

SESSION OF 2011

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 196**

As Recommended by House Committee on
Taxation

Brief*

House Sub. for SB 196 would provide a new state income tax deduction known as “expensing” for certain qualified investments; repeal or phase out a number of existing state income tax credit and sales tax exemptions; repeal the Kansas Economic Opportunity Initiative Fund (KEOIF); and create a new fund, the Job Creation Program Fund (JCPF).

The legislation also would expand the Promoting Employment Across Kansas (PEAK) program in several ways.

Expensing Provisions

One section of the bill allows taxpayers to claim an expense deduction from Kansas net income before expensing or recapture for the cost of certain machinery and equipment depreciable under Section 168 of the federal Internal Revenue Code and certain canned software defined under Section 197 placed into service beginning in tax year 2012. The property must be located in Kansas to qualify for expensing. A member of a unitary group of corporations filing a combined report may, under certain circumstances, take the expense deduction for an investment made by another member of the group.

Any amount of excess expensing deduction would be treated as a net operating loss for state income tax purposes.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Any property sold during the applicable recovery period defined by federal law or relocated outside the state during such period would be subject to have a portion of its expense deduction “recaptured” for Kansas income tax purposes.

Taxpayers electing to expense qualified investments would be prohibited from also claiming a number of existing tax incentives that might otherwise apply to such investments, including tax credits for the high performance incentive program (HPIP); research and development; alternative fueled vehicles; swine facility improvements; historic preservation; carbon dioxide capture equipment; film production; refineries; oil or gas pipelines; integrated coal or coke gasification nitrogen fertilizer plants; biomass-to-energy plants; integrated coal gasification power plants; renewable electric cogeneration facilities; and biofuel storage and blending equipment. Taxpayers claiming expensing also would be prohibited from claiming accelerated depreciation otherwise available for the latter seven of these investment purposes.

Repeal or Modification of Existing Tax Incentives

Beginning in tax year 2012, income tax credits could no longer be earned pursuant to the Kansas Enterprise Zone Act; and the Job Expansion and Investment Credit Act.

Transitional language would authorize certain extant credits earned under both programs in tax year 2011 or previous years to continue to be carried forward.

Provisions relating to HPIP income tax credits would be modified such that beginning in tax year 2012, the current \$50,000 minimum investment threshold in six urban counties (Douglas, Johnson, Leavenworth, Sedgwick, Shawnee, and Wyandotte) would be increased to \$1 million. All HPIP related tax incentives also would be required to be reviewed prior to January 1, 2017.

Another income tax credit relative to property taxes paid on commercial and industrial machinery and equipment would be repealed beginning in tax year 2012.

A sales tax exemption relative to projects that qualify for the business and job development income tax credit program would be repealed on January 1, 2012.

Job Creation Program Fund

The bill further would create the Job Creation Program Fund (JCPF), which would be administered by the Secretary of Commerce, in consultation with the Secretary of Revenue and the Governor, to promote job creation and economic development by funding projects related to: the major expansion of an existing Kansas commercial enterprise; potential relocation to Kansas of a major employer; the award of a significant grant which has a financial matching requirement; the potential departure from the state or substantial reduction of operations of an existing employer; training or retraining activities; the potential closure or substantial reduction of a major state or federal institution; projects in counties with at least a 10 percent population decline over the last decade; or other “unique” economic development opportunities.

The two percent of withholding tax receipts under current law that is earmarked for the Investments in Major Projects and Comprehensive Training (IMPACT) program would begin becoming earmarked for the JCPF on July 1, 2011, except that transitional language generally would provide that current debt services for the IMPACT program repayment fund be met, as well as administrative costs associated with the IMPACT Program Services Fund.

Various statutes relating to another program, KEOIF, also would be repealed on January 1, 2012.

Additional language would require the Secretary of Revenue to estimate annually beginning on July 1, 2012 the amount of net savings realized under the provisions of the bill in anticipation of such amount being appropriated to the JCPF.

PEAK Expansion

The Peak Program, which provides for a diversion of 95 percent of certain employee income taxes away from the State General Fund (SGF), would be expanded on January 1, 2012 to include for the first time “retained jobs,” which generally would be defined to mean jobs which would otherwise be lost but for employer participation in PEAK.

Additional changes would allow companies to use either the median or the average wage paid to employees (as opposed to the median wage only under current law) as one of the tests for qualification; allow companies to retain employee withholding taxes for all new jobs (as opposed to only those jobs equal to or above the wage threshold); and allow not-for-profit corporations to enter the program.

Participation of existing Kansas businesses in the job creation or expansion phases of the program would be accelerated from January 1, 2012, to July 1, 2011.

Qualified companies also would be authorized to utilize or contract with all third-party employers (as opposed to only unrelated third-party employers).

A new provision would allow Kansas small businesses, defined as qualified companies with fewer than 100 employees, to be eligible to the extent that additional employees represent an increase over the highest employment level of the previous 10 years.

The bill also would effectively provide an individual income tax exemption (through an income tax credit mechanism) for certain Kansas source income received by Kansas resident owners of qualified companies who materially participate in the business activities.

Finally, a \$4.8 million cap for each fiscal year on the total amount of benefits granted to expanding businesses would be repealed.

Background

The bill was requested for introduction by the Governor and supported by the Secretary of Revenue and the Secretary of Commerce. A number of conferees applauded the proposed expensing provisions but expressed concern about elimination of existing tax credit and incentive programs.

The House Taxation Committee on March 14 amended the bill to strip its contents; insert the similar but not identical provisions of the expensing legislation which had previously been approved by that committee in HB 2317; insert the provisions of Sub. for HB 2220 relating to the PEAK program; and recommend that a substitute bill be created.

The latest fiscal notes available from the Department of Revenue indicate that the expensing related provisions of the bill (from HB 2317) would be expected to increase State General Fund (SGF) receipts by \$2.874 million in FY 2012 and by \$39.540 million in FY 2013; increase State Highway Fund (SHF) receipts by \$1.126 million in FY 2012 and by \$5.560 million in FY 2013; and increase Economic Development Initiatives Fund (EDIF) available revenues by \$1.3 million for both fiscal years as a result of the proposed repeal of the KEOIF program. The net provisions from this part of the bill therefore would produce an additional \$5.3 million of available resources in FY 2012 and an additional \$46.4 million in available resources in FY 2013. As noted previously, these net amounts – notwithstanding the fact that the monies would be in three separate funds – are contemplated being designated for ultimate appropriation to the JCPF. The following table summarizes that portion of the fiscal note provisions:

(\$ in millions)

	FY 2012	FY 2013
<u>State General Fund</u>		
Expensing	\$ (6.000)	\$ (47.400)
Sunset Ent. Zone, Job Exp. Credits	0.000	5.000
HPIP Credit Changes	0.000	1.000
Repeal Mach./EQ. Prop. Tax Credits	0.000	37.000
Repeal Sales Tax Exemptions	8.874	43.940
Total SGF Impact	\$ 2.874	\$ 39.540

State Highway Fund

Repeal Sales Tax Exemptions	\$ 1.126	\$ 5.560
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Eco. Devo. Initiatives Fund

Repeal KEOIF	\$ 1.300	\$ 1.300
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Net All Funds Impact	\$ 5.300	\$ 46.400
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The Department of Revenue indicated that the PEAK expansion provisions (from Sub. for HB 2220) would be expected to have the following impact on SGF receipts:

FY 2012	\$ (10.0)
FY 2013	(20.5)
FY 2014	(31.0)
FY 2015	(41.5)
FY 2016	(52.0)
5-yr total	\$ (155.0)