfully requests that the committee take no further action on HB 2763.**