TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

SB 3901 – HB 3787

June 2, 2010

SUMMARY OF AMENDMENTS (019192, 019061, 019194, 019216, 019253, 019234, 019252): Amendment 019192 deletes the language of the original bill and adds new language that makes multiple changes to state tax law, including technical corrections.

Section 1 clarifies that property purchased by service providers cannot be purchased on resale certificates when those items are used by a taxpayer in providing its service. Sections 2 and 3 update the law to reflect previous changes in the definitions of "tangible personal property" and "computer software." Section 4 declares that local sales tax revenue derived from the rate increase in Sevier County on July 1, 2009, cannot be distributed to the Sevier County Tourism Development Zone.

Sections 5-18 redefine net earnings and make changes to the reporting methods for captive real estate investment trusts (REITs). Section 19 clarifies that tangible personal property is not subject to the reasonable rent provisions for franchise and excise (F&E) tax purposes. Section 20 clarifies that the term "affiliate" can include an individual who owns more than a 50 percent interest in the taxpayer. Sections 21-23 correct cross-reference errors within F&E tax law. Sections 24 and 25 create an F&E tax credit for relocation expenses incurred by companies who become part of the Nashville Medical Trade Center (NMTC). Section 26 creates an F&E tax credit for certain qualified advertising expenses to promote the NMTC. Sections 27 and 28 authorize the Commissioner of Revenue to lower wage and investment criteria applicable to job tax credits and headquarters facility relocation expense tax credits. Section 29 authorizes any airline company with its international, national, or regional headquarters in Tennessee to convert any available and unused job tax credit into a refundable credit. Section 30 extends the refundable headquarters facilities relocation expense credit to any insurance company that is a qualified headquarters facility. Sections 31 and 32 repeal the July 1, 2012, sunset provision applicable to the F&E tax credits for film and episodic television production. Section 33 expands the definition of "industrial machinery" for sales tax exemption purposes to include an expansion to an existing warehouse for certain investment levels.

Sections 34-36 make several changes relative to tax credits for TNInvestcos. Section 37 authorizes integrated customers to qualify for the annual job tax credit. Sections 38-41 create F&E tax credits and sales tax credits for certain green energy production facilities. Section 42 distributes state and local tax revenues to retire the debt of a hotel constructed with a convention center. Sections 43-45 make housekeeping changes related to the business tax provisions that were enacted in 2009. Sections 46 and 47 repeal obsolete provisions in the Hall income tax statute that require corporations to give the Department of Revenue (DOR) a list of all shareholders to whom dividends are paid. Section 48 repeals an obsolete provision in the estate tax statute concerning interest due in connection with a refund. Section 49 clarifies that no

rollback taxes become due solely as a result of acquisition under the Agricultural, Forest and Open Space Land Act of 1976. Sections 50 and 51 authorize an energy acquisition corporation that acquires an on-going concern engaged in the sale and distribution of propane to enter into agreements for payments in lieu of taxes.

Section 52 authorizes the Commissioners of Revenue, Economic and Community Development (ECD), and Finance and Administration (F&A), with the approval of the Comptroller of the Treasury, to jointly establish a program pursuant under which buildings, facilities, or infrastructure may be developed utilizing a state funding mechanism and pursuant to which the value of tax credits that have been earned by the taxpayer may be applied, in lieu of lease payments, toward the purchase or lease of such property.

Section 53 extends the "best interests of the state" determination concerning availability of tax credits to additional tax incentive mechanisms, including new mechanisms created by this bill as amended. Section 54 creates a sales and use tax credit for qualified disaster restoration projects. Section 55 authorizes a community development financial institution to charge a rate of interest up to 24 percent per year. Section 56 removes the limitation requiring job tax credits be authorized only for counties meeting the "enhancement county" definition. Section 57 authorizes an allocation of state sales tax revenue to any zoo that is accredited by the Association of Zoos and Aquariums equal to the amount of state sales tax revenue derived from the sale of tangible personal property or amusements on the premises of the zoo.

Section 58 authorizes local governments to prorate the annual property tax assessment on certain qualifying personal property when such personal property has been destroyed, demolished, or substantially damaged as a result of a disaster certified by the Federal Emergency Management Agency (FEMA) and such personal property is located within a FEMA certified county. This provision will be retroactive to January 1, 2010, but shall not take effect as to any particular county or municipality unless approved by two-thirds vote of its governing body. The provision shall expire on December 31, 2010. Section 59 is the effective date provisions of the bill as amended.

Amendment 19061 adds language to the bill as amended by amendment 019192 authorizing a refund of state and local sales taxes on the retail sale of certain items of tangible personal property when sold to a natural person who has received disaster assistance through the Federal Emergency Management Agency (FEMA). Eligible items include major appliances, residential building supplies, and residential furniture as defined. Such items must be purchased between May 1, 2010 and September 30, 2010. Requires all such eligible items which are sold under the proposed refund to be utilized in the person's primary residence for the purposes of restoration, repair, and replacement or rebuilding due to disaster damage occurring between May 1, 2010 and May 8, 2010. Authorizes the Department of Revenue (DOR) to assess a civil penalty not to exceed $25,000 for reporting false information. Requires that all refunds be paid from the General Fund. Makes declaration that nothing within the amendment should be construed to reduce the amount of sales and use tax payable to local governments.

Amendment 019194 adds language to the bill as amended by amendment 019192 authorizing one-time franchise and excise tax credits for qualifying businesses located within the various counties declared as federal disaster areas when such businesses suffered property damage as a result of the flood disaster which occurred between May 1, 2010, and May 8, 2010. Such tax credits shall be determined and approved by the Commissioner of Revenue after consultation with the Commissioner of Economic and Community Development. Limits the aggregate amount of one-time tax credits to $20,000,000 statewide.

Amendment 019216 adds language to the bill as amended by amendment 019192 authorizing a special allocation of state sales tax revenue, up to a maximum of $500,000 per year, to a municipal jurisdiction in a county with a population not less than 91,800, nor greater than 91,900 (Madison County), when such municipality has established an economic impact area as part of an economic impact plan to promote economic development of professional sports.

Amendment 019253 makes a technical correction to Section 58 of the bill as amended by amendment 019192.

Amendment 019234 makes a technical correction to Section 57 of the bill as amended by amendment 019192.

Amendment 019252 adds language to the bill as amended by amendment 019192 that extends the valuation method for determining property tax to pollution control facilities that are operating for the purpose of extracting, purifying, dehydrating, or otherwise treating landfill methane to the quality level required to render the landfill methane eligible for transportation by natural gas pipeline.

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 AMENDMENTS:

Increase State Revenue – Net Impact – $15,975,000/Recurring
Decrease State Revenue – $39,950,000/One-Time

Increase State Expenditures – $15,100/One-Time/Department of Revenue
$275,100/Recurring/Department of Revenue

Forgone State Revenue – Exceeds $2,262,500/FY10-11 and FY11-12
Exceeds $6,662,500/FY12-13 through FY15-16
Exceeds $5,662,500/FY16-17 and Subsequent Years

Increase Local Revenue – Net Impact - $1,130,000/Recurring
Decrease Local Revenue – Exceeds $1,500,000/One-Time/Permissive
Forgone Local Revenue – Exceeds $100,000/Recurring

Increase Local Expenditures – Not Significant/Permissive

Other Fiscal Impact – There will be an increase of state expenditures as a result of an appropriation to an industrial development board during FY10-11 for the purpose of capital outlay estimated to exceed $20,000,000. Such increase of state expenditures will be offset over a period of 10 years by lease payments and avoidance of future revenue reductions as a result of the applicable taxpayer forgoing the use of earned franchise and excise tax credits and job tax credits. Contingent funding in the amount of $20,000,000 is included in the Administration Amendment to the appropriations bill. Additional funding in an amount that cannot reasonably be determined will be provided through Fast Track appropriations to the Department of Economic and Community Development included in the Governor's Recommended Budget. If the contingency is not met, full funding for the project will come from Fast Track funds. Utilization of Fast Track funds will reduce the availability of Fast Track funds for other projects by the amount dedicated to this project.

The Governor's Recommended Budget Document for FY10-11 includes $50,000,000 of state revenue resulting from tax legislation (page A-11) and additional state expenditures of $290,200 for new Tax Auditor positions (page B-13) required to implement the provisions of this bill. There is an additional $85,000,000 of state revenue in the Administration Amendment to the appropriations bill.

Assumptions applied to amendments:

- The additional revenue measures will generate $20,000,000 in gross recurring state revenue. This increase will be offset by reductions in revenue of $4,025,000 from new tax incentives. The net impact of the additional revenue measures and new tax incentives is a recurring increase of state revenue of $15,975,000. The Governor's Recommended Budget included $50,000,000 in recurring state revenue and the Administration Amendment to the appropriations bill included an additional $85,000,000.
- According to DOR, clarifying that property purchased by service providers cannot be purchased on resale certificates when those items are used by the taxpayer in providing

its service will increase state and local revenue by $3,000,000 and $950,000 per year respectively (Section 1).

- According to DOR, redefining net earnings and the changes applicable to reporting methods for captive real estate investment trusts (REITs) will increase state revenue by $17,000,000 per year (Sections 5 through 18). This item was budgeted at $10,000,000 in the Governor's Recommended Budget.
- Based on information provided by DOR, creating an F&E tax credit for relocation expenses incurred by companies who become part of the Nashville Medical Trade Center (NMTC) will result in forgone state revenue exceeding $1,000,000 per year for the next six fiscal years (FY10-11 through FY15-16). The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by these provisions (Sections 24 and 25).
- Based on information provided by DOR, creating an F&E tax credit for certain qualified advertising expenses to promote the NMTC will result in forgone state revenue exceeding $500,000 per year. The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by this provision (Section 26).
- Based on information provided by DOR, authorizing the Commissioner of Revenue to lower wage and investment criteria applicable to job tax credits and headquarters facility relocation expense tax credits will result in forgone state revenue exceeding $100,000 per year. The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by these provisions (Sections 27 and 28).
- The fiscal impact resulting from authorizing certain airline companies to receive refunds for any available and unused franchise and excise tax credits is dependent on several unknown factors. As a result, determining a precise fiscal impact for this section is difficult. However, a decrease to state revenue is reasonably estimated to exceed $300,000 per year (Section 29).
- The fiscal impact resulting from the extension of refundable headquarters facilities relocation expense credits to insurance companies that are a qualified headquarters facility is dependent upon multiple unknown factors. As a result, determining a precise fiscal impact for this section is difficult. However, a decrease to state revenue is reasonably estimated to exceed $100,000 per year (Section 30).
- Based on information provided by DOR, repealing the July 1, 2012, sunset provision applicable to the F&E tax credits for film and episodic television production will result in forgone state revenue exceeding $4,400,000 per year beginning with FY12-13. The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by these provisions (Sections 31 and 32).
- The fiscal impact resulting from expanding the definition of industrial machinery will affect the extent to which industrial machinery tax credits are authorized. Such impact is dependent on several unknown factors. However, a decrease to state revenue is reasonably estimated to exceed $100,000 per year (Section 33).

- Sections 34-36 concern tax credits applicable to TNInvestcos. Section 34 expands F&E tax credits to contributions made to the Tennessee Small Business Opportunity Fund. The fiscal impact for this section is unknown and dependent on several unknown factors. However, a decrease to state revenue is reasonably estimated to exceed $500,000 per year. According to DOR, Sections 35 and 36 concern a F&E tax exemption that TNInvestcos are currently authorized to receive pursuant to Tenn. Code Ann. § 67-4-2008(a)(5). As a result, Sections 35 and 36 will have no significant impact to state revenue.
- The fiscal impact from authorizing integrated customers to qualify for annual job tax credits is dependent upon several unknown factors and is difficult to estimate. However, a decrease to state revenue is reasonably estimated to exceed $100,000 per year (Section 37).
- The fiscal impact resulting from tax credits authorized for certified green energy production facilities is dependent upon several unknown factors. As a result, determining a precise fiscal impact for this section is difficult. However, a decrease to state revenue is reasonably estimated to exceed $100,000 per year; the decrease to local government revenue is reasonably estimated to exceed $10,000 per year (Sections 38 through 41).
- Based on information provided by DOR, distribution of state and local tax revenues to retire the debt of a hotel constructed with a convention center will result a decrease to state revenue estimated to be $1,000,000 per year and additional forgone state revenue estimated to exceed $200,000 per year (Section 42). The decrease to local government revenue is reasonably estimated to exceed $320,000 per year.
- Based on information provided by DOR, the fiscal impact from allowing energy acquisition companies to enter into agreements for payments in lieu of taxes with local governments will increase local government revenue by approximately $10,000 per year (Sections 50 and 51).
- The Commissioners of Revenue, Economic and Community Development, and Finance and Administration, with approval of the Comptroller of the Treasury, will jointly establish a program in which buildings, facilities, or infrastructure are developed and used for economic development incentives in exchange for a taxpayer's unutilized tax credits. The development will then be leased to a taxpayer who will make lease payments to the state over time via cash payments or by forgoing the use of earned and unutilized franchise and excise tax credits. According to DOR, the state will recoup all funds expended for capital outlay (Section 52).
- DOR estimates that approximately $25,000,000 in taxable sales will be subject to the sales and use tax credit disaster restoration projects. Only 6.5 percent of the 7.0 percent state sales and use tax rate will be eligible for determining the proposed credit. As a result, the decrease to state revenue is estimated to be $1,625,000 per year ($25,000,000 x 6.5% = $1,625,000). Local government revenue will not be impacted (Section 54).
- Removing the limitation that requires job tax credits be authorized only for counties meeting the "enhancement county" definition will result in foregone state revenue exceeding $112,500 per year. The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by these provisions (Section 56).

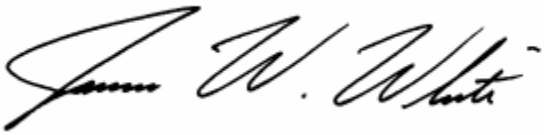
- According to DOR, authorizing an allocation of state sales tax revenue to any zoo or aquarium accredited by the Association of Zoos and Aquariums will decrease state revenue by an amount estimated as less than $50,000 per year (Section 57 as amended by amendment 019234). According to DOR, this estimate does include allocations for both zoos and aquariums.
- Authorizing local governments to prorate the annual property tax assessment on certain qualifying personal property when such personal property has been destroyed, demolished, or substantially damaged as a result of a disaster certified by the Federal Emergency Management Agency (FEMA), and such personal property is located within a FEMA certified county, will result in a decrease to local government revenue. Such decrease will be considered one-time due to the December 31, 2010 expiration date proposed. In addition, such decrease will be considered permissive due to the requirement that such proration of personal property tax is dependent upon two-thirds vote of the respective governing body. Determining a precise amount for such decrease is difficult due to several unknown factors. However, the one-time permissive decrease to local government revenue is reasonably estimated to exceed $1,500,000. Any increase to local government expenditures is considered not significant and permissive (Section 58 as amended by amendment 019253).
- Based on information provided by DOR, the following sections of amendment 018981 will not result in a fiscal impact to state or local government revenue or expenditures beyond not significant: Sections 2 through 4, Sections 19 through 23, Sections 43 through 49, Section 53, Section 55, and Section 59.
- DOR indicates it will require additional resources within its Audit Division. 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).
- Authorizing refunds of state and local sales taxes to eligible claimants for purchases of qualified tangible personal property (with amendment 019061) will result in a one-time decrease to state revenue estimated to exceed $19,950,000. Based on information provided by the Department of Revenue, taxable sales for eligible items are likely to exceed $210,000,000. Refunds for both state and local sales tax will be paid from the state's General Fund exclusively. Local government revenue will not be impacted. Assuming a combined state and local sales tax rate of 9.5 percent (7.0 percent state rate; and 2.5 percent local option rate), the one-time decrease to state revenue from the General Fund is estimated to exceed $19,950,000 ($210,000,000 x 9.5% = $19,950,000).
- Authorization of one-time franchise and excise tax credits for qualifying businesses located within the various counties declared as federal disaster areas (with amendment 019194) will result in a one-time decrease to state revenue estimated as an amount up to $20,000,000.
- The special allocation of state sales tax revenue (with amendment 019216) is estimated to increase local government revenue by $500,000 per year. The fiscal impact to the

state is dependent upon (1) the extent of incremental sales that would occur only as a direct result of subsequent development of the economic impact area, and (2) the extent of incremental sales that will occur in the absence of this legislation. Incremental taxable sales required to generate an additional $500,000 in state sales tax revenue would be approximately $7,142,857 per year ($500,000 / 7.0% state rate = $7,142,857). Thirty percent of such incremental taxable sales ($2,142,857) are assumed to occur in the absence of this legislation; and seventy percent of such incremental sales ($5,000,000) are assumed to occur as a direct result of subsequent development of the economic impact area. As a result, there will be a decrease to state revenue estimated to be $150,000 per year ($2,142,857 x 7.0% state rate = $150,000) and additional forgone state revenue estimated to be $350,000 per year ($5,000,000 x 7.0% state rate = $350,000).

- According to the Comptroller of the Treasury, there is currently no facility in Tennessee that meets the criteria specified in amendment 019252. As a result, extending the valuation method for property tax to certain pollution control facilities (with amendment 019252) would apply to a facility that has not yet been subject to taxation. Based on the information provided by the Comptroller, the fiscal impact for this amendment is estimated as forgone local government revenue exceeding $100,000 per year.

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

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