

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

| <b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates) |                     |                |                     |                 |
|---|---------------------|----------------|---------------------|-----------------|
|   | <b>FY 2021-22</b>   |                | <b>FY 2022-23</b>   |                 |
|   | <b>EXPENDITURES</b> | <b>REVENUE</b> | <b>EXPENDITURES</b> | <b>REVENUE</b>  |
| GENERAL FUNDS   |                     |                | \$2,323,147         | (\$295,000,000) |
| CASH FUNDS  |                     |                |                     | (\$386,000)     |
| FEDERAL FUNDS   |                     |                |                     |                 |
| OTHER FUNDS   |                     |                |                     |                 |
| <b>TOTAL FUNDS</b>  |                     |                | \$2,323,147         | (\$295,386,000) |

**Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.**

LB 422 seeks to change various sections relating to sale and use tax collection.

LB 422 redefines taxable services and gross receipts. Under LB 422, all services and gross income from services are considered taxable unless otherwise written. This is a reversal of the current statutory format, where all services are considered exempt unless otherwise written.

LB 422 also adjusts the percent of the sales and use tax revenue that is distributed to the Highway Allocation Fund. Under LB 422, all but 0.5% of the tax proceeds received from the selling or leasing of motor vehicles, trailers, and semitrailers for a period longer than 31 days are to be credited to the Highway Trust Fund, with the remaining 0.5% going to the Highway Allocation Fund. This will create a revenue loss for the Highway Allocation Fund, as the original language gives an additional 46.67% less \$32,000 per month.

LB 422 adjusts the sales and use tax rate starting in October 1, 2022, changing the rate from 5.5% to 5%. In each of the following 4 calendar quarters, LB 422 requires the Tax Commissioner to adjust the rate such that the revenue gained will equal the same sales and tax revenue had LB 422 not been enacted.

LB 422 would become operative October 1, 2022.

**Revenue:**

The Department of Revenue (DOR) estimates that the sales and use tax base will be reduced to 41% of the current level. This is estimated to have the following impact to the various recipients of sales and use tax revenue:

|                | <b>General Fund</b> | <b>Highway Allocation Fund (Cities &amp; Counties)</b> | <b>State Highway Capital Improvement Fund</b> | <b>Highway Cash Fund</b> | <b>Local Option, Assuming 1.5%</b> |
|----------------|---------------------|--|---|--------------------------|------------------------------------|
| <b>FY22-23</b> | (\$295,000,000)     | (\$15,777,646)   | \$22,100,000                                  | (\$22,485,727)           | \$156,000,000                      |
| <b>FY23-24</b> | \$0                 | (\$30,983,493)   | \$34,600,000                                  | (\$42,386,887)           | \$244,000,000                      |
| <b>FY24-25</b> | \$0                 | (\$31,670,831)   | \$35,960,000                                  | (\$43,446,559)           | \$254,000,000                      |

There is no basis to disagree with the estimates provided by DOR.

**Expenditures:**

DOR expects significant costs to implement LB 422. DOR estimates the need for 35.5 FTE in FY22-23, 34.5 FTE in FY23-24, and 32.5 FTE in FY24-25. The various staff that are expected to be needed will be to aid in auditing, licensing, and processing returns for the new sales tax permit holders in Nebraska. DOR also expects OCIO charges of \$70,647 in FY22-23 and \$ 48,588 in FY23-24. There is no basis to disagree with these estimates.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE

LB: 422                      AM:                      AGENCY/POLT. SUB: University of Nebraska

REVIEWED BY: Lee Will                      DATE: 02/01/2021                      PHONE: (402) 471-4175

COMMENTS: No basis to disagree with the University of Nebraska's assessment of fiscal impact for students to pay sales taxes on tuition and fee charges.

**State Agency Estimate**

| State Agency Name: Department of Revenue |                | Date Due LFO:       |                      |                     |                      |
|--|----------------|---------------------|----------------------|---------------------|----------------------|
| Approved by: Tony Fulton                 |                | Phone: 471-5896     |                      |                     |                      |
| Date Prepared: 2/1/2021                  |                |                     |                      |                     |                      |
| <b>FY 2021-2022</b>                      |                | <b>FY 2022-2023</b> |                      | <b>FY 2023-2024</b> |                      |
| <u>Expenditures</u>                      | <u>Revenue</u> | <u>Expenditures</u> | <u>Revenue</u>       | <u>Expenditures</u> | <u>Revenue</u>       |
| General Funds                            |                | \$2,323,147         | \$295,000,000        | \$2,091,288         | \$ 0                 |
| Cash Funds                               |                |                     | (\$386,000)          |                     | (\$7,787,000)        |
| Federal Funds                            |                |                     |                      |                     |                      |
| Other Funds                              |                |                     | \$140,222,000        |                     | \$213,017,000        |
| <b>Total Funds</b>                       |                | <b>\$2,323,147</b>  | <b>\$434,836,000</b> | <b>\$2,091,288</b>  | <b>\$205,230,000</b> |

LB 422 changes the sales and use tax rate starting on October 1, 2022; imposes a requirement on the Tax Commissioner to adjust the new rate in the four calendar quarters of 2023; redefines the taxation of services; and changes the percentage credited to the Highway Allocation Fund from the proceeds derived from taxes imposed on the rental or lease of motor vehicles, trailers, and semitrailers for periods more than 31 days.

LB 422 amends the sales and use tax rate: The current sales and use tax rate of 5.5% will end and a new rate of 5% will begin on October 1, 2022. The Tax Commissioner will be required to adjust the rate based on an estimate of what the approximate sales and use tax revenue would have been had the changes in LB 422 not gone into effect. The following schedule for adjusting the rate will apply:

- The Tax Commissioner must determine the adjusted rate on January 1, 2023. The new adjusted rate will take effect on April 1, 2023.
- The Tax Commissioner must re-determine the adjusted rate on April 1, 2023. The new adjusted rate will take effect on July 1, 2023.
- The Tax Commissioner must re-determine the adjusted rate on July 1, 2023. The new adjusted rate will take effect on October 1, 2023.
- The Tax Commissioner must re-determine the adjusted rate on October 1, 2023. The new adjusted rate will take effect on January 1, 2024.

LB 422 redefines the taxation of services. LB 422 ends the past and current treatment of imposing sales and use taxes only on gross receipts from the specific services enumerated in statute. Under Neb. Rev. Stat. § 77-2703(a), LB 422 imposes sales and use tax on the gross receipts from the provision of services in this State. The bill amends the definition of gross receipts under Neb. Rev. Stat. § 77-2701.16(4) to include gross income received from providing services, adding that services are presumed taxable unless a specific sales tax exemption applies.

Under LB 422, the term service includes all activities that are engaged in for other persons for a consideration and that involve predominantly the performance of a service as distinguished from selling or leasing tangible

**Major Objects of Expenditure**

| <u>Class Code</u>         | <u>Classification Title</u> | <u>22-23 FTE</u> | <u>23-24 FTE</u> | <u>24-25 FTE</u> | <u>22-23 Expenditures</u> | <u>23-24 Expenditures</u> | <u>24-25 Expenditures</u> |
|---------------------------|-----------------------------|------------------|------------------|------------------|---------------------------|---------------------------|---------------------------|
| G31113                    | Attorney III                | 3.0              | 3.0              | 3.0              | \$213,500                 | \$218,400                 | \$223,500                 |
| A21211                    | Fiscal Compliance Analyst   | 13.0             | 13.0             | 13.0             | \$535,200                 | \$547,500                 | \$560,100                 |
| A21251                    | Revenue Auditor I           | 8.0              | 8.0              | 8.0              | \$354,000                 | \$362,200                 | \$370,500                 |
| X29222                    | Revenue Agent               | 7.0              | 7.0              | 5.0              | \$263,700                 | \$269,800                 | \$197,100                 |
| X29223                    | Revenue Agent Senior        | 0.5              | 0.5              | 0.5              | \$21,800                  | \$22,300                  | \$22,800                  |
| R29112                    | Revenue Operations Clerk II | 0                | 1.0              | 1.0              | \$32,400                  | \$33,200                  | \$33,900                  |
| R01113                    | Office Clerk III            | 3.0              | 1.0              | 1.0              | \$79,800                  | \$27,200                  | \$27,800                  |
| A29621                    | Revenue Tax Specialist      | 1.0              | 1.0              | 1.0              | \$54,100                  | \$55,300                  | \$56,600                  |
| Benefits.....             |                             |                  |                  |                  | \$513,000                 | \$506,800                 | \$492,500                 |
| Operating Costs.....      |                             |                  |                  |                  | \$70,647                  | \$48,588                  | \$0                       |
| Travel.....               |                             |                  |                  |                  |                           |                           |                           |
| Capital Outlay.....       |                             |                  |                  |                  | \$185,000                 | \$0                       | \$0                       |
| Capital Improvements..... |                             |                  |                  |                  |                           |                           |                           |
| <b>Total.....</b>         |                             |                  |                  |                  | <b>\$2,323,147</b>        | <b>\$2,091,288</b>        | <b>\$1,984,800</b>        |

personal property. The term does not include services rendered by an employee to his or her employer. In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties will not be controlling.

LB 422 redefines seller in Neb. Rev. Stat. § 77-2701.36 to include every person engaged in the business of providing services the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

LB 422 amends Neb. Rev. Stat. § 77-2704.45 to exempt from sales and use tax the gross receipts from services that become an ingredient or component part of a service for ultimate sale at retail.

Neb. Rev. Stat. § 77-27,223 is amended to include the redefined taxation of services under LB 422 within the county occupation tax imposed on businesses engaged in the sale of admissions to recreational, cultural, entertainment, or concert events.

Finally, the bill harmonizes and adds references to the redefined taxation of services under LB 422 in Neb. Rev. Stat. §§ 77-2701, 77-2701.04, 77-2701.41, 77-2711, and 77-2713.

Neb. Rev. Stat. §77-27,132(b) would be amended to provide that all sales and use tax proceeds from selling or leasing motor vehicles, trailers, and semitrailers for a period more than 31 days will be credited to the Highway Trust Fund, except proceeds equal to a sales tax rate of 0.5% of the sales tax derived from the sale or lease of motor vehicles, trailers, and semitrailers for a period more than 31 days will be credited to the Highway Allocation Fund.

To calculate the fiscal note, DOR utilized data from the South Dakota Department of Revenue. Based on the analysis of the South Dakota sales and use tax data, DOR assumes the revenues generated from services will be approximately 41% of the current tax base. DOR estimates that the sales and use tax rate can be adjusted to 3.9% in January 2023 effective April 1, 2023 and will result in no significant change to the General Fund revenues. Under these assumptions, the estimates of fiscal impact of LB 422 for expanding the sale tax base, lowering the rate, and redistributing the motor vehicle sales tax as described in Neb. Rev. Stat. § 77-27, 132(b) are as follows:

|         | General Fund Revenues | Highway Allocation Fund (Cities and Counties) | State Highway Capital Improvement Fund | Highway Cash Fund | Local Option Sales Tax (Assume 1.5%) |
|---------|-----------------------|---|--|-------------------|--------------------------------------|
| FY22-23 | \$ 295,000,000        | \$ (15,777,646)                               | \$ 22,100,000                          | \$ (22,485,727)   | \$ 156,000,000                       |
| FY23-24 | \$ -                  | \$ (30,983,493)                               | \$ 34,600,000                          | \$ (42,386,887)   | \$ 244,000,000                       |
| FY24-25 | \$ -                  | \$ (31,670,831)                               | \$ 35,960,000                          | \$ (43,446,559)   | \$ 254,000,000                       |

The Department will require extensive changes to implement this bill’s requirements. This bill would approximately double the number of sales tax permit holders in the state. Consequently, the number of Discovery and Nexus staff (Fiscal Compliance Officers) for reviews would double to 13.0 FTEs. Audit of new permit holders would require an additional 8.0 FTE Auditors. Accounts requiring collection and additional processing of returns will increase the need for Revenue Agents by 7.0 FTEs for the first two years, and 5.0 FTEs the third year. Processing will require a 1 FTE Revenue Agent Senior. Licensing and processing errors will require 0.5 FTE Revenue Operations Clerk II and 3.0 FTE Office Clerks III in the first year and 1.0 FTE thereafter. The Legal and Policy sections will require 3.0 FTE Attorneys III for litigation and legal guidance. The quarterly sales tax rate changes and the significant increase in permit holders needing notices and information guides will require 1.0 FTE Revenue Tax Specialist. DOR will require major programing changes to effect the initial and quarterly sales tax rate changes. This will require OCIO charges of \$70,647 in the first year and \$48,588 in the second year.

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**2021**

**LB<sup>(1)</sup> 422**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> University of Nebraska

Prepared by: <sup>(3)</sup> Michael Justus Date Prepared: <sup>(4)</sup> January 21, 2021 Phone: <sup>(5)</sup> 402-472-7109

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

|               | <u>FY 2021-22</u>   |                | <u>FY 2022-23</u>   |                |
|---------------|---------------------|----------------|---------------------|----------------|
|               | <u>EXPENDITURES</u> | <u>REVENUE</u> | <u>EXPENDITURES</u> | <u>REVENUE</u> |
| GENERAL FUNDS | _____               | _____          | _____               | _____          |
| CASH FUNDS    | _____               | _____          | _____               | _____          |
| FEDERAL FUNDS | _____               | _____          | _____               | _____          |
| OTHER FUNDS   | _____               | _____          | _____               | _____          |
| TOTAL FUNDS   | =====               | =====          | =====               | =====          |

Explanation of Estimate:

Based off the 2019-2020 academic year, there were roughly 52,000 students enrolled across the University's four campuses. These students have paid an estimated total of \$436,335,000 million in tuition and fee charges during fiscal year 2020. With the loss of the sales tax exemption under LB422, enrolled students would have an added cost of about \$32,650,000 per year in new sales taxes. This additional sales tax would average over \$620 per student and be payable as part of their student account at the beginning of each semester.

Enrolled students would have to determine how to pay the additional charge, or in many cases, students would need to increase the amount of their educational loans. It is difficult to forecast at what point this additional financial burden causes a student to withdraw from or pause their college education, impacting completion rates and filling needed workforce development demands. The fiscal impact of lost enrollment is indeterminable at this time.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

| <u>POSITION TITLE</u>     | <u>NUMBER OF POSITIONS</u> |              | <u>2021-22<br/>EXPENDITURES</u> | <u>2022-23<br/>EXPENDITURES</u> |
|---------------------------|----------------------------|--------------|---------------------------------|---------------------------------|
|                           | <u>21-22</u>               | <u>22-23</u> |                                 |                                 |
| _____                     | _____                      | _____        | _____                           | _____                           |
| _____                     | _____                      | _____        | _____                           | _____                           |
| Benefits.....             | _____                      | _____        | _____                           | _____                           |
| Operating.....            | _____                      | _____        | _____                           | _____                           |
| Travel.....               | _____                      | _____        | _____                           | _____                           |
| Capital outlay.....       | _____                      | _____        | _____                           | _____                           |
| Aid.....                  | _____                      | _____        | _____                           | _____                           |
| Capital improvements..... | _____                      | _____        | _____                           | _____                           |
| TOTAL.....                | _____                      | _____        | _____                           | _____                           |

Please complete ALL (5) blanks in the first three lines.

**2021**

**LB<sup>(1)</sup> 422**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Nebraska Department of Transportation

Prepared by: <sup>(3)</sup> Jenessa Boynton Date Prepared: <sup>(4)</sup> 1/29/2021 Phone: <sup>(5)</sup> 402-479-4691

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

|               | <u>FY 2021-22</u>   |                | <u>FY 2022-23</u>   |                |
|---------------|---------------------|----------------|---------------------|----------------|
|               | <u>EXPENDITURES</u> | <u>REVENUE</u> | <u>EXPENDITURES</u> | <u>REVENUE</u> |
| GENERAL FUNDS | _____               | _____          | _____               | _____          |
| CASH FUNDS    | _____               | _____          | See Below           | See Below      |
| FEDERAL FUNDS | _____               | _____          | _____               | _____          |
| OTHER FUNDS   | _____               | _____          | _____               | _____          |
| TOTAL FUNDS   | =====               | =====          | =====               | =====          |

**Explanation of Estimate:**

LB 422 changes the sales and use tax rate from the current 5.5% to 5% beginning October 1, 2022. In addition, the sales and use tax rate will no longer apply to gross receipts for specific statutorily identified services but apply to gross receipts unless a specific exemption applies, resulting in an expanded sales tax base. Following the initial tax rate change the Tax Commissioner will be required to adjust the tax rate at the beginning of the next four calendar quarters to a rate estimated to provide approximately the same amount of sales and use tax revenue had the changes in LB 422 not gone into effect.

In addition, LB 422 changes the sales tax distribution to the Highway Allocation Fund on motor vehicle sales and leases for periods of more than 31 days from the amount generated from any rate in excess of 5% to one-half of one percent irrespective of the overall rate. NDOT has estimated, with guidance from the Department of Revenue, the fiscal impact to the State Highway Capital Improvement Fund (NDOT), the Highway Cash Fund (NDOT) and the Highway Allocation Fund (cities and counties) would be as follows:

|             | State Highway Capital Improvement Fund | Highway Cash Fund | Highway Allocation Fund (Cities and Counties) |
|-------------|--|-------------------|---|
| FY2022 – 23 | \$ 22,100,000                          | \$ (22,485,727)   | \$ (15,777,646)                               |
| FY2023 – 24 | \$ 34,600,000                          | \$ (42,386,887)   | \$ (30,983,493)                               |
| FY2024 – 25 | \$ 35,960,000                          | \$ (43,446,559)   | \$ (31,670,831)                               |

Absent any adjustment to the Highway Cash Fund appropriation in light of the reduced Highway Cash Fund revenue, it is expected that an increase in the variable fuel tax rate would be necessary to offset the reduced revenue in FY2022-23.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

| <u>POSITION TITLE</u>     | <u>NUMBER OF POSITIONS</u> |              | <u>2021-22</u>      | <u>2022-23</u>      |
|---------------------------|----------------------------|--------------|---------------------|---------------------|
|                           | <u>21-22</u>               | <u>22-23</u> | <u>EXPENDITURES</u> | <u>EXPENDITURES</u> |
| _____                     | _____                      | _____        | _____               | _____               |
| _____                     | _____                      | _____        | _____               | _____               |
| Benefits.....             | _____                      | _____        | _____               | _____               |
| Operating.....            | _____                      | _____        | _____               | _____               |
| Travel.....               | _____                      | _____        | _____               | _____               |
| Capital outlay.....       | _____                      | _____        | _____               | _____               |
| Aid.....                  | _____                      | _____        | _____               | _____               |
| Capital improvements..... | _____                      | _____        | _____               | _____               |
| TOTAL.....                | _____                      | _____        | _____               | _____               |