

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on January 31, 2008 in Room 519-S of the Capitol.

All members were present except: Representative Dillmore - Excused

Committee staff present:

Chris Courtwright, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Ryan Hoffman, Legislative Research Department
Scott Wells, Office of Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Secretary Joan Wagnon, Kansas Department of Revenue (KDOR)
David Bybee, HPIP Manager - Kansas Department of Commerce (KDOC)

Others attending:

See attached list.

Representative Wilk made a motion to introduce a bill regarding income tax deductions related to medical care expenses. Representative Carlson seconded. The motion carried.

The Chairman invited Secretary Wagnon to the podium to give a briefing on the macro economics package, which is comprised of several incentive programs. Recently Secretary Wagnon and Secretary Kerr had given this briefing jointly, however due to a scheduling conflict for Secretary Kerr, Secretary Wagnon would review KDOC IMPACT program.

The Secretary said that on Friday the Senate Tax and Economic Development Committees are going into a joint session hearing on **SB 497**, which contained the majority of the tax incentive programs. The bill had been jointly referred to those committees. At the request of the Chairman, she explained that a dual referred bill means that you combine the two committees, they move the bill together, and it takes a majority of the total number of combined members to pass the bill out. She said that the 2008 Legislative Proposal is very much a joint effort of KDOR and KDOC, and legislators can be assured that they are totally in agreement on all the proposals.

The Secretary said there were four concepts in the economic development package: 1. Impact Program Enhancement; 2. Tax Incentive Program; 3. Research and Development, and 4. Modernization of the Corporate Income Tax. She explained the genesis of the sub-committee that worked together to develop legislation before them. She introduced David Bybee, HPIP Manager, KDOC in attendance

IMPACT PROGRAM ENHANCEMENT (Attachment 1) Following are key points:

Current Law

- ▶ Utilized for training and cash incentives for new or retained jobs.
- ▶ Allows for use of 2% of overall withholding taxes collected
- ▶ Capacity for debt service and program fees
- ▶ Awards restricted to 95% of estimated withholding tax for new or retained jobs

Recommendation for Impact Enhancement

- ▶ Maximize value to the state and business by providing the flexibility to utilize debt service or cash
- ▶ Eliminate 95% withholding limitation which negatively impacts business recruitment
- ▶ Target a minimum of 15% for rural projects and a minimum of 20% for small business opportunities
- ▶ Unallocated funds carried forward absent of targets

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on January 31, 2008 in Room 519-S of the Capitol.

TAX INCENTIVE PACKAGE (Attachment 2)

OBJECTIVES:

1. Establish a selectively applied tax credit cash refund program (New)
Applied on a prospective basis only (12/31/07 and after)
Total amount of appropriation capped at \$10M annually
Companies may apply for a select number of a discounted cash refund of up to 40% of earned credits.
If awarded and a discounted cash refund is accepted, the remaining amount of company's tax credits would be forfeited.
Application made through Commerce with selection criteria developed through rules & regulations.
Commerce submits annual report to Legislature, detailing the company and total credit awarded.
2. Establish the creation of opportunity zones to enhance investment and job creation credits
Mirrors provisions of **HB 2170**
Opportunity Zone can be created in response to a disaster area designation
3. Replace existing tax credit programs with streamlined investment tax credit and job creation credit plans
Investment Tax Credit - Set at 10% of qualified investment
For-profit businesses
Identified under specifics NAICS codes or HQ/ancillary support operation
Qualified investment
Job Credit Creation
Investment tax credit and job creation credit plans replace:
Enterprise Zone Incentives; High Performance Incentive Program (HPIP) and the Businesses and Job Development Credits
4. Simplify qualified investment calculation for investment-based credits
Qualified investment placed in service during taxpayer's tax year

The Secretary called attention to the following memorandums: 1) Business and Job Development Credit: Job Expansion and Investment Credit Act and Kansas Enterprise Zone Act, which describes the current programs being repealed (Attachment 3); 2) Kansas Tax Credits, which reflects tax expenditure data for 2005 (Attachment 4); 3) High Performance Incentive Program (HPIP) (Attachment 5) and General Flow of HPIP Activities (Attachment 6).

Following were requests for addition information:

- ▶ Request data on the amount of HPIP applications and the dollar amount of the credits
- ▶ How much debt service is outstanding?
- ▶ How many HPIP applications and credits were awarded in 2007
- ▶ What criteria will be used to determine whether a company will be awarded a refund?
- ▶ Will the criteria be published in the Rules and Regulations before a vote on the bill is taken.
- ▶ What is the level of investment most applicants are making?

Due to time constraints the Chairman said they would return to the issue on Tuesday, February 5, 2008. He invited Secretary Wagon back to that meeting, and also extended the invitation to Secretary Kerr.

The meeting adjourned at 10:25 a.m. The next meeting is 2-1-08.

HOUSE TAXATION COMMITTEE

DATE: January 31, 2008

NAME	REPRESENTING
J P SMALL	KOCH INDUSTRIES
Ron Secher	Hem Law Firm
Terry Fosyth	KNEA
Marlee Carpenter	KS Chamber
Demick Sontag	NFIB
KEVIN GREGG	KMCA
Jamie Slack	federico Consulting
Shahira Suford	KS Grain Feed Assn.
RONALD RICHEY	NAFRE
Don Korber	Kansas, Inc
Jim Muay	Spinec Aero Systems
David Byler	Dept of Commerce
James Bertle	dept. of Revenue
Kathleen Smith	KDOR
Loki Desch	PMCA
BRAD HARRISON	KFB

2008 Legislative Proposal
IMPACT Program Enhancement

➤ **IMPACT – Current Law**

- **Utilized for Training and Cash Incentives for New or Retained Jobs**
- **Allows for Use of 2% of Overall Withholding Taxes Collected**
- **Capacity for Debt Service and Program Fees**
 - 2007: \$1.9B of overall withholding taxes; \$39.3M available to service debt (bond payments)
 - 2007: \$13.5M paid for debt service; \$1.5M paid for program fees
- **Awards Restricted to 95% of Estimated Withholding Tax for New or Retained Jobs**

2008 Legislative Proposal
IMPACT Program Enhancement

Recommendation for IMPACT Enhancement

- **Maximize Value to the State and Businesses by Providing the Flexibility to Utilize Debt Service or Cash**
 - \$27.5M available annually to service bonds (\$39.3M Annually Services \$275M on a 10 Year Bond)
 - \$39.3M available annually if converted to cash
 - Creates a “pay as you go” vs. “mortgage the future” environment
- **Eliminate 95% Withholding Limitation Which Negatively Impacts Business Recruitment**
- **Target a Minimum of 15% for Rural Projects and a Minimum of 20% for Small Business (less than 100 employees) Opportunities**
- **Unallocated Funds Carried Forward Absent of Targets**

2008 Legislative Proposal Tax Incentive Package

Tax Incentive Package Objectives:

- 1. Establish a Selectively Applied Tax Credit Cash Refund Program**
- 2. Establish the Creation of Opportunity Zones**
- 3. Replace Existing Tax Credit Programs with Streamlined Investment Tax Credit and Job Creation Credit Plans**
- 4. Simplify Qualified Investment Calculation for Investment-Based Credits**

2008 Legislative Proposal
Tax Incentive Package

1. **Establish a Selectively Applied Tax Credit Cash Refund Program**
 - Applied on a prospective basis only (12/31/07 and after)
 - Total amount of appropriation capped at \$10M annually
 - Companies may apply for a select number of a discounted cash refund of up to 40% of earned credits
 - If awarded and a discounted cash refund is accepted, the remaining amount of company's tax credits would be forfeited
 - Application made through Commerce with selection criteria developed through rules & regulations
 - Commerce submits annual report to Legislature, detailing the company and total credit awarded

2008 Legislative Proposal
Tax Incentive Package

2. Establish the Creation of Opportunity Zones to Enhance Investment and Job Creation Credits

- **Mirrors Provisions of HB 2170**
 - Established by Secretary of Commerce
 - Comprised of at least one county
 - Economically disadvantaged
 - Outside of designated metropolitan county or micropolitan statistical areas
- **Opportunity Zone Can Be Created in Response to a Disaster Area Designation**

2008 Legislative Proposal
Tax Incentive Package

- 3. Replace Existing Tax Credit Programs with Streamlined Investment Tax Credit and Job Creation Credit Plans**
- **Investment Tax Credit - Set at 10% of qualified investment**
 - For-profit businesses
 - Identified under specific NAICS codes or HQ /ancillary support operation
 - **Qualified investment**
 - Equal or exceeds \$50K for businesses in Opportunity Zones
 - Equal or exceeds \$300K for businesses outside of Opportunity Zones
 - Average wages must exceed regional NAICS code wages
 - Non-manufacturing worksites must generate more than 50% of revenues from Kansas manufacturers or out-of-state commercial or government customers unless an HQ or back-office operation

2008 Legislative Proposal
Tax Incentive Package

- 3. Replace Existing Tax Credit Programs with Streamlined Investment Tax Credit and Job Creation Credit Plans**
- **Job Credit Creation**
 - \$3,500 per new employee with a minimum of 2 new jobs created in an Opportunity Zone
 - \$1,500 per new employee with a minimum of 5 new employees outside of an Opportunity Zone
 - \$1,500 per new employee with a minimum of 20 employees for HQ / ancillary support operations outside of an Opportunity Zone
 - **Investment Tax Credit and Job Creation Credit Plans Replace:**
 - Enterprise Zone Incentives
 - High Performance Incentive Program (HPIP)
 - and the Business and Job Development credits

2008 Legislative Proposal
Tax Incentive Package

4. Simplify Qualified Investment Calculation for Investment-Based Credits

- **Qualified investment placed in service during taxpayer's tax year**
 - **Investment must remain in service through the last day of the year**
 - **Recertification not required for investment or job credits**

BUSINESS AND JOB DEVELOPMENT CREDIT

K.S.A. 79-32,153 et seq. and K.S.A. 79-32,160a

The purpose of the business and job development credit is to provide tax incentives throughout the state which encourage businesses to create new jobs through capital investment projects involving the building of new facilities or the expansion or renovation of existing facilities. There are two different acts within the Kansas statutes which provide an income tax credit for those businesses which make an investment and create jobs as a result of that investment. The acts are the Job Expansion and Investment Credit Act and the Kansas Enterprise Zone Act.

JOB EXPANSION AND INVESTMENT CREDIT ACT

First effective for all taxable years beginning after December 31, 1975.

QUALIFICATIONS

The business and job development credit is allowed as a direct tax credit against the income tax of any Kansas taxpayer if:

- an investment in a qualified business facility is made, and;
- at least two qualified business facility employees are hired as a direct result of that investment.

There is no minimum amount of investment necessary to qualify for the credit, however, some investment must have been made. The taxpayer must qualify for the credit during the first taxable year that operations occur at the qualified business facility investment.

CREDIT AMOUNT

For an investment that began operations after December 31, 1992, the credit amounts are as follows:

Employee - \$100 for each qualified employee

Investment - \$100 for each \$100,000 of qualified investment

For an investment that began operations prior to December 31, 1992, the credit amounts are as follows:

LIMITATION OF CREDIT

The credit is limited to 50% of the tax on the qualified business facility income for the tax year, but in no case can the credit from all qualified investment and employees be more than 50% of the Kansas income tax in any one tax year.

The credit is recomputed each year for a 9 year period and no carryover of unused credit is allowed.

KANSAS ENTERPRISE ZONE ACT

First effective for all taxable years beginning after December 31, 1992.

QUALIFICATIONS

An enhanced business and job development credit is allowed as a direct tax credit against the income tax of any Kansas taxpayer when:

- an investment in a qualified business facility is made, and;
- the business meets the definition of:
 - manufacturing;
 - nonmanufacturing; or
 - retail, and
- a specified minimum number of qualified business facility employees are hired as a direct result of that investment.

There is no minimum amount of investment necessary to qualify for the credit, however, some investment must have been made. The taxpayer must qualify for the credit during the first taxable year that operations occur at the qualified business facility investment.

MANUFACTURING

A manufacturing business must hire at least two qualified business facility employees as a direct result of the investment to qualify for the credit.

CREDIT AMOUNT

Located in a Kansas metropolitan county or any other area not designated as a nonmetropolitan region

Employee - \$1,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

Located in a Kansas nonmetropolitan region

Employee - \$2,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

NONMANUFACTURING

A nonmanufacturing business must hire at least five qualified business facility employees as a direct result of the investment to qualify for the credit.

CREDIT AMOUNT

Located in a Kansas metropolitan county or any other region not designated as a nonmetropolitan region

Employee - \$1,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

Located in a Kansas nonmetropolitan region

Employee - \$2,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

RETAIL

A retail business may qualify for the enhanced tax credit under the Kansas Enterprise Zone Act if the business is considered as:

- the business headquarters of a retail operation;
- an ancillary support operation of a retail business;
- Catalog and Mail-Order Houses identified under the Standard Industrial Classification code of 5961; or
- Prepackaged Software identified under the Standard Industrial Classification code of 7372.

To qualify for the enhanced income tax credit, a business headquarters must hire at least 20 qualified business facility employees as a direct result of the investment and must have begun operations after December 31, 1992.

Effective for all taxable years commencing after December 31, 1995, an ancillary support operation of a retail business or those establishments designated with a SIC code of 5961 or 7372 shall also qualify for the enhanced income tax credit if at least 20 qualified business facility employees are hired as a direct result of investment made.

If the retail business is not considered as the business headquarters, ancillary support, or is not identified under the Standard Industrial Classification code of 5961 or 7372, the retail business may claim the business and job development credit under the Job Expansion and Investment Credit Act of 1976. The retail business must hire two qualified business facility employees as a direct result of the investment to qualify for the credit.

CREDIT AMOUNT

Located in a Kansas metropolitan county or any other area not designated as a nonmetropolitan region

Employee - \$1,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

Located in a Kansas nonmetropolitan region

Employee - \$2,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

Kansas Tax Credits
Tax Year 2005

Program Name	Statutory Reference	Description	Number of Filers	Tax Expenditure	Projected Jobs Created	Actual Jobs Created	Projected Jobs Retained	Actual Jobs Retained	Projected Capital Investment Generated	Actual Capital Investment Generated	Projected Revenue/Sales Generated	Actual Revenue/Sales Generated	Projected Payroll Generated	Actual Payroll Generated
Business and Job Development Credit	K.S.A. 79-32,153	Any taxpayer that invests in a qualified business facility and hires at least two employees as a result of that investment may be eligible for an investment tax credit of \$100 for every \$100,000 of investment made and a job creation tax credit of \$100 for every qualified business facility employee.												
	K.S.A. 79-32,160a	Any taxpayer that meets the definition of business in K.S.A. 74-50,114(b), that invests in a qualified business facility and hires a minimum number of employees as a result of that investment may be eligible for an investment tax credit of \$1,000 for every \$100,000 of investment made and a job creation tax credit of at least \$1,500 for every qualified business facility employee.												
Income and Privilege Taxpayers		Sector 11-Agriculture, Forestry, Fishing and Hunting	10	\$77,427 -		0 -				\$0 -				
		Sector 21-Mining	8	\$47,450 -		51 -				\$15,507,087 -				
		Sector 23-Construction	15	\$227,465 -		148 -				\$10,107,059 -				
		Sector 31-33-Manufacturing	327	\$6,960,184 -		4,769 -				\$292,311,687 -				
		Sector 42-Wholesale Trade	35	\$558,183 -		399 -				\$31,045,096 -				
		Sector 44-45-Retail Trade	431	\$4,038,723 -		6,062 -				\$456,557,930 -				
		Sector 48-49-Transportation and Warehousing	27	\$715,305 -		401 -				\$17,374,386 -				
		Sector 52-Finance and Insurance	162	\$1,286,809 -		1,030 -				\$81,374,937 -				
		Sector 54-Professional, Scientific, and Technical Services	141	\$756,638 -		1,113 -				\$39,977,328 -				
Total Business and Job Development Credits			1156	\$14,668,184 -		13,973 -				\$944,255,510 -				

Key Points about the High Performance Incentive Program (HPIP)

- 1) HPIP is an incentive program, not an entitlement program. Business demonstrate foreknowledge by pre-identifying anticipated investment before locking in the scope of investment.
- 2) HPIP was structured to reward businesses that have satisfied program objectives. Benefits cannot be claimed based on promises of future performance.
- 3) HPIP is not available to businesses in which tax benefits have no impact on their decision about where to locate (e.g., retailers, mining, agriculture, construction, not-for-profits).
- 4) HPIP does not require job creation, but new job creation is typically part of the kind of major investment that generates the largest benefits from the program.
- 5) All participants must pay an above-average wage and invest in employee training. Some must also focus on out-of-state sales to pull new dollars into the state's economy.

Kansas High Performance Incentive Program (HPIP)

Benefits	Investment Tax Credit	Sales Tax Exemption	Training Tax Credit	Priority Consideration
	10% of qualifying investment over \$50,000 10-year carry-forward (worksite must re-qualify)	Must be requested before spending occurs	Capped at \$50,000 No carry-forward	While its worksite is HPIP-qualified, the firm receives priority consideration from other state business programs

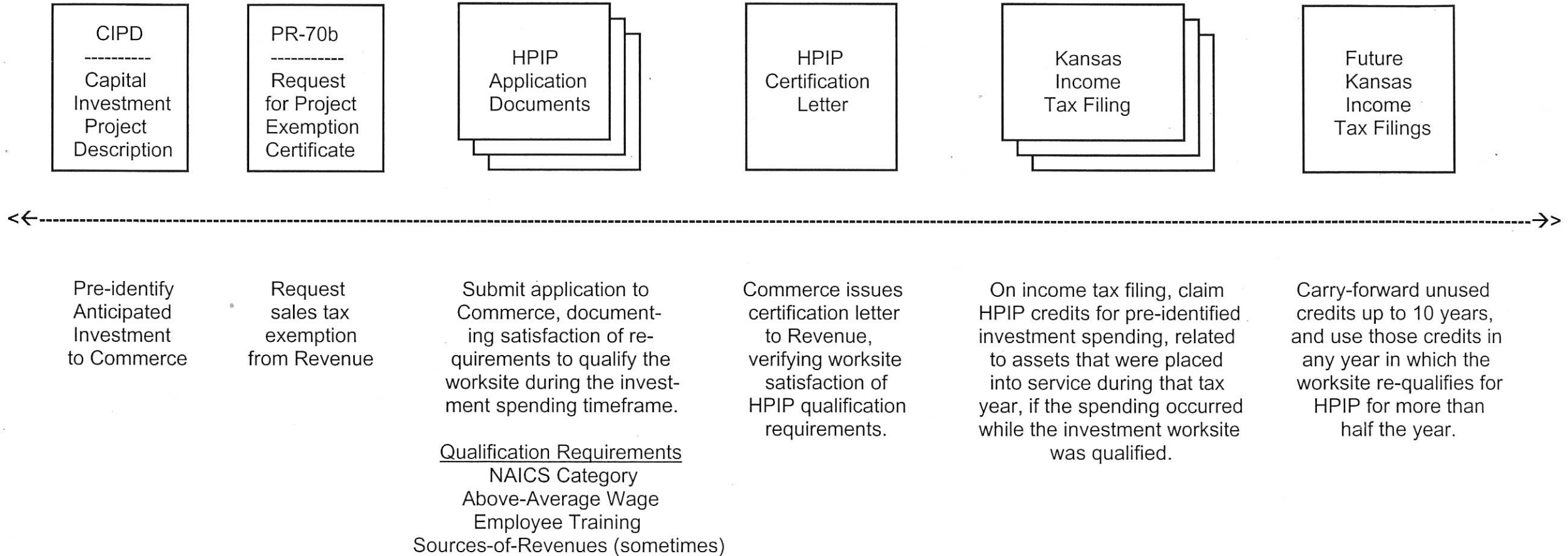
Requirements for worksite qualification (investment must also be pre-identified to qualify for credits):

Worksites in eligible non-manufacturing NAICS categories (not including retailing, agriculture, mining, construction, or not-for-profits)

Only wage & training requirements apply to manufacturing NAICS categories, and to headquarters or back-office worksites of (multi)national organizations in any NAICS category

Pay an above-average wage	Provide Employee Training	Sources-of-Revenues
<ul style="list-style-type: none"> - based on major NAICS category, number of worksite employees, and worksite location - updated in Q3 each calendar year - fallback qualification based on alternative wage threshold of 1 ½ times state-wide average wage 	<ul style="list-style-type: none"> - spend 2% of wages on eligible training, or - participate for at least 3 months in a KIT or KIR or IMPACT workforce training project 	<ul style="list-style-type: none"> - more than half of worksite revenues must be generated from sales to Kansas manufacturers and/or out-of-state commercial/ governmental organizations

General Flow of HPIP Activities



RE: HPIP Quarterly Performance Report through 12/31/07 - based on when the certification paperwork was processed

IMPORTANT NOTE: Presentation of the following information is based on the period in which the HPIP certification paperwork was processed, but the company's certification period may begin anytime within the statutory timeframe during which the Kansas Department of Revenue will allow an amended tax filing (normally up to 3 prior tax years).

CAUTION: The sales tax exemption is based on estimates, and is inflated to the degree businesses decide to acquire materials for their capital investment from outside the state.

	"first-time" certifications	initial certification at a secondary location	re-certification of a previously certified worksite	total of all certifications & re-certifications	existing employees of all worksites when certified		weighted average wage	anticipated job creation	anticipated increase in capital investment	potential investment tax credit	estimated sales tax exemption available through HPIP	estimated sales tax exemption available thru E-Zone or IRB's	number of certifications using:			amount of independent training which exceeds 2% of payroll	training tax credit earned	companies receiving match \$ for consulting services	match \$ claimed for consulting services
					of all worksites	when certified	weighted average wage	anticipated job creation	in capital investment	ment tax credit			train- ing pro- grams	inde- pendent training	both				
FY94	2	0	0	2	391	27,643	26	23,500,000	2,340,000	0	764,000	1	1	0	138,128	50,000	0	0	
FY95	13	0	0	13	2,262	32,117	279	41,666,166	4,111,617	588	1,300,680	3	9	1	479,492	314,822	2	25,000	
FY96	31	1	9	41	9,036	44,383	479	285,956,593	28,415,659	2,550,312	4,497,541	13	26	2	2,627,754	799,049	7	75,000	
FY97	17	2	15	34	8,118	41,126	2,567	307,176,293	30,582,629	356,230	7,850,260	14	19	1	2,663,656	543,805	1	12,500	
FY98	15	0	24	39	10,425	43,879	979	187,757,821	18,630,782	831,667	4,154,699	14	23	2	4,308,949	818,062	2	25,000	
FY99	25	4	33	62	24,509	41,236	1,799	542,387,041	53,963,704	3,072,518	6,856,692	21	38	3	7,770,039	1,104,546	1	12,500	
FY00	16	0	35	51	31,897	46,556	1,245	593,172,618	58,992,262	8,079,497	4,907,361	20	30	1	9,477,644	1,044,255	0	0	
FY01	35	0	49	84	44,012	51,767	1,920	609,690,828	60,529,083	2,482,790	9,594,626	30	52	2	9,791,661	1,819,318	0	0	
FY02	26	0	44	70	18,972	40,280	947	569,261,268	56,571,128	10,650,952	4,113,679	26	41	3	5,919,185	1,340,190	0	0	
FY03 Totals	28	2	70	100	37,783	45,111	1,381	515,397,524	51,079,752	3,619,755	7,178,543	35	60	5	8,452,698	2,178,667	0	0	
FY04 Totals	33	0	60	93	21,683	55,093	13,263	2,019,913,424	201,581,343	4,997,667	30,939,167	37	55	1	8,244,629	1,878,488	0	0	
FY05 Totals	35	6	99	140	50,697	192,101	4,200	1,834,810,655	182,866,065	7,630,676	18,778,508	65	74	1	11,758,240	2,224,941	0	0	
FY06	35	2	99	136	36,960	not calc'd	1,257	1,228,768,682	122,196,868	11,281,332	8,650,001	64	70	2	21,528,478	2,541,486	0	0	
FY07	34	1	104	139	44,020	not calc'd	2,786	1,964,928,633	195,797,863	11,278,934	20,992,706	63	72	4	6,268,125	2,573,633	0	0	
FY08(Q1 & Q2)	14	0	51	65	33,112	not calc'd	639	2,126,056,650	212,280,665	24,520,428	4,414,108	28	37	0	7,635,745	1,184,323	0	0	
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Totals	359	18	692	1,069	373,877	---	33,767	12,850,444,196	1,279,939,420	91,353,346	134,992,571	434	607	28	107,064,423	20,415,585	13	150,000	
Avg / Cert	---	---	---	---	350	---	32	12,020,996	1,197,324	85,457	126,279	---	---	---	100,154	19,098	0	140	

6-2