TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

SB 3901 – HB 3787

April 15, 2010

SUMMARY OF AMENDMENT (016533): Deletes the language of the original bill. Adds language that makes multiple changes to tax law, including technical corrections.

Sections 1 through 9 make multiple changes to sales and use tax law. Sections 1 through 4 of the bill as amended removes $15 exemption for cable television services and requires that providers pay sales tax on cable boxes; Section 5 increases sales tax on interstate and international telecommunications services sold to businesses from 7.5 percent to 9.5 percent; Section 6 clarifies that a service provider cannot purchase items on a resale certificate when items are used by taxpayer, and also clarifies that a seller of tangible personal property cannot buy services on a resale certificate when services are used by taxpayer; Sections 7 and 8 makes technical correction to update law to reflect previous changes to the definition of "tangible personal property" and "computer software". Section 9 declares that local sales tax revenue derived from the rate increase in Sevier County on July 1, 2009, will not be distributed to the Sevier County tourism development zone.

Sections 10 through 31 make multiple changes to franchise and excise (F&E) tax law. Sections 10 through 19 repeal the dividend paid deduction taken by captive real estate investment trusts (REITs) for F&E tax purposes, and requires combined filing by captive REIT affiliated groups; Sections 20 and 21 establishes a refundable F&E tax credit to a key tenant of a qualified medical trade center equal to the amount of relocation expenses incurred by the key tenant (such credit cannot exceed $10 for each square foot of space leased and occupied); Sections 22 and 23 authorizes the Commissioner of Revenue to lower the wage and investment criteria contained in the job tax credit and the headquarters facility relocation expense tax credit if the jobs are created within a central business district or economic recovery zone; Section 24 extends the refundable headquarters facilities relocation expense credit to any insurance company that is a qualified headquarters facility for sales and use tax purposes; Sections 25 and 26 repeals the July 1, 2012 sunset provision applicable to the film and episodic television production credit for F&E tax purposes, and also clarifies that the incentive is a credit allowed against F&E tax with any excess credit being available as a refund; Section 27 clarifies that tangible personal property is not subject to the "reasonable rent" provisions for F&E tax purposes; Section 28 clarifies that the term "affiliate" can include an individual who owns more than a 50 percent interest in the taxpayer; and Sections 29 through 31 makes technical corrections to correct cross-reference errors within the F&E tax statutes.

Sections 32 through 34 make changes to business tax law. Section 32 clarifies that gasoline and diesel fuel sold at wholesale is taxable under the rate applicable for Classification 1(B); Sections 33 and 34 make housekeeping changes to the business tax provisions that were enacted in 2009.

Sections 35 through 39 makes changes to tax law for other taxes not discussed above. Sections 35 and 36 repeals obsolete provision in the Hall income tax statute that requires corporations to give the Department a list of all shareholders to whom dividends are paid; Section 37 repeals obsolete provision in the estate tax statute concerning interest due in connection with a refund; Section 38 provides an exemption from the gross premiums tax for contracts with insurance companies, managed care plans or other entities to provide services to enrollees of the Cover Kids program; Section 39 declares that the purchase of land using the state land acquisition fund will not constitute a change in the use of the property and no rollback taxes will be due solely as a result of such acquisition. Section 40 is the effective date clause.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - $49,800,000/Recurring
Increase State Expenditures – $15,100/One-Time
$275,100/Recurring

(Reflected in the Governor's FY10-11 Recommended Budget)

Increase Local Revenue - $14,300,000/Recurring

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue - $49,800,000/Recurring
Increase State Expenditures – $15,100/One-Time
$275,100/Recurring

(Reflected in the Governor's FY10-11 Recommended Budget)

Forgone State Revenue – $1,000,000/FY10-11 and FY11-12
$5,400,000/FY12-13 and Subsequent Years

Increase Local Revenue - $4,100,000/Recurring

Assumptions applied to amendment concerning sales and use tax:

- According to the Department of Revenue (DOR), removing current state sales tax exemptions for equipment used to provide video programming services will increase state revenue by approximately $21,300,000 per year (Sections 1 through 3).
- DOR indicates that applying sales tax to cable boxes and digital video recorders and other related equipment will increase state and local government revenue by approximately $2,000,000 and $700,000 per year respectively (Section 4).
- DOR indicates that increasing the interstate telecommunications tax by two percent will increase state revenue by approximately $6,500,000 per year (Section 5).

- DOR indicates that taxing the property purchased by service providers will increase state and local government revenue by approximately $10,000,000 and $3,400,000 per year respectively (Section 6).
- DOR indicates that Sections 7 and 8 are technical corrections and will have no impact on state or local government revenue.
- Section 9 could cause a shift of use for local government revenue; however, the net change to local government revenue is considered not significant.

Assumptions applied to amendment concerning franchise and excise tax:

- DOR indicates that changing the definition of "net earnings" as it applies to REITs will increase state revenue by approximately $10,000,000 per year (Sections 10 through 19).
- DOR indicates that (1) the establishment of a refundable F&E tax credit for a key tenant of a qualified medical trade center equal to the amount of relocation expenses incurred by the key tenant, (2) authorizing the Commissioner of Revenue to lower the wage and investment criteria contained in the job tax credit and the headquarters facility relocation expense tax credit when the jobs are created within a central business district or economic recovery zone, and (3) extending the refundable headquarters facilities relocation expense credit to any insurance company that is a qualified headquarters facility will collectively cause forgone state revenue of approximately $1,000,000 per year for six years, FY10-11 through FY15-16 (Sections 20 through 24).
- DOR indicates that repealing the July 1, 2012 sunset provision applicable to the film and episodic television production credit for F&E tax purposes, and clarifying the incentive is a credit allowed against F&E tax liability with any excess credit being available as a refund will collectively cause forgone state revenue of approximately $4,400,000 per year beginning with FY12-13 (Sections 25 and 26).
- DOR indicates that Sections 27 through 31 are technical corrections such as cross-reference corrections, housekeeping changes, repealing obsolete provisions, etc. The Department has indicated no fiscal impact for these changes.

Assumptions applied to amendment concerning business tax and other provisions:

- DOR indicates that Sections 32-34 are technical corrections to the business tax statute; the Department further indicated that there would be no fiscal impact to state or local government resulting from these changes.
- DOR indicates that Sections 35 through 39 are technical corrections to various sections of tax statute not mentioned above; the Department further indicated that there would be no fiscal impact to state or local government resulting from these changes.
- No fiscal impact resulting from Section 40 of the bill as amended (effective date clause).
- DOR indicates it will require additional resources within its Audit Division to accomplish the provisions of this bill. Four new Tax Auditor 4 positions are anticipated. The associated increase to recurring state expenditures is estimated to be $275,100 per year ($167,300 salaries; $51,200 benefits; and $56,600 other). The associated increase to one-time state expenditures is estimated to be $15,100 (for computers, software, etc.).

- Included in the Governor's Recommended Budget Document for FY10-11 is $50,000,000 of additional state revenue resulting from 2010 tax legislation (A-11) and additional state expenditures of $290,200 for new Tax Auditor positions required to implement the provisions of this bill (B-13).

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

James W. White, Executive Director

/rnc