

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2045

As Amended by House Committee of the Whole

Brief*

HB 2045, as amended, would revise certain tax credits pertaining to angel investors and home renovations for disabled family members.

Angel Investor Tax Credit

The bill would revise the Kansas Angel Investor Tax Credit Act (Act) by extending the sunset on the program from tax year 2021 to tax year 2026, amending applicable definitions, removing certain program restrictions, and increasing program tax credit amounts and annual program limits.

Program Sunset

The bill would extend the sunset on the angel investor tax credit from tax year 2021 through tax year 2026.

Definitions

The bill would amend the definition of “qualified securities” with respect to the use of debt instruments as qualifying forms of investment. Debt instruments permitted to be used as a form of investment would include any debt that:

- Is subordinate to the creditors of the business receiving the investment,

*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>

- Requires no payment by such business, and
- Will convert to some form of equity before the business receives any additional funds.

Tax Credit Limits

The bill would make the following changes to limits on tax credit dollar amounts:

- Increase single-year tax credit amounts
 - From \$50,000 to \$100,000 for a single Kansas business, and
 - From \$250,000 to \$350,000 for a single qualified investor;
- Change the maximum value of the tax credit from equal to 50 percent, to up to 50 percent of the qualifying investment; and
- Set annual tax credit limits at \$6.0 million in tax years 2021 and 2022, with a \$0.5 million increase each tax year after that through 2026.
 - Any unused tax credits for a given year would be carried over for use in future tax years through 2026.

Restrictions on Investments and Investors

The bill would remove or modify certain restrictions on investments and investors:

- Venture capital companies would be permitted to receive tax credits;
- Investments in Kansas Venture Capital, Inc., would be permitted;

- In order to receive a transferable credit, the bill would require an investor to have no current tax liability at the time of investment, rather than no tax liability for the preceding three years;
- The recipient of a transferable credit would not need to be an accredited investor as defined by federal regulation (17 CFR 230.501(a)); and
- Provided that an investment was made lawfully, investors would not lose any tax credits if the business in which the investment was made were to lose its designation as a qualified business.

Clawback Provision

The bill would modify the clawback provision in the Act. Currently, any business receiving financial assistance under the Act is required to make repayment to the Kansas Department of Commerce if the business ceases to be a qualified business or moves its operations outside of Kansas within ten years. The bill would require businesses to meet these qualifications for a minimum of:

- Ten years for bioscience businesses, and
- Five years for any other business.

Home Renovation Tax Credit for Disabled Family Members

The bill would increase the maximum tax credit, from \$9,000 to \$15,000, for home renovations made for a disabled family member's access. Under current law, the tax credit that may be claimed is equal to the lesser of either \$9,000 or the applicable percentage of construction expenditures, which decreases as the taxpayers' federal adjusted gross income (FAGI) increases; a taxpayer with an FAGI no greater than \$25,000 has an applicable percentage of 100.0 percent. The

bill would allow taxpayers with an FAGI of \$60,000 or less to be eligible for the tax credit of \$15,000. The bill would phase out the credit by increments of 10.0 percent for each \$10,000 increase in FAGI. The bill would also distinguish tax credits eligible for married individuals filing jointly and all other individual taxpayers, who would be eligible for the maximum credit if their FAGI is no greater than \$40,000.

Under current law, if a taxpayer's liability is less than \$2,250, then portions of the credit may be refundable in the first, second, and third years equal to one-fourth, one-third, and one-half, respectively. The bill would increase the taxpayer's liability threshold from \$2,250 to \$3,750.

Starting in tax year 2022 and for all subsequent tax years, the bill would adjust the maximum tax credit and the tax liability threshold by a cost-of-living amount determined under Internal Revenue Code section 1(f)(3).

Background

The bill was introduced by Representative Owens.

House Committee on Commerce, Labor and Economic Development

In the House Committee hearing on January 13, 2020, Representative Owens provided **proponent** testimony, as did representatives of Artio Medical, Inc.; BioNexus KC; Enterprise Center in Johnson County; the Greater Kansas City Chamber of Commerce; the Kansas Department of Commerce; KC Tech Council; the Overland Park Chamber of Commerce; and the Wichita Regional Chamber of Commerce. Written-only **proponent** testimony was provided by representatives of Fennik Life Sciences and Women's Capital Connection. Proponents of the bill stated the bill's clarifications and removal of restrictions would increase the effectiveness of the program.

A representative of the Kansas Policy Institute testified as an **opponent** to the bill, voicing concerns over the impossibility of determining whether the program has been successful, as discussed in a 2020 Legislative Post Audit report on the Angel Investor Tax Credit Program.

No neutral testimony was provided.

A representative of BioKansas who did not testify at the hearing appeared as a **proponent** of the bill prior to the discussion and action on the bill on January 28, 2020.

The House Committee adopted amendments that would make technical changes and clarify that investors would not lose tax credits if the investment was made lawfully, even if the business invested in were to lose its designation as a qualified business.

House Committee of the Whole

The House Committee of the Whole amended the bill to add provisions related to tax credits for home renovations for disabled family members.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Kansas Department of Revenue (KDOR) estimated that, if the bill is enacted, State General Fund (SGF) revenue would decrease by \$1.9 million in FY 2022, by \$6.0 million in FY 2023, and by increasing increments of \$0.5 million each year through FY 2026 to \$8.0 million. KDOR noted program utilization has not reached its cap in previous tax years, but the removal of restrictions by the bill would lead to full utilization of the credits in future years. In order to implement the bill and modify the automated tax system, \$6,445 would be required from the SGF in FY 2022, although additional expenditures

might be necessary should KDOR require contracting of outside programming resources. The fiscal note states no additional staff would be necessary for either KDOR or the Department of Commerce to implement and administer the changes to the angel investor program.

The Department of Revenue estimates the enactment of the provisions related to home renovations for disabled family members would reduce SGF receipts by a negligible amount, beginning in FY 2022.

Any fiscal effect associated with the enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*

Tax credits; Angel investors; economic development; disability access