

Approved: 2-19-07

Date

MINUTES OF THE HOUSE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE

The meeting was called to order by Chairman Lana Gordon at 3:30 P.M. on February 6, 2007 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Hank Avila, Kansas Legislative Research Department
Jason Long, Revisor of Statutes
Ann Deitcher, Committee Assistant

Conferees appearing before the committee:

Joan Wagnon, Secretary, Dept. Of Revenue

Others attending:

See attached list.

Secretary Wagnon offered a briefing on **HB 2170**, the Governor's Tax reform Proposal as well as the proposed repeal of underutilized tax credits. (Attachments 1 and 2).

Following this, the Chair requested a list and explanation of these tax credits. The Secretary agreed to provide them for the next Committee meeting.

The meeting was adjourned at 4:40 p.m. The next meeting is scheduled for Wednesday, February 7, 2007.

**Briefing on HB 2170
Governor's Tax Reform Proposal
February 6, 2007**

Why? Growth in the economy

Improve the business climate long term, with changes in tax policy that could stimulate the economy and grow jobs and investment for Kansas.

How? Ask Business what they need most. Their priorities were corporate rate reduction and simplification of tax incentives. Commerce and Revenue, in consultation with the business advisory group developed the plan below.

A. Business Tax Incentives/Tax Credits (Sections 1 - 14, 24)

The Enterprise Zone incentives, HPIP credit and Business and Job Development Credit will be replaced by the following two new, simplified incentives.

1. Investment Tax Credit – 10% of investment if you qualify:

- Minimum of \$1,000,000
- No retail, mining, agriculture
- Higher than average wage
- 10 year carry forward
- for profit business
- Sales tax exemption available for construction

2. Jobs Credit - \$1,500 per job created if you qualify:

- Minimum of 20 jobs
- No retail, mining, agriculture
- No wage requirement
- Unlimited carry forward
- Sales tax exemption available for construction

NEW!! Opportunity Zones Incentives¹ (Subsection 10(e))

The incentives for Opportunity Zones are also a Jobs Credit, and Investment credit but with different thresholds and awards:

- o \$3,500 Job Credit per new employee for each business creating at least 5 jobs in an Opportunity Zone. Open to any business, including retail. (Subsection 11(a))

¹ Commerce will establish this program by rule and regulation, setting out the areas eligible to participate and program parameters. The eligible areas will be evaluated and reviewed every 3 years

- A minimum of \$100,000 in investment in an O-Zone will qualify. All other rules apply. (Subsection 3(a)(2); subsection 4(e))
- Eligible for the sales tax exemption. (Subsection 22(cc))

B. Business Tax Rate Reductions:

- **Corporate Income Tax reduced from 7.35% to 6.75%**

Section 18 amends K.S.A. 79-32,110 to reduce the corporate income tax surcharge over 2 years from 3.35% to 2.75%, beginning in tax year 2008. The base rate of 4% would remain unchanged. The rate in Tax Year 2008 would be 6.95% and in TY 2009, 6.75%. This is an 18% reduction in the surcharge and about an 8% reduction overall in corporate income taxes when fully implemented.

	Fiscal Year				
	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Franchise Tax	\$ (7.0)	\$ (7.3)	\$ (7.6)	\$ (7.9)	\$ (8.2)
Corporate Income	\$ (5.8)	\$ (22.2)	\$ (29.0)	\$ (29.0)	\$ (29.0)
Total	\$ (12.8)	\$ (29.5)	\$ (36.6)	\$ (36.9)	\$ (37.2)

- **Raise the Franchise Tax net worth exemption from \$100,000 to \$1,000,000** beginning tax year 2007. The fiscal impact of this is approximately \$7-8 million annually. (Section 23) The rate and cap will remain unchanged.²

Finally, some administrative provisions are included in the bill:

- Delinquent taxes must be paid before credits or sales tax exemption is granted. (Subsection 2(c); subsections 10(c) and (f); subsection 22(cc))³
- Repeal these unused credits (Section 24):
 - Plugging abandoned oil/gas wells (K.S.A. 79-32,207)
 - Swine Facility Improvement Credit (K.S.A. 79-32,204)
 - Temporary Assistance to Families Contribution credit (K.S.A. 79-32,200; K.S.A. 39-7,132)
 - Ag loan interest reduction (K.S.A. 79-32,181a)
 - Habitat management (expired)

² Currently 79,000 small businesses are exempt because of the \$100,000 threshold. Raising the threshold to \$1,000,000 adds an additional 16,000 businesses, leaving only 5,000 paying franchise tax.

³ Prior to authorization of a tax credit or the sales tax exemption allowed under K.S.A. 79-3606(cc), KDOR will verify that the applicant does not owe any delinquent income, sales, use or premium taxes or interest or penalties on such taxes. If a delinquency exists, no credit or exemption can be issued until all delinquencies are satisfied. Department of Insurance will verify delinquent premium taxes

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Additional detail on credits and section reference in the bill:

Investment Tax Credit (Sections 1 - 8)

- Sections 2 and 3 set forth the eligibility criteria:
 - Be a for profit business (Subsection 2(c) defining “eligible taxpayer”)
 - Invest at least \$1,000,000 at a company’s qualified business facility. Investments less than that amount (except in Opportunity Zones) will not qualify. (Subsection 3(a)(2); subsection 4(d)) If the investment occurs over a multi-year period, as long as it is the same project, it will qualify. (Subsection 2(g) defining “qualified investment”)
 - Pay a higher than average wage (Subsection 3(a)(3)—which is modeled after the current HPIP wage requirements in K.S.A. 74-50,131)
 - Company’s facility must be classified under specified NAICS codes or be identified as a headquarters or ancillary support operation. (Subsection 3(a)(1)(A))
- Business must apply for the credit initially with the Department of Commerce. Certification of eligibility by Commerce is required in order to obtain the credit. (Subsection 4(a)) Sections 5 and 6 provide that the Departments of Commerce and Revenue will work together to coordinate the procedures, and those agencies are given rule and regulation authority to do so.
- Commerce determines eligibility and refers applicant to KDOR (subsection 4(a)); a preliminary estimate of the credit is done with KDOR staff and signed by the department and the taxpayer; when investment is made, the form is completed and returned to KDOR to claim the credit. (form attached)
- Credit amount is 10 percent for all the investment actually made, not just the amount above the eligibility threshold. (Subsection 4(a); subsection 2(g))
- Credit is claimed in the year the investment is placed in service (Subsection 4(a))
- Unused credits may be carried-forward for 10 years and will require taxpayer to provide a self-certification statement that it is still paying a higher than average wage and still doing business in Kansas. (Subsection 4(c))
- An eligible company also qualifies for a sales tax exemption for use in conjunction with the company’s eligible capital investment at its business facility. (Subsection 22(cc) amending K.S.A. 79-3606(cc))
- Credits may be used to pay corporate, individual or premium taxes. (Subsection 2(c); subsection 4(a))
- A taxpayer shall elect to claim the investment credit on the original return for the tax year in which the qualified investment was placed into service. (Subsection 4(b))

A. Jobs Credit (Sections 9 through 14)

. Requirements include:

- Any businesses within appropriate NAICS or identified as a headquarters or ancillary support operation and creating at least 20 net new jobs in

- Kansas, as determined by the net gain in employees on the payroll at year end, is eligible for a credit of \$1,500 for each new employee. (Subsection 10(c); subsection 11(a))
- Claim the credit on the tax return; no pre-certification requirement. (Subsection 11(b))
- An eligible company may be issued a two year sales tax exemption certificate for facility construction in conjunction with the company's capital investment at its business facility. (See C. Sales Tax Exemptions.) (Subsection 22(cc))
- Does not apply to retention of existing jobs. (Subsection 10(d); subsection 11(c))
- No restriction on the kind of business in Opportunity Zone; retail excluded in MSA's. (Subsection 10(f); subsection 10(c))
- Enhanced credit and lower job hiring requirement is available in the Opportunity Zone. (Subsection 11(a))
- Credit is non-refundable, but may be carried forward. (Subsection 11(c))
- Websites at both Commerce and Revenue include a benefits calculator for this credit.
- A taxpayer shall elect to claim the job credit on the original return for the tax year in which the employees were hired. (Subsection 11(b))

B. Sales Tax Exemptions (Subsection 22(cc) amending K.S.A. 79-3606(cc))

- Available to any certified investment credit or eligible job credit
- Project based, but requires project exemption certificate. The 2 year period of issuance can be extended if needed by KDOR.
- Lessor leasing to a qualified business shall also qualify for a sales tax exemption for the construction, reconstruction of a facility if there is a 5 year lease between the two entities.

There is a 5 year sunset on these credits which will go into effect for all taxable years commencing after December 31, 2006. (Sections 8 and 14)) Businesses with existing credits to carry forward will retain those credits until used.

These items from the HPIP have been simplified or eliminated :

- Simplified calculation of credit and application process, such as removal of calculations of monthly averages, etc. (Subsection 2(g) defining "qualified investment"; section 24 repeal of K.S.A. 79-32,154 definition of "qualified business facility investment"))
- Eliminate the 50% sales outside the state requirement and training credit (Section 24 repeal of K.S.A. 74-50,131).
- Eliminate recertification for carry-forward. (Subsection 4(c))

Investment Credit Process

1. Identify anticipated investment to Commerce.

Taxpayer will give their NAICS (or information providing that the worksite is a headquarters or ancillary support operation), investment amount by categories and description of project, indicate whether they have been or will be paying higher than average wages, and time period for investment project. (See worksheet)

2. Commerce reviews and signs off on the anticipated investment if it qualifies. Revenue also reviews the anticipated investment and signs off on the investment commitment giving a proposed credit amount based on the estimate provided by the taxpayer with the assumption that the taxpayer will meet all of the requirements. Revenue will explain to the taxpayer in written form what investment qualifies and provisions for requesting a project exemption certificate.

3. When the investment has been made and placed into service, the taxpayer will complete a schedule indicating the actual investment made and submit to Revenue with appropriate documentation.

4. Revenue will verify investment and issue a formal letter of offering representing the investment credit available and to be claimed on the taxpayer's income tax, privilege tax or premium tax return. (There will be no documentation or credit schedule attached to income tax return.) Wages will be verified by Commerce. For investment occurring at a Kansas business facility that will operate with an existing workforce, the average wage will be determined based on the four calendar quarters ending prior to the start of the investment spending. For investment occurring at a Kansas business facility that will begin operations with a new workforce, the average wage will be determined based on the first four calendar quarters of operation.

5. Investment credit will be claimed when project is completed and investment is placed into service. Taxpayer may separate project into stages and claim as stage is placed into service as long as that stage is at least \$1,000,000 in investment. If the stage does not have \$1,000,000 in expenditures, the taxpayer can roll this stage to the next stage to claim the credit, again as long as the two stages now are at least \$1M.

6. A new schedule of anticipated investment will be required for each new project or for any material change in the scope of a project originally applied for.

(DRAFT)

Investment Credit		Commerce	Revenue
Planned Project:		Completed Project:	
Name:	_____	_____	_____
FEIN:	_____	_____	_____
Address of Facility	_____	_____	_____
Project Number:	_____	_____	_____
Project Name:	_____	_____	_____
Project Description:	_____	_____	_____
Project Duration: beginning and ending dates	_____	_____	_____
NAICS of facility	_____	_____	_____
Description of NAICS	_____	_____	_____
Headquarters operation	_____	_____	_____
Ancillary support operation	_____	_____	_____
Average wage per NAICS Code	\$0.00		\$0.00
Average wage at facility	\$0.00		\$0.00
Difference:	<u>\$0.00</u>		<u>\$0.00</u>
Dates:	_____	_____	_____
Tax Period: beginning and ending	_____	_____	_____
Project investment estimate:	_____	_____	_____
Date placed in service:	_____	_____	_____
Depreciable asset categories:	Acct Number:	Acct Number:	
Building	\$0.00		\$0.00
Furniture and fixtures	\$0.00		\$0.00
Machinery and equipment	\$0.00		\$0.00
Leasehold improvements	\$0.00		\$0.00
Land	\$0.00		\$0.00
Other: specify	\$0.00		\$0.00
Rents: specify	\$0.00		\$0.00
	\$0.00		\$0.00
Total investment:	<u>\$0.00</u>		<u>\$0.00</u>
\$100,000 or \$1,000,000 minimum investment			
If greater than minimum investment:			
Credit @ 10%	<u>\$0.00</u>		<u>\$0.00</u>
(Investment excludes property that leaves the facility.)			
Signature of taxpayer	_____	Signature	_____
Date	_____	Date	_____
Commerce signature	_____		
Date	_____		
Revenue signature	_____	Revenue signature	_____
Date	_____	Date	_____

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**Proposed Repeal of Tax Credits that are Underutilized
SB 213 and HB 2170**

Credit for Plugging an Abandoned Oil or Gas Well-K.S.A. 79-32,207

This legislation was passed in 1998, (effective for all taxable years commencing after December 31, 1997) and allows a credit for taxpayers who make expenditures during the tax year to plug an abandoned oil or gas well on their land in accordance with the rules and regulations of the Kansas Corporation Commission. The credit is 50% of the expenditures incurred to plug the well. The total amount of credits taken by all taxpayers may not exceed \$250,000 in any fiscal year.

	Number of Filers	Amount of Credit Allowed
Tax Year 2004	7	\$23,461
Tax Year 2003	*confidential	*confidential
Tax Year 2002	*confidential	*confidential
Tax Year 2001	*confidential	*confidential
Tax Year 2000	9	\$9,081

*confidential-This information is confidential as there are less than 5 filers. This information is not included in the total.

Agricultural Interest Reduction Loan Credit-K.S.A. 79-32,181a and K.S.A. 79-1126a

This legislation was passed during the 2000 session. The legislation, effective April 27, 2000, and prior to July 1, 2004, allows a credit to any production credit association or agricultural credit association which extends or renews an agricultural production loan to an eligible agricultural borrower at an interest rate which is at least one whole percentage point less than the lowest rate at which the association is making agricultural production loans to agricultural loan customers with equivalent collateral.

	Number of Filers	Amount of Credit Allowed
Tax Year 2004	*confidential	*confidential
Tax Year 2003	*confidential	*confidential
Tax Year 2002	0	0
Tax Year 2001	*confidential	*confidential
Tax Year 2000	0	0

*confidential-This information is confidential as there are less than 5 filers. This information is not included in the total.

Habitat Management Credit-K.S.A. 79-32,203

This legislation was passed in 1997 and effective for all taxable years commencing after December 31, 1997 and prior to January 1, 2003. An income tax credit is allowed for a property owner that pays property taxes and assessments on property designed as a critical habitat and for costs incurred for habitat management or construction and maintenance of improvements on real property.

	Number of Filers	Amount of Credit Allowed
Tax Year 2004	*confidential	*confidential
Tax Year 2003	*confidential	*confidential
Tax Year 2002	*confidential	*confidential
Tax Year 2001	*confidential	*confidential
Tax Year 2000	*confidential	*confidential

*confidential-This information is confidential as there are less than 5 filers. This information is not included in the total.

Economic Development & Tourism
Date: 2-6-07
Attachment # 2-1

Swine Facility Improvement Credit-K.S.A. 79-32,204

This legislation was passed in 1998 and effective for all taxable years commencing after December 31, 1997. An income tax credit is allowed for taxpayers making required improvements to a qualified swine facility. The credit is 50% of the costs incurred. Required improvements to a qualified swine facility are capital improvements certified by the Secretary of Health and Environment.

	Number of Filers	Amount of Credit Allowed
Tax Year 2004	0	0
Tax Year 2003	0	0
Tax Year 2002	*confidential	*confidential
Tax Year 2001	0	0
Tax Year 2000	*confidential	*confidential

*confidential-This information is confidential as there are less than 5 filers. This information is not included in the total.

Temporary Assistance to Families Contribution Credit-K.S.A. 79-32,200 and K.S.A. 39-7,132

This legislation was passed during the 1994 legislative session and effective for all taxable years commencing after December 31, 1993. This legislation allows a 70% credit for a taxpayer that enters into an agreement with the Secretary of Social and Rehabilitation Services to provide financial support to a person who receives Temporary Assistance for Families (TAF).

	Number of Filers	Amount of Credit Allowed
Tax Year 2004	0	0
Tax Year 2003	0	0
Tax Year 2002	0	0
Tax Year 2001	0	0
Tax Year 2000	0	0

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