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April 21, 2014

Commissioner Doug Nelson
Office of Administration
State Capitol Building, Room 125
201 West Capitol Street
Jefferson City, MO. 65102

RE: Senate Bills Nos. 509 & 496, 97th General Assembly (2014)

Dear Commissioner Nelson:

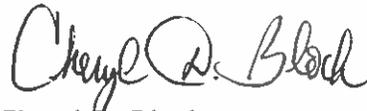
The Administration requested my opinion on statutory language from the above referenced bill that would repeal RSMo section 143.011 and replace it with a new section 143.011. My opinion on the statutory language, as written, is based on over thirty years' experience as a Professor of Law, teaching courses on tax law, legislation, and statutory interpretation. I am not receiving any remuneration for my opinion in this matter.

As amended, RSMo section 143.011 would instruct the director of the department of revenue to adjust the tax tables under subsection one, annually reducing the top personal income tax rate by one-tenth of a percent for each calendar year beginning in 2017, but only in the event that "the amount of net general revenue collected in the previous fiscal year exceeds the highest amount of net general revenue collected in any of the three fiscal years prior to such fiscal year by at least one hundred fifty million dollars." The new statutory language further provides that the "top rate of tax shall not be reduced below five and one-half percent."

The last sentence of subsection two, subparagraph four of proposed new section 143.011 provides that the "*bracket for income* subject to the top rate of tax *shall be eliminated* once the top rate of tax has been reduced to five and one-half percent" (emphasis added). For tax purposes, the term "bracket" has a technical meaning quite distinct from "rate." The former, represented by the left-hand column in most tax tables, refers to a specified *range of taxable incomes* to which a particular tax rate applies. The awkwardly worded language in proposed new subparagraph four uses an *event* – the moment at which the top tax rate has been reduced to five and one-half percent pursuant to subparagraphs one and two of new subsection two – as a *trigger* for automatically eliminating the "top bracket."

As written, the proposed new section 143.011 language appears to completely eliminate the top state personal income tax bracket – Missouri taxable income of over \$9,000 – once the top rate has been reduced to five and one-half percent through the reductions called for in proposed subparagraphs one and two of new subsection two. As such, the *new* top bracket in section 143.011 would become Missouri taxable incomes “over \$8,000 but not over \$9,000.” As presently drafted, the bills’ language appears to have the perverse result that those with incomes between \$8,000 and \$9,000 would be subject to at a five and one-half percent tax rate, while those over \$9,000 would pay no tax at all. Thus, the ultimate impact of the statutory language now included in the last sentence of new section 143.011, subsection two, subparagraph four, could be a significant reduction in state revenue.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl D. Block". The signature is written in black ink and is positioned above the printed name.

Cheryl D. Block
Professor of Law