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GOVERNOR JEFF COLYER, M.D.
LARRY L. CAMPBELL, CHIEF BUDGET OFFICER

March 15, 2018

The Honorable Caryn Tyson, Chairperson
Senate Committee on Assessment and Taxation
Statehouse, Room 123-E
Topeka, Kansas 66612

Dear Senator Tyson:

SUBJECT: Fiscal Note for SB 445 by Senate Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 445 is respectfully submitted to your committee.

Under current law, taxpayers are able to deduct up to $3,000 ($6,000 for married filing jointly) for contributions to a 529 Education Savings Plan and are not able to deduct contributions to a 529a ABLE Savings Plan for each designated beneficiary. SB 445 would allow taxpayers, beginning in tax year 2018, to be able to deduct up to $3,000 ($6,000 for married filing jointly) for the cumulative contributions to both a 529 Education Savings Plan and a 529a ABLE Savings Plan for each designated beneficiary. Upon the death of the beneficiary in a 529a ABLE Savings Plan, the assets would be transferred to the estate of the designated beneficiary or another eligible account specified by the designated beneficiary or their estate, but would not be allowed to be claimed by the Kansas Medicaid Plan or any other state agency.

The Department of Revenue indicates that the bill would reduce State General Fund revenues by approximately $30,000 in FY 2019. The Department of Revenue indicates that the fiscal effect of the bill has the potential to slightly increase in FY 2020 and future fiscal years as additional 529a ABLE Savings Plan are set up and more taxpayers take advantage of this tax deduction.

To formulate this estimate, the Department reviewed data on the Kansas ABLE Savings Program that is managed by the State Treasurer. According to the State Treasurer, 176 accounts have been opened under the Kansas ABLE Savings Program since the program began in January 2017. If the average deduction amounts will be similar to the current deductions for the Learning Quest Education Savings Plan, which is also managed by the State Treasurer, and assuming an effective tax rate of 3.66 percent, the bill is estimated to reduce State General Fund revenues by approximately $30,000 in FY 2019. The Department of Revenue indicates that the bill would require $7,200 from the State General Fund in FY 2019 to implement the bill and to modify the automated tax system. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. However, 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 State Treasurer indicates that the bill will likely encourage additional accounts to be opened if the Medicaid claw back provision is eliminated because individuals with a disability can currently avoid the Medicaid claw back by investing in a special needs trust. The State Treasurer indicates that by allowing contributions to a 529a ABLE Savings Plan to be deducted on the Kansas tax return has the possibility to reduce Kansas individual income tax liability for a limited number of taxpayers.

The Kansas Department of Health and Environment (KDHE) indicates that federal law allows that if a person has received Medicaid payments since July 1, 1992, the state has the legal right to seek reimbursement for those payments from their estate through the Estate Recovery Program. Federal law limits estate recovery claims to Medicaid payments made for individuals who are 55 years of age or older and individuals who have been admitted to a long-term care or similar facility regardless of their age. Estate Recovery brings in approximately $11.0 million to $12.0 million per year and the state has collected approximately $120.0 million since the program began in 1992. The program allows approximately 40.0 percent of those funds to be retained in the state. Since ABLE accounts are fairly new, KDHE is unable to estimate the amount of funds that would no longer be retained in future fiscal years from the Estate Recovery Program under the provisions of the bill. KDHE indicates that guidance from the Centers for Medicare and Medicaid Services indicates that the state should continue to seek estate recoveries from ABLE accounts. Any fiscal effect associated with SB 445 is not reflected in *The FY 2019 Governor's Budget Report*.

Sincerely,

L. Campbell

Larry L. Campbell
Chief Budget Officer

cc: Lynn Robinson, Department of Revenue
Peter Northcott, Office of the Treasurer
Dan Thimmesch, Health & Environment