

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on March 20, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes
Scott Wells, Office of the Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Kathy Beavers, Committee Assistant

Conferees appearing before the Committee:

Richard Cram, Kansas Department of Revenue
Representative Julie Menghini

Others attending:

See attached list.

The Chairman opened the meeting and asked Representative King to brief the committee on the results of the subcommittee studying **HB 2150**.

HB 2150 - Property taxation; 2% limit on valuation increases.

Representative King summarized the subcommittee report (Attachment 1). He thanked the members of the subcommittee for their hard work and diligence in the process. Representative King stated that the subcommittee recommended that a request be made to the Legislative Coordinating Council (LCC) to make **HB 2150**, and reform of the property tax valuation system as a whole, a topic for further study by an Interim Taxation Committee. The subcommittee members also made two recommendations to the Interim Committee. They are:

- Use a rolling average in order to decrease valuation volatility
- Use **HB 2150** or similar alternatives to address overall valuation concerns

Representatives McCray-Miller and Hawk thanked the subcommittee for their hard work. Representative King made a motion to adopt the subcommittee report. Representative Schwartz seconded the motion. The motion carried.

Representative King made a motion to recommend the subcommittee report to the Legislative Coordinating Council (LCC) for an Interim Study this year. Representative Powell seconded the motion. The motion carried.

HB 2388 - Qualifying investments under the county business restoration assistance program.

The Chairman opened the hearing on **HB 2388**.

Richard Cram, Kansas Department of Revenue, testified in support of **HB 2388** (Attachment 2). Mr. Cram stated that **HB 2388** would amend K.S.A. 2008 Supp. 75-3713e(c) to extend the date by which investments must be made in order to qualify for business restoration program assistance payments in connection with repairing, replacing or rebuilding a business facility damaged or destroyed during the Greensburg tornado in Kiowa County on May 4, 2007. He stood for questions.

The Chairman closed the hearing on **HB 2388**.

Representative Brown introduced his son, Alex.

Representative Goyle introduced his friend, Edward Nolan.

HB 2379 - Valuation of land devoted to agricultural use under Kansas estate tax act.

CONTINUATION SHEET

Minutes of the House Taxation Committee at 9:00 a.m. on March 20, 2009, in Room 535-N of the Capitol.

Chris Courtwright, Kansas Legislative Research Department, briefed the members on **HB 2379**.

Gordon Self, Office of the Revisor of Statutes, explained the balloon to **HB 2379** in which a statement was added to clarify that the provisions of this section shall be part of and supplemental to the Kansas estate tax. (Attachment 3). Richard Cram and Jim Weisgerber, Tax Specialist, Kansas Department of Revenue, stood for questions relating to **HB 2379**.

Chairman Carlson stated that it was the intent of the committee that tax payers qualifying for refunds are required to file an amended return.

Representative Schwartz moved to remove the contents of SB 98 and insert the contents into HB 2379. Representative King seconded the motion. The motion carried.

Representative Schwartz made a motion to adopt the balloon to HB 2379. Representative George seconded the motion. The motion carried.

Representative Lukert made a motion to remove the retroactive clause from HB 2379. Representative Menghini seconded the motion. The motion failed. Discussion followed.

Representative Schwartz made a motion to move HB 2379, as amended, favorably for passage. The motion was seconded by Representative Powell.

Representative Brown made a substitute motion to make the contents of SB 98 and HB 2379 a substitute bill instead of an amendment and move HB 2379, as amended, favorably for passage. Representative Schwartz seconded the motion. The motion carried.

HB 2365 - Creating the promoting employment across Kansas act.

Representative Kleeb briefed the committee on **HB 2365** (Attachment 4) and stood for questions. The information that was handed out to the committee members explained the changes that were made to the original bill and stood for questions. Discussion ensued.

Representative Kleeb, at the March 19, 2009 meeting, made a motion to amend HB 2365 in the form of a substitute bill. Seconded by Representative Powell. The motion carried. Discussion followed.

Representative Dillmore made a motion to reconsider. Representative Goyle seconded the motion. The motion carried. Discussion followed.

The chairman recommended that **HB 2365** be referred to Legislative Coordinating Council (LCC) for an Interim Study. Discussion followed.

Representative Goico made a motion to move substitute bill HB 2356, as amended, favorably for passage. Representative Peck seconded the motion. Discussion followed.

Representative Menghini made a substitute motion to table HB 2356 for further study. Representative Goico seconded the motion. Division was requested. Eight members in favor and thirteen members opposed. The motion failed.

Back to the Goico motion to move substitute bill HB 2356, as amended, favorably for passage. Representative Peck seconded the motion. The motion carried.

The meeting was adjourned at 10:25 a.m.

HOUSE TAX COMMITTEE SIGN IN SHEET

DATE: MARCH 20, 2009

NAME	REPRESENTING
ERIK SARTORIUS	City of Overland Park
Nelson Knueger	PAR Electric
Mike Murray	Embassy
Mark Boran/AC	KS Economic Progress Council
Low Stanton	Northern Natural Gas Co
Rick Slave	P71
Verde Hdn	Hall Law Firm
Dave Holtwick	O.P. Chamber of Commerce
Michelle Butler	Capital Strategies
John Bertram	Pustge - Smith

House Subcommittee Report

The House Subcommittee on HB 2150 recognizes the broad nature of the issue of residential property taxes in Kansas. Because of the interest in HB 2150, the full House Committee on Taxation received testimony for three days on the bill. The Subcommittee (after receiving the bill from the full House Committee on Taxation) spent an additional three days discussing the details of the proposed legislation as well as the broader question of residential and business valuation for property tax purposes. The Subcommittee recognizes that these subjects are highly complex issues that are of considerable importance for Kansas taxpayers.

The Subcommittee does not propose specific legislation as a result of its efforts. Instead, the Subcommittee intends this report to serve as a roadmap for consideration of this issue by any Interim Taxation Committee and the 2010 Kansas Legislature. As a preliminary note, the Subcommittee recognizes that it did not address constitutionality issues with any possible initiatives, including HB 2150. Instead, the Subcommittee focused its efforts on discussing broad policy concerns, leaving legal considerations to be dealt with at the appropriate date in the future. It bears mention, however, that once an Interim Taxation Committee or the 2010 Kansas Legislature formulates its desired policy option, the constitutionality of any resulting legislation will be of vital importance.

Problems with the Current Valuation System

The Subcommittee appreciates the serious concerns held by many Kansas taxpayers with the current system of property tax valuation. The Subcommittee further acknowledges that these concerns have caused numerous Kansans to lose faith with the property tax system. To provide further direction to the Interim Taxation Committee, the Subcommittee notes the following broad concerns with the current residential and business property valuation system:

1. The volatility of valuation increases from year-to-year.
2. The substantial overall valuation increases, especially over the last decade.

In addition, the Subcommittee believes that overreliance on computer-based appraisals and an insufficient number of in-person property appraisals exacerbate both of these problems.

Recommendation

Accordingly, the Subcommittee on HB 2150 strongly urges that a request be made to the Legislative Coordinating Council (LCC) to make HB 2150, and reform of the property tax valuation system as a whole, a topic for further study by an Interim Taxation Committee. Due to the complexity and considerable popular concern with this subject area, the Subcommittee further urges that it be requested of the LCC to charge the Interim Taxation Committee to devote at least one half day on this topic.

Recommended Focus of the Interim Taxation Committee

1. Using a rolling average in order to decrease valuation volatility

To address the annual volatility of valuation increases, especially following the sale of real property, the Subcommittee strongly urges the Interim Taxation Committee to consider the proposal of

using a multi-year rolling average for valuing residential and business property. Currently, property values for agricultural land are determined by using an eight-year rolling average. This rolling average serves to mitigate the effect of sharp increases in property values in any one year by also considering historic figures.

The Subcommittee acknowledges that eight years might be excessive for residential and business valuations. Given the well tested and widely accepted nature of rolling averages, however, the concept of a multi-year rolling average certainly deserves careful consideration in an interim study.

2. Using HB 2150 or similar alternatives to address overall valuation concerns

The Subcommittee encourages the Interim Taxation Committee to use HB 2150 as a starting point to consider the second issue — the substantial overall valuation increases. HB 2150 is a useful vehicle for framing this discussion and provides a solid framework for considering property tax valuations.

The Subcommittee recommends the following points of emphasis for any discussion of HB 2150 by the Interim Taxation Committee or the 2010 Kansas Legislature:

1. Mitigate the potential adverse impact on lower-income neighborhoods and counties from the fixed 2% across-the-board valuation increase in HB 2150;
2. Examine the proper method of valuing real property after resale;
3. Ensure the fair treatment of new and substantially renovated real property in relation to existing property;
4. Consider the effect of external factors (i.e., infrastructure improvements, overall economic conditions) on business property valuations;
5. Minimize the negative impact on the property tax burden faced by owners of agricultural land; and
6. Craft a taxpayer friendly appeals process that is well-tailored to the specifics of any new system.

In closing, the Subcommittee notes that property valuation is only one component of a larger problem. Kansans face substantially higher property taxes today than they did even a decade ago. Property taxes remain the primary way for local governments to raise revenue. Demands for local services are increasing at the same time that state and federal monies to local governments are declining. Even if Kansas institutes the perfect property valuation system, the problem of mounting property taxes on Kansas families and businesses will remain. Thus, the Subcommittee urges an Interim Taxation Committee and the entire Kansas Legislature to carefully consider ways of reducing local government reliance on property taxes and the overall property tax burden faced by Kansas taxpayers.

2009 Legislative Session

HOUSE COMMITTEE ON TAXATION SUBCOMMITTEE

House Bill 2150



Representative Jeff King, Chair



Representative Melody McCray-Miller



Representative Sharon Schwartz



Representative Tom Hawk



Representative Mario Goico

Testimony to the House Taxation Committee

Richard Cram

March 20, 2009

Testimony in Support of House Bill 2388

Representative Richard Carlson, Chair, and Members of the Committee:

House Bill 2388 would amend K.S.A. 2008 Supp. 75-3713e(c) to extend the date by which investments must be made in order to qualify for business restoration program assistance payments in connection with repairing, replacing or rebuilding a business facility damaged or destroyed during the Greensburg tornado in Kiowa County on May 4, 2007. This date would be extended from June 30, 2008 to June 30, 2010.

K.S.A. 2008 Supp. 75-3713e, enacted at *sine die* of the 2007 Legislative Session, created a program for businesses damaged or destroyed during the Greensburg tornado, providing assistance payments for restoring jobs lost as a result of the tornado (\$3500 per job) and for 10% of the cost of repairing, replacing or rebuilding a damaged or destroyed business facility (including business machinery and equipment in the facility). This bill only affects the portion of the assistance program dealing with investment in repairing, replacing or rebuilding a damaged or destroyed business facility, machinery and equipment. Subsection (c) requires that the investment must be made between May 4, 2007 and June 30, 2008.

The Department accepted applications from businesses for investment assistance through June 30, 2008. However, the Department does not authorize any payment until the business has made the investment, incurred the expenditures, and adequately documented them. As a result of extensive delays in commencing much of the construction to rebuild business facilities in Greensburg, several businesses already approved for investment assistance still have a significant amount of construction activity in progress. The Department recommends extending the deadline contained in Subsection (c) for making the qualifying investment from June 30, 2008 to June 30, 2010. This should give businesses that the Department has already approved for investment assistance, still in the process of completing reconstruction, sufficient time to complete their investment and qualify for assistance.

Included below is a status report as of February 9, 2009 on approvals of assistance and payments to date under this program.

Kiowa County Business Restoration Assistance Program

House Bill 2540 was passed by the 2007 Kansas Legislature establishing the Kiowa County business restoration assistance program. The program was established for the purpose of assisting businesses that were in operation in Kiowa County and damaged by the tornado and other severe weather in Kansas on May 4, 2007.

The business restoration assistance program includes:

- **INVESTMENT ASSISTANCE**
A grant of up to 10% of qualifying investment made to rebuild or replace a business facility in Kiowa County and the business machinery and equipment of a business that has been damaged or destroyed by the tornado or other severe weather that occurred on May 4, 2007.
- **JOB RESTORATION ASSISTANCE**
A grant of up to \$3,500 per qualifying job to a business damaged by the tornado and severe weather on May 4, 2007 that fills an employment position in Kiowa County, Kansas.
- **SALES TAX EXEMPTION**
A sales tax exemption is available for those businesses in Kiowa County that were damaged as a result of the tornado and other severe weather on May 4, 2007. This sales tax exemption will exempt all construction, reconstruction, materials and machinery and equipment to be incorporated into the business facility. Replacement of tornado damaged or destroyed fencing, the purpose for which is to enclose land devoted to agricultural use shall also be exempt from sales tax.

Applications for the investment and job restoration assistance through the Kiowa County Business Restoration Assistance program were accepted through June 30, 2008. Applications for the sales tax exemption for Kiowa County will be accepted through June 30, 2009.

The Kansas Department of Revenue has pre-approved assistance as follows for the Kiowa County Business Restoration Assistance Program:

72 applications have been pre-approved for assistance

Pre-approved assistance total-\$4,274,431

Investment assistance-\$2,783,431

Job restoration assistance-\$1,491,000 (426 jobs)

To date the Kansas Department of Revenue has processed the following requests for payment of the restoration assistance:

32 requests for payments have been received and processed

Total assistance given to businesses-\$1,669,267

Investment assistance-\$822,267

Job restoration assistance-\$847,000 (242 jobs)

To date the Kansas Department of Revenue has received the following requests for sales tax exemption:

73 requests for project exemption certificates have been received and approved

Total estimated project costs-\$21,446,412

Estimated state sales tax foregone-\$1,136,700

1 adopted by the secretary of revenue, the job restoration assistance pay-
2 ment shall be for the purpose of assisting the business recover from the
3 damages sustained from the storm on May 4, 2007.

4 (e) As used in this section:

5 (1) "Business facility" means a building or structure used in business
6 operations located within the county;

7 (2) "business machinery and equipment" means the real and tangible
8 personal property permanently and physically located at a business facility
9 and used in the business operations and shall not include (A) mobile
10 equipment, such as motor vehicles, or (B) any items held for sale, such
11 as business inventory;

12 (3) "qualifying business" means a business that was in existence and
13 in operation providing goods or services within a county, which was struck
14 by the tornado and other severe weather in Kansas on May 4, 2007, which
15 had damage and destruction to governmental buildings and facilities to
16 the extent that there was a complete interruption of all governmental
17 services provided by a major town and the county government, and which
18 suffered a major loss of the property tax base for the county of 25% or
19 more, and that was damaged by the tornado and other severe storms that
20 struck Kansas on May 4, 2007; and

21 (4) "qualifying job" means a job with a qualifying business that was
22 lost as a result of damage sustained by the tornado and other severe
23 storms that struck Kansas on May 4, 2007, that is restored and filled by
24 an employee hired back in the county between May 4, 2007, and June
25 30, ~~2008~~, and shall not include any part-time job that provides the em-
26 ployee with less than 20 hours per week of paid employment.

27 (f) In accordance with the provisions of this section, the secretary of
28 revenue shall adopt policies and procedures for the implementation and
29 administration of the county business restoration assistance program and
30 shall present such information to the state finance council requesting
31 approval to make expenditures from the state emergency fund for assis-
32 tance payments under the program in accordance with the proposed im-
33 plementation and administration of the program. Upon approval of the
34 state finance council by the affirmative vote of the governor and by a
35 majority vote of the legislative members of the state finance council, act-
36 ing on this matter which is hereby characterized as a matter of legislative
37 delegation and subject to the guidelines prescribed in subsection (c) of
38 K.S.A. 75-3711c, and amendments thereto, and subject to the limitation
39 that not more than \$5,000,000 may be approved by the state finance
40 council to be expended from the state emergency fund for such payments,
41 the director of the budget shall certify to the director of accounts and
42 reports the amount approved by the state finance council for expenditure
43 by the department of revenue for such assistance payments from the state

2010

HOUSE BILL No. 2379

By Committee on Taxation

3-11

Proposed Technical Amendments to HB No. 2379

Prepared by: Gordon Self
Office of Revisor of Statutes

March 18, 2009

House Taxation Committee
3-20-09
Attachment 3

9 AN ACT concerning estate taxation; relating to valuation of land devoted
10 to agricultural use; amending K.S.A. 2008 Supp. 79-15,253 and re-
11 pealing the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. If the decedent was a resident of Kansas, the value
15 of an interest in a legal entity that is not publicly traded, including, but
16 not limited to, a partnership, ~~subchapter S~~ corporation, limited liability
17 company or limited liability partnership, which at the time of the dece-
18 dent's death owns land that is located in Kansas and treated as land de-
19 voted to agricultural use for purposes of K.S.A. 79-1476, and amendments
20 thereto, shall be determined by valuing the land at its most recent valu-
21 ation pursuant to K.S.A. 79-1476, and amendments thereto. The provi-
22 sions of this section shall apply to the estates of all decedents dying after
23 December 31, 2006, but before January 1, 2010. ←

24 Sec. 2. K.S.A. 2008 Supp. 79-15,253 is hereby amended to read as
25 follows: 79-15,253. On January 1, 2010, the provisions of K.S.A. 2008
26 Supp. 79-15,201 through 79-15,253, and section 1, and amendments
27 thereto, are hereby repealed.

28 Sec. 3. K.S.A. 2008 Supp. 79-15,253 is hereby repealed.

29 Sec. 4. This act shall take effect and be in force from and after its
30 publication in the statute book.

The provisions of this section shall be part of
and supplemental to the Kansas estate tax
act.

HOUSE BILL No. 2365

By Committee on Taxation

3-5

2365 Balloon: Highlighting differences between substitute and original bill

9 AN ACT creating the promoting employment across Kansas act.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. ~~The provisions of sections 1 through 7, and amendments~~ (a)
13 ~~thereto, shall be known and may be cited as the promoting employment~~
14 ~~across Kansas act. It shall be the intent of this act to foster economic~~ (b)

15 ~~development and the creation of new jobs and opportunities for the cit-~~
16 ~~izens of Kansas through incentivizing the repatriation of business facili-~~
17 ~~ties, other operations and jobs from foreign countries and to incentivize~~
18 ~~the relocation of business facilities, other operations and jobs from other~~
19 ~~states to Kansas. The primary objective of this legislation is economic~~
20 ~~development for Kansas and not the generation of direct tax revenue from~~

21 ~~a qualified company or such company's employees. Therefore, the state~~
22 ~~of Kansas, the secretary of the department of commerce and the depart-~~
23 ~~ment of commerce shall seek to aggressively solicit and approve applica-~~
24 ~~tions by qualified companies, and shall not unreasonably withhold ap-~~
25 ~~proval of such applications.~~

26 Sec. 2. As used in this act, unless the context otherwise requires:

27 (a) "Act" means the provisions of sections 1 through 7, and amend-
28 ments thereto.

29 (b) ~~"Commencement of operations" means the starting date for the~~
30 ~~qualified company's first new employee, which date must be no later than~~
31 ~~12 months after the date such qualified company's application is approved~~
32 ~~by the secretary pursuant to section 4, and amendments thereto.~~

33 (c) "County average wage" means the average wage paid to employ-
34 ees located in the county where the qualified company intends to hire
35 new employees as reported by the department of labor in its annual report
36 for the previous year.

37 (d) "Department" means the department of commerce.

38 (e) "High-impact project" means a business development project for
39 which the qualified company shall meet the requirements of subsection
40 (c) of section 3, and amendments thereto.

41 (f) "NAICS" means the north American industry classification
42 system.

43 (g) "Metropolitan county" means the county of Douglas, Johnson,

.

pursuant to this act.

1 Sedgwick, Shawnee or Wyandotte.

2 (h) "New employee" means a person newly employed by the quali-
3 fied company in the qualified company's business operating in Kansas
4 during the taxable year for which benefits are sought under section 3, and
5 amendments thereto. A person shall be deemed to be so engaged if such
6 person performs duties in Kansas in connection with the operation of the
7 Kansas business on: (1) A regular, full-time basis; (2) a part-time basis,
8 provided such person is customarily performing such duties at least 20
9 hours per week throughout the taxable year; ~~(3) a seasonal basis, provided~~
10 such person performs such duties for substantially all of the season cus-
11 tomary for the position in which such person is employed; ~~or (4) a project~~
12 ~~basis, provided employing individuals on a project by project basis is the~~
13 ~~business model of the qualified company. For a Kansas business that~~
14 ~~becomes operational during the current tax year, new employees shall be~~
15 the number of employees employed at the qualified company's Kansas
16 business on the last business day of the qualified company's tax year.
17 ~~Employees acquired through an acquisition or merger of a business op-~~
18 ~~erating in Kansas shall be considered as new employees, provided, such~~
19 ~~new employees are relocated to Kansas from a facility or other business~~
20 ~~operation located outside the state.~~

or

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Employees acquired or relocated to Kansas from another state through an expansion or relocation of a business operation to Kansas from another state shall be considered as new employees

21 (i) "Non-metropolitan county" means any county that is not a met-
22 ropolitan county.

23 (j) (1) "Qualified company" means any corporation, partnership or
24 other entity, ~~whether~~ organized for profit ~~or not for profit~~, which meets
25 the requirements of section 3, and amendments thereto.

,

26 (2) "Qualified company" shall not include any corporation, partner-
27 ship or other entity: (A) Which is identified by any of the following NAICS
28 code groups, sectors or subsectors:

29 (i) Industry group 7132 or 8131;
30 (ii) sectors 44, 45, 61, 92 or 221 (including water and sewer services);

31 or
32 (iii) subsector 722;

which is a bioscience company, as defined in K.S.A. 2008 Supp. 74-99b33, and amendments thereto;

33 (B) ~~which produces or distills ethanol as its primary business;~~

34 ~~(C) which produces biodiesel as its primary business;~~

35 (D) which is delinquent in the payment of any nonprotested taxes or
36 any other amounts due to the federal government, the state of Kansas or
37 any other political taxing subdivision; or

38 (E) which has filed for or has publicly announced its intention to file
39 for bankruptcy protection.

except for paragraphs (2)(B), (C) and (D),

40 (3) Notwithstanding any provision of this subsection, a company may
41 be deemed a qualified company if such company's headquarters or ad-
42 ministrative offices located in this state serve an international or multi-
43 state territory and such company meets the requirements of section 3,

and amendments thereto.

(k) "Secretary" means the secretary of the department of commerce.

Sec. 3. (a) In order to qualify for benefits under this act a qualified company shall:

(1) Close down an existing business facility, office, department or other operation located outside the state of Kansas, whether located in a foreign country or another state, and relocate the employees from such business facility, office, department or other operation to Kansas as a result of such closing;

(2) expand its business operations to Kansas, which results in the employment of new employees, provided, such expansion is not of an existing facility or other business operation already located in Kansas;

(3) contract with a third party to perform services on the qualified company's behalf as part of such company's business model, provided the qualified company directs that the services are performed in Kansas; or

(4) contract with a third party to perform services whereby the third party serves as the legal employer of the new employees providing services to the qualified company.

(b) ~~Any qualified company whose business operation is located in a metropolitan county that will hire at least 10 new employees, or any qualified company whose business operation is located in a non-metropolitan county that will hire at least five new employees~~ shall be eligible to retain 100% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of:

(1) Five years if the new employees are compensated at a rate equal to at least 100% of the county average wage;

(2) ~~seven~~ years if the new employees are compensated at a rate equal to at least 110% of the county average wage; or

(3) ~~ten~~ years if the new employees are compensated at a rate equal to at least 120% of the county average wage.

(c) Any qualified company that engages in a high-impact project whereby the qualified company will hire at least 100 new employees within ~~two years of commencement of operations~~ shall be eligible to retain 100% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of:

(1) Seven years if the new employees are compensated at a rate equal to at least 100% of the county average wage;

(2) ~~nine~~ years if the new employees are compensated at a rate equal to at least 110% of the county average wage;

(3) ~~12~~ years if the new employees are compensated at a rate equal to at least 120% of the county average wage; or

(4) ~~15~~ years if the new employees are compensated at a rate equal to at least 140% of the county average wage.

from another state

and the third party and the new employees are subject to Kansas state withholding

and such services are performed in Kansas and the third party and the new employees are subject to Kansas state withholding

Any qualified company that locates its business operation in a metropolitan county and will hire at least 10 new employees within two years from the date the qualified company enters into an agreement with the secretary pursuant to section 4, and amendments thereto, or any qualified company that locates its business operation in a non-metropolitan county and will hire at least five new employees within two years from the date the qualified company enters into an agreement with the secretary pursuant to section 4, and amendments thereto,

five years from the date the qualified company enters into an agreement with the secretary pursuant to section 4, and amendments thereto,

six

seven

eight

nine

ten

s (a)

1 (d) In the event that a qualified company contracts with a third party
2 as described in paragraph (3) and (4) of subsection (a), it shall be per-
3 missible for the third party to remit payments equal to the amount of
4 Kansas payroll withholding taxes the qualified company is eligible to re-
5 tain under this section to the qualified company.

6 (e) (1) For any qualified company which is eligible for benefits under
7 either subsection (b)(1) or (c)(1), if the Kansas payroll withholding tax for
8 any new employee is not equal to at least 3% of such employee's gross
9 wages, the qualified company shall be eligible to retain a portion of such
10 new employee's gross wages equal to the difference between 3% of such
11 new employee's gross wages and the percentage of such new employee's
12 gross wages that is required to be withheld by the qualified company
13 pursuant to K.S.A. 70-3204 et seq., and amendments thereto.

14 (2) For any qualified company which is eligible for benefits under
15 either subsection (b)(2) or (c)(2), if the Kansas payroll withholding tax for
16 any new employee is not equal to at least 4% of such employee's gross
17 wages, the qualified company shall be eligible to retain a portion of such
18 new employee's gross wages equal to the difference between 4% of such
19 new employee's gross wages and the percentage of such new employee's
20 gross wages that is required to be withheld by the qualified company
21 pursuant to K.S.A. 70-3204 et seq., and amendments thereto.

22 (3) For any qualified company which is eligible for benefits under
23 either subsection (b)(3) or (c)(3), if the Kansas payroll withholding tax for
24 any new employee is not equal to at least 5% of such employee's gross
25 wages, the qualified company shall be eligible to retain a portion of such
26 new employee's gross wages equal to the difference between 5% of such
27 new employee's gross wages and the percentage of such new employee's
28 gross wages that is required to be withheld by the qualified company
29 pursuant to K.S.A. 70-3204 et seq., and amendments thereto.

30 (4) For any qualified company which is eligible for benefits under
31 subsection (e)(4), if the Kansas payroll withholding tax for any new em-
32 ployee is not equal to at least 6% of such employee's gross wages, the
33 qualified company shall be eligible to retain a portion of such new em-
34 ployee's gross wages equal to the difference between 6% of such new
35 employee's gross wages and the percentage of such new employee's gross
36 wages that is required to be withheld by the qualified company pursuant
37 to K.S.A. 70-3204 et seq., and amendments thereto.

38 (f) Any qualified company that satisfies the requirement of paragraph
39 (1) of subsection (a) shall be exempt from taxation under the provisions
40 of article 32 of chapter 79 of the Kansas Statutes Annotated for a period
41 of five years. The first year of the five year period shall be the calendar
42 year in which the qualified company becomes eligible for benefits under
43 this subsection.

1 Sec. 4. (a) Any qualified company meeting the requirements of section 3, and amendments thereto, may apply to the secretary for benefits under this act. The application shall be submitted on a form and in a manner prescribed by the secretary, and shall include: (1) Evidence that the applicant is a qualified company; (2) evidence that the applicant meets the requirements of section 3, and amendments thereto; and (3) a certification that the qualified company is able to hire the new employees solely due to the benefits being provided under this act.

and

9 (b) ~~Within 30 days of receipt of such application the secretary shall either approve or disapprove the application. If the secretary does not approve or disapprove the application within 30 days of receipt the application shall be deemed approved.~~ Any qualified company whose application is approved shall be eligible to receive benefits under this act pursuant to section 3, and amendments thereto.

as of the date such qualified company enters into an agreement with the secretary in accordance with this section.

15 (c) Upon approval of an application for benefits under this act, the secretary ~~shall certify to the secretary of revenue: (1) That the qualified company is eligible to receive benefits under this act; (2) the number of new employees being hired by the qualified company; (3) the amount of gross wages to be paid to each new employee; and (4) whether the qualified company is entitled to an exemption from taxation pursuant to subsection (f) of section 3, and amendments thereto.~~

SEE INSERT 1 ON PAGE 7

(e) 22 (d) A qualified company that is already receiving benefits pursuant to this act may apply to the secretary for additional benefits if the qualified company meets the requirements of section 3, and amendments thereto.

and if such qualified company makes such application within five years from the date the qualified company entered into the first agreement with the secretary pursuant to this section

25 (e) ~~A qualified company that is eligible to receive benefits under this act may seek benefits from any other state or municipal economic development benefit program, including, but not limited to, grants, tax abatements, tax credits or income withholding benefits. Nothing in this act shall be construed so as to limit the availability or application of any other economic development or business incentive program, including, but not limited to, the Kansas investments in major projects and comprehensive training act, the Kansas industrial training program, the Kansas industrial retraining program, the Kansas enterprise zone act, and the economic revitalization and reinvestment act.~~

SEE INSERT 2 ON PAGE 7

(g) 35 (f) The secretary shall adopt rules and regulations necessary to implement and administer the provisions of this act.

37 Sec. 5. (a) Any qualified company eligible to receive benefits pursuant to ~~subsections (b) or (c) of section 3, and amendments thereto,~~ shall complete and submit to the department of revenue a form setting forth the amount of Kansas payroll withholding tax being retained by the qualified company pursuant to this act. ~~Such form shall be prescribed by the secretary of revenue and shall be submitted in accordance with the statutes and rules and regulations for submitting other forms relating to Kan-~~

in a manner prescribed by the director of taxation

1 sas payroll withholding taxes under K.S.A. 79 3294 et seq., and amend-
2 ments thereto.

3 (b) The secretary of revenue shall adopt rules and regulations nec-
4 essary to implement and administer the provisions of this act. The sec-
5 retary of revenue and the secretary of commerce shall work together to
6 coordinate a set of procedures to implement the provisions of this act.

7 Sec. 6. (a) The secretary shall conduct an annual review of the activ-
8 ities undertaken by a qualified company pursuant to this act to ensure
9 that the qualified company is in compliance with the provisions of this
10 act ~~and any rules and regulations adopted by the secretary with respect~~
11 ~~to this act.~~

12 (b) If the secretary determines that a qualified company is not in
13 ~~substantial~~ compliance with the requirements of this act, the secretary,
14 by written notice, shall inform the officers of the qualified company that
15 such qualified company is not in compliance and is not eligible to receive
16 any benefits under this act for the duration of the period the company is
17 not in ~~substantial~~ compliance. In the event a qualified company is not in
18 ~~substantial~~ compliance the secretary shall certify such determination to
19 the secretary of revenue.

20 (c) ~~If the qualified company corrects the deficiencies to the satisfac-~~
21 ~~tion of the secretary and is once again in compliance with the require-~~
22 ~~ments of this act, the qualified company shall be eligible to receive the~~
23 ~~benefits under this act for the remainder of the original period for which~~
24 ~~the qualified company was initially eligible to receive benefits. The sec-~~
25 ~~retary shall certify such renewed eligibility to the secretary of revenue.~~

26 Sec. 7. The secretary shall transmit annually to the governor, the
27 standing committee on commerce of the senate, the standing committee
28 on economic development and tourism of the house of representatives
29 and the joint committee on economic development, or any successor com-
30 mittee, a report, based on information received from each qualified com-
31 pany receiving benefits under this act, describing the following:

- 32 (a) The names of the qualified companies;
- 33 (b) the types of qualified companies utilizing the act;
- 34 (c) the location of such companies and the location of such compa-
- 35 nies' business operations in Kansas;
- 36 (d) the number of new employees hired;
- 37 (e) the wages paid for such new employees;
- 38 (f) the annual amount of benefits provided under this act;
- 39 (g) the estimated net state fiscal impact, including the direct and in-
- 40 direct new state taxes derived from the new employees hired; and
- 41 (h) an estimate of the multiplier effect on the Kansas economy of the
- 42 benefits received under this act.

43

, any rules and regulations adopted by the secretary with respect to this act and the agreement described in section 4, and amendments thereto. The books and records concerning employment and wages of any employees for which the qualified company has retained any Kansas payroll withholding taxes shall be available for inspection by the secretary or the secretary's duly authorized agents or employees at all times during business hours. Notwithstanding any taxpayer confidentiality laws, the secretary may request the department of revenue to audit the qualified company for compliance with the provisions of this act, and the department of revenue may report any findings resulting from such audit to the secretary.

1 Sec. 8. This act shall take effect and be in force from and after its
2 publication in the statute book.

INSERT 1:

may enter into an agreement with the qualified company for benefits under this act. If necessary, the secretary may also enter into an agreement with any third party described in subsection (a) of section 3, and amendments thereto, or such third party may be a party to the agreement between the qualified company and the secretary. The agreement shall commit the secretary to certify to the secretary of revenue: (1) That the qualified company is eligible to receive benefits under this act; (2) the number of new employees hired by the qualified company; and (3) the amount of gross wages being paid to each new employee.

(d) The agreement between the qualified company and the secretary shall be entered into before any benefits may be provided under this act, and shall specify that should the qualified company fail to comply with the terms and conditions set forth in the agreement, or fails to comply with the provisions set forth in this act, the secretary may terminate the agreement, and the qualified company shall not be entitled to any further benefits provided under this act and shall be required to remit to the state an amount equal to the aggregate Kansas payroll withholding taxes retained by the qualified company, or remitted to the qualified company by a third party, pursuant to this act as of the date the agreement is terminated.

INSERT 2:

(f) A qualified company seeking benefits shall not be allowed to participate in the IMPACT program, or any program pursuant to K.S.A. 74-50,102, and amendments thereto, or any other program in which any portion of such qualified company's Kansas payroll withholding taxes have been pledged to finance indebtedness or transferred to or for the benefit of such company. A qualified company shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-32,160a or 79-32,182b, and amendments thereto, if such credits would otherwise be earned for the hiring of new employees and the qualified company has retained any Kansas payroll withholding taxes from wages of such employees.

Section	Section Title	Suggested Amendment	Substitute for HB 2365
Section 1	Purpose statement	Remove "and not direct tax revenue from a qualified company or such company's employees"	amendment accepted, also deletes provision stating secretary of commerce shall not unreasonably withhold approval of applications
Section 2	Definitions "Commencement of operations" "Qualified company" "New employee"	Delete definition Modify definition to exclude non-profits Exclude multi-state company's headquartered whose headquarters or administrative offices are in Kansas but have filed for bankruptcy, are delinquent in payments to federal or state government, or are a bioscience company Exclude bioscience companies from def. of "qualified company" Delete project basis employees from definition Subject not addressed in KDOR balloon Include provision indicating employees acquired through expansion of a business operation to Kansas from another state	amendment accepted. amendment accepted. amendment accepted. amendment accepted. amendment accepted. Deletes provision regarding employees acquired through an acquisition or merger of a business operating in Kansas amendment accepted.
Section 3	Qualifications and Benefits Time periods - 5, 7, and 9 years under (b) and 7, 9, 12 and 15 years under (c)	Clarify in (a)(2) that expansion must occur from another state Delete paragraphs (a)(3) and (4) Remove benefits for 110% of county average wage and reduce time periods for remaining benefits to 3 and 5 years under (b) and 5, 7, and 10 years under (c).	amendment accepted. No change from HB 2365 Benefits for 110% of county average wage retained, benefit periods amended to 5, 6, and 7 years under (a) and 7, 8, 9, 10 years under (c)

Subject not addressed in KDOR balloon
Delete Sec. 3(d) which pertains to situations where qualified company contracts with 3rd parties

Provisions added to (b) and (c) indicating new employees are to be hired within 2 and 5 years, respectively, of date the qualified company enters into an agreement with the secretary

No change from HB 2365 other than a technical amendment

Delete Sec. 3(e) which pertains to the withholding tax floors
Delete Sec. 3(f) which pertains to income tax exemption for certain qualified companies

amendment accepted.

amendment accepted.

Section 4 **Application Process**

Delete "but for" test in Sec. 4(a)(3) (certification qualified company is able to hire new employees due to benefits of PEAK)

amendment accepted.

Delete provision regarding automatic approval of application if secretary does not respond within 30 days

amendment accepted.

Provision added to Sec. 4(b) stating qualified company eligible for benefits as of the date the agreement is entered into with secretary

Subject not addressed in KDOR balloon

Provisions regarding agreement between qualified company and secretary added to Sec. 4

Subject not addressed in KDOR balloon
Delete Sec. 4(d) allowing qualified company to apply for additional benefits after already receiving benefits under act

Provision amended to allow qualified company to apply for additional benefits within 5 years the first agreement is entered into

Delete provisions of Sec. 4(e) stating qualified company can also participate in other state incentive programs

amendment accepted. Detailed language from department of revenue disallowing such situations also added.

Section 5 **Submission to Department of Revenue**

Delete provisions requiring qualified company to submit to KDOR a form setting forth amount of payroll withholding taxes being retained. Include provision stating any submission to KDOR shall be in a manner prescribed by director of taxation.

amendment accepted.

Section 6 **Compliance Provisions**

Remove references to "substantial" compliance	amendment accepted.
Include suggested language in Sec. 6(a) pertaining to annual review of qualified company	amendment accepted.
Delete paragraph (c) pertaining to correction of deficiencies	amendment accepted.

MEMORANDUM

To: Rep. Kleeb

From: Jason B. Long, assistant revisor

Re: NAICS code descriptions for HB 2365

Date: March 20, 2009

The following are the descriptions for the NAICS codes set forth in HB 2365:

Group 7132 - Gambling industries

Group 8131 - Religious organizations

Sector 44 - Retail trade

Sector 45 - Sporting goods, hobby, book and music stores; general merchandise stores; miscellaneous store retailers; and nonstore retailers

Sector 61 - Educational services

Sector 92 - Public administration

Sector 221 - Utilities

Subsection 722 - Food services and drinking places