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Adam C. Proffitt, Director

Laura Kelly, Governor

March 19, 2024

The Honorable Caryn Tyson, Chairperson
Senate Committee on Assessment and Taxation
300 SW 10th Avenue, Room 548-S
Topeka, Kansas 66612

Dear Senator Tyson:

SUBJECT: Fiscal Note for SB 546 by Senate Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 546 is respectfully submitted to your committee.

SB 546 would discontinue the following tax credits beginning in tax year 2025:

1. Contributions to an individual development account;
2. High Performance Incentive Program (HPIP);
3. Business and job development tax;
4. Plugging an abandoned oil or gas well;
5. Agritourism liability insurance;
6. Assistive technology contributions;
7. Declared disaster capital investment;
8. Environmental compliance;
9. Owners Promoting Employment Across Kansas (PEAK); and
10. Swine facility improvement.

Taxpayers would no longer be allowed to transfer HPIP tax credits after December 31, 2024. The Secretary of the Department of Commerce would not be allowed to approve Promoting Employment Across Kansas (PEAK) benefits on and after July 1, 2024. The bill would also remove outdated language from prior tax years.

Under current law, corporation tax rates are set at 3.5 percent of taxable income (normal tax) and an additional tax of 3.0 percent of taxable income (surtax) applies to taxable income in excess of $50,000 in tax year 2024. The Attracting Powerful Economic Expansion (APEX) Program at the Department of Commerce allows an additional 0.5 percent normal tax rate reduction for the second signed APEX project after construction has commenced. The bill would reduce the normal tax rate to 3.0 percent beginning in tax year 2025 regardless of whether the second signed APEX project has commenced construction. For tax year 2026, the normal tax rate would be reduced to 2.75 percent.

The Department of Revenue estimates that SB 546 would increase State General Fund revenues by $22.1 million in FY 2025, $22.0 million in FY 2026, and $41.5 million in FY 2027. The estimated fiscal effect by specific tax policy change would be as follows:

Tax Changes (SGF)	FY 2024	FY 2025	FY 2026
HPIP Ending TY 2025	$ 26,700,000	$ 53,300,000	$ 80,000,000
No PEAK After 07/01/2024	7,400,000	14,800,000	22,200,000
Corporate Rate Change	(12,000,000)	(46,100,000)	(60,700,000)
Total SGF	$ 22,100,000	$ 22,000,000	$ 41,500,000

To formulate these estimates, the Department of Revenue reviewed data on HPIP tax credits from tax years 2016 through 2021, PEAK benefit agreements from 2019 through 2022, and corporation tax returns from tax year 2021. It is assumed that two-thirds of HPIP tax credits are currently carry-forward from previous years. Not allowing new HPIP tax credits to be claimed is expected to increase tax liability by $26.7 million the first year and would continue to increase tax liability each year as fewer credits remain to be claimed until reaching an impact of approximately $80.0 million per year. It is estimated that $7.4 million in yearly caps are enrolled each year in new PEAK benefit agreements that would now be disallowed under the provisions of the bill. Assuming benefit agreements expire at the same rate they are entered, the bill would increase the State General Fund revenues by this amount each year until current agreements expire. The fiscal note takes into account that the corporation normal rate has already decreased to 3.5 percent in tax year 2024 after the first signed APEX project began construction. The Department used a simulation to estimate the fiscal effect of the rate decreases for tax years 2025 and 2026. The Department indicates that repealing the other tax credits in the bill is not estimated to have a fiscal effect because they are currently unused.

The Department indicates that the bill would require $157,625 from the State General Fund in FY 2025 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. In addition, 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 Insurance Department indicates insurance companies claimed approximately $11.5 million in HPIP tax credits in tax year 2022 and approximately $18.9 million in tax year 2023. If insurance companies are no longer able to claim the HPIP tax credit, then it would increase insurance premiums taxes collections that are distributed to the Start General Fund (99.0 percent) and the Insurance Department Service Regulation Fund (1.0 percent) by unknown amounts beginning in tax year 2025. The amount of HPIP tax credits claimed varies each year depending on the amount of capital investment in that year and the amount of tax credits that were carried forward from the previous tax year. The Insurance Department indicates the computer programming costs to eliminate the processing of future HPIP tax credits on insurance premium tax returns would be negligible and could be absorbed within existing resources.

The Department of Commerce indicates that it is currently responsible for administering the HPIP and PEAK programs. The Governor's budget includes continuing funding for these programs in FY 2025 to review applications from qualified businesses. Though no new HPIP tax credits would be issued in tax year 2025 and no new PEAK benefits would be issued in FY 2025 under the provisions of the bill, previously issued HPIP tax credits may be carried over for up to 16 years and current PEAK benefits could be extended up to seven years. The Department does not anticipate immediate changes to agency workload in FY 2025 as existing program managers would be required to review existing agreements, implement possible claw back plans, and satisfy tracking and reporting requirements. Any cost savings resulting from enactment of this bill would be delayed until FY 2026 when 2.00 FTE positions would no longer be needed, which would reduce agency expenditures by $236,281 including $165,396 from the Economic Development Initiatives Fund and $70,885 from PEAK and HPIP fee funds. The Department collected $271,144 in various applications fees from these programs in FY 2023. The Department estimates that similar application fees would not be collected from these programs beginning in FY 2025.

The Division of the Budget notes the bill would have an unknown impact on current and future economic development projects. Any fiscal effect associated with SB 546 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,

Adam C. Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Bobbi Mariani, Insurance Department
Sherry Rentfro, Department of Commerce