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MEMORANDUM

To: Senate Committee on Assessment and Taxation
From: Office of Revisor of Statutes
Date: March 19, 2024
Subject: Senate Bill No. 546

Summary

Senate Bill No. 546 would decrease the corporate income tax rate, discontinue tax credits of the high performance incentive program (HPIP) and payroll withholding tax benefits of the promoting employment across Kansas act (PEAK) and repeal certain unused tax credits.

Corporate Income Tax

Section 6 of the bill amends K.S.A. 2023 Supp. 79-32,110 to codify the corporate normal tax of 3.5% for tax year 2024 and to reduce the normal tax to 3% for tax year 2025 and to 2.75% for tax year 2026, and all tax years thereafter. The surtax in the amount of 3% of Kansas taxable income of such corporation in excess of \$50,000 would remain unchanged.

Section 5 amends K.S.A. 2023 Supp. 74-50,321 to clarify that the 3.5% normal tax rate codifies the application of the APEX provision for tax year 2024.

HPIP Training and Education Credit and Investment Tax Credit

Section 2 amends K.S.A. 74-50,132 to discontinue, after tax year 2024, the income, premium and privilege tax credits of the high performance incentive program (HPIP) relating to training and education of the firm's employees.

Section 7 amends K.S.A. 2023 Supp. 79-32,160a to discontinue the HPIP tax credits for investment in a qualified business facility after tax year 2024, except that for taxpayers who have excess unused credit

pursuant to a credit initially claimed for a tax year commencing before January 1, 2025, the credit carryforward provisions would still apply. The bill provides that no transfers of credits shall be allowed after December 31, 2024, but the carryforward provisions would still apply to transferees who have excess unused credit pursuant to a transfer that occurred before January 1, 2025.

PEAK Payroll Withholding Tax Benefits

Sections 3 and 4 amend K.S.A. 74-50,212 and 74-50,213, portions of the promoting employment across Kansas act (PEAK) relating to qualified companies, eligibility and applications, to provide that the secretary of commerce shall not approve any applications for benefits, enter into any agreements for benefits nor grant any additional benefits on and after July 1, 2024.

Repeal of certain unused tax credits

The bill would repeal the following tax credits:

K.S.A. 79-32,207	Abandoned well plugging
K.S.A. 2023 Supp. 32-1438	Agritourism liability insurance
K.S.A. 65-7107	Assistive technology contributions
	(The statute would be amended; see Section 1 of the bill.)
K.S.A. 79-32,262	Declared disaster capital investment
K.S.A. 79-32,222	Environmental compliance
K.S.A. 79-32,266	Owners promoting employment across Kansas (PEAK)
K.S.A. 79-32,204	Swine facility improvement
(see copies attached)	

The bill would take effect from and after its publication in the statute book.

79-32,207. Kansas income tax credit for corporations for plugging abandoned oil or gas well. (a) As used in this section, "abandoned oil or gas well" means an abandoned well, as defined by K.S.A. 55-191, and amendments thereto:

(1) The drilling of which was commenced before January 1, 1970; and

(2) which is located on land owned by the taxpayer claiming the tax credit allowed by this section.

(b) For any taxable year commencing after December 31, 2000, a credit shall be allowed against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer for expenditures made for the purpose of plugging any abandoned oil or gas well in accordance with rules and regulations of the state corporation commission applicable thereto, in an amount equal to 50% of such expenditures made in the taxable year.

(c) If the amount of the tax credit allowed by this section exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability.

(d) The total amount of credits allowed taxpayers pursuant to this section, including the amount of credits carried over under subsection (c), shall not exceed \$250,000 for any one fiscal year.

(e) The secretary of revenue shall adopt such rules and regulations as necessary to carry out the purposes of this section.

(f) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

History: L. 1998, ch. 122, § 6; L. 2001, ch. 176, § 9; L. 2012, ch. 135, § 25; January 1, 2013.

32-1438. Kansas income tax credit allowed for certain costs of liability insurance for corporations; rules and regulations adopted by secretary of commerce. (a) For taxable years commencing on and after December 31, 2003, December 31, 2004, December 31, 2005, December 31, 2006, and December 31, 2007, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who operates an agritourism activity on the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof that exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(b) For the first five taxable years commencing after a taxpayer opens such taxpayer's business, after the effective date of this act, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator who starts an agritourism activity after the effective date of this act. No tax credit claimed pursuant to this subsection shall exceed \$2,000. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof that exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of tax credit has been deducted from tax liability, except that no such tax credit shall be carried forward for deduction after the third taxable year succeeding the taxable year in which the tax credit is claimed.

(c) The secretary of commerce shall adopt rules and regulations establishing criteria for determining those costs which qualify as costs of liability insurance for agritourism activities of a registered agritourism operator.

(d) As used in this section, terms mean the same as provided by K.S.A. 32-1432, and amendments thereto.

(e) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to of K.S.A. 79-32,110(c), and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

History: L. 2004, ch. 97, § 9; L. 2012, ch. 135, § 4; L. 2013, ch. 133, § 14; L. 2023, ch. 7, § 106; July 1.

79-32,262. Tax credit for certain capital investments in a business located in or near certain cities made within three years of occurrence of certain major disasters. (a) Subject to limitations contained herein, for tax years 2008, 2009 and 2010, any taxpayer who makes a capital investment in a business which is located in the city of Chanute, Coffeyville, Erie, Fredonia, Greensburg, Independence, Iola, Neodesha or Osawatomie, Kansas, or within one mile of the city limits of any such city as long as such business is located in Kansas, when such investment is made within three years of the date of the occurrence of the disaster which is the subject of major disaster declaration DR 1699 or DR 1711 as the case may be shall be allowed a credit not to exceed 10% of such investment against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The total amount of credit allowed pursuant to this section for any one taxpayer shall not exceed \$100,000. In no event shall the total amount of credits or refunds allowed under this section exceed \$5,000,000 for any one fiscal year. The amount of credit allowed under this section shall be reduced by an amount equal to any assistance payment received by the taxpayer pursuant to the provisions of K.S.A. 75-3713e, and amendments thereto, or an assistance payment received by the taxpayer pursuant to the southeast Kansas business restoration assistance program as approved by the state finance council for the same investment as provided in this section. Notwithstanding any other provision of law, no taxpayer shall claim more than one credit allowed under this subsection for the same investment as provided in this section, except that nothing contained in this provision shall prevent a taxpayer from making a claim for and being allowed credit pursuant to this subsection in a subsequent tax year when such taxpayer was not allowed the credit in a previous tax year. If the amount of the tax credit determined under this section exceeds the income, privilege or premium tax liability for the taxpayer for any taxable year in which the qualified investment is made, the amount thereof which exceeds such tax liability may be carried over for deduction from such taxpayer's income, privilege or premium tax liability in the next succeeding year or years until the total amount of the credit has been deducted from tax liability, except that no such credit shall be carried over for deduction after the 10th taxable year succeeding the taxable year in which the qualified investment was made.

(b) (1) For tax years 2008, 2009 and 2010, a taxpayer may receive a refund of tax liability in lieu of the credit provided in this act. The refund shall be in an amount up to 50% of the credit earned by the taxpayer. The amount of refund allowed under this subsection shall be reduced by an amount equal to any assistance payment received by the taxpayer pursuant to the provisions of K.S.A. 75-3713e, and amendments thereto, or an assistance payment received by the taxpayer pursuant to the southeast Kansas business restoration assistance program as approved by the state finance council for the same investment as provided in this section. Notwithstanding any other provision of law, no taxpayer shall claim more than one refund allowed under this subsection for the same investment, except that nothing contained in this provision shall prevent a taxpayer from electing to receive a refund and receiving such refund in a subsequent tax year when such taxpayer was not allowed such refund in a previous tax year.

(2) A claim for refund shall be made prior to the taxpayer claiming any credit on which the refund is based. Should the taxpayer elect to receive the cash in lieu of the credit, the remaining portion of the tax credit shall be lost. Any refund pursuant to this subsection shall be allowed against the tax liability imposed under the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, and the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated in the tax year the qualified investment is placed into service. The amount of such refund which exceeds such tax liability shall be refunded to the taxpayer.

(3) The secretary of revenue shall submit an annual report to the legislature detailing taxpayers that have been allowed a credit and that have made the election to receive a refund in lieu of the credit. The annual report shall provide the aggregate amount of such credits and refunds. Such report shall be due during the legislative session, commencing with the 2009 legislative session.

(c) As used in this section, "capital investment" means an investment in the construction, equipment, reconstruction, maintenance, repair, enlargement, furnishing or remodeling of real property, and the purchase, lease or repair of tangible personal property. A "capital investment" shall not include inventory or property held for sale in the ordinary course of business.

(d) The secretary of revenue shall adopt rules and regulations to carry out the provisions of this act.

History: L. 2008, ch. 182, § 8; June 5.

79-32,222. Same; credit for certain environmental compliance expenditures. (a) As used in this section:

(1) "Refinery" has the meaning provided by K.S.A. 79-32,217, and amendments thereto.

(2) "Qualified expenditures" means expenditures which the secretary of health and environment certifies to the director of taxation are required for an existing refinery to comply with environmental standards or requirements established pursuant to federal statute or regulation, or state statute or rules and regulation, adopted after December 31, 2006.

(b) There shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act an amount equal to the taxpayer's qualified expenditures. The tax credit allowed by this subsection shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the taxpayer may carry over the amount thereof that exceeds such tax liability for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the year in which the costs are incurred.

(c) (1) To qualify the expenditures of the tax credit allowed by this section, a taxpayer shall apply to the secretary of health and environment for a certification that the costs were incurred to comply with environmental standards or requirements as specified in subsection (a). The secretary shall prescribe the form of the application, which shall include, but not be limited to, the following information: (A) A detailed description of the refinery project that is the subject of the expenditure; (B) a citation to the applicable federal or state statutes, regulations or rules and regulations which require the environmental compliance; (C) a detailed accounting of the costs incurred for the environmental compliance; and (D) a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate and complete.

(2) If the secretary of health and environment determines that the expenditures were incurred to comply with environmental standards or requirements as specified in subsection (a), the secretary shall issue a certificate of compliance to the director of taxation.

(3) The secretary of health and environment may adopt rules and regulations to administer the provisions of this subsection, including rules and regulations to fix, charge and collect an application fee to cover all or any part of the department of health and environment's cost of certifying the taxpayer's qualified expenditures under this subsection.

(d) The provisions of this section shall be applicable to all taxable years commencing after December 31, 2006.

(e) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

History: L. 2006, ch. 209, § 6; L. 2012, ch. 135, § 28; January 1, 2013.

79-32,266. Tax credit for taxpayers who receive income from business activities of certain qualified companies. (a) For taxable years commencing after December 31, 2010, there shall be allowed as a credit against the tax liability of a resident individual taxpayer an amount equal to 95% of the resident individual's income tax liability under the provisions of the Kansas income tax act for Kansas source income received from a qualified company that is business income attributable to business activities conducted at the business facility, office, department or other operation relocated to Kansas when the taxpayer owns such qualified company and materially participates in such business activities conducted at such relocated business facility, office, department or other operation of such qualified company which qualified for benefits under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments thereto. A taxpayer shall be treated as materially participating in such qualified company's business activities conducted at such business facility, office, department or other operation relocated to Kansas only if the taxpayer is involved in such business activities of such qualified company on a basis which is regular, continuous and substantial. A taxpayer may claim the credit authorized by this section during any tax year in which the qualified company owned by the taxpayer qualifies for benefits under provisions of K.S.A. 74-50,212, and amendments thereto.

(b) Business income attributable to the business activities conducted at the business facility, office, department or other operation relocated to Kansas of a qualified company which qualified for benefits under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments thereto, shall be determined by multiplying the business income of the company apportioned to this state by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. For purposes of this subsection, the property factor is a fraction, the numerator of which is the average value of the company's real and tangible personal property owned or rented and used during the tax period at such relocated facility, office, department or other relocated operation in Kansas, and the denominator of which is the average value of the company's real and tangible personal property owned or rented and used within this state during the tax period. The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the company for compensation at such relocated facility, office, department or other relocated operation in Kansas, and the denominator of which is the total compensation paid by the company in this state during the tax period. The sales factor is a fraction, the numerator of which is the total sales of the relocated facility, office, department or other relocated operation in this state during the tax period, and the denominator of which is the total sales of the company in this state during the tax period.

(c) This credit shall not be available to any taxpayer making a modification under (b)(xix) or (c)(xx) of K.S.A. 79-32,117, and amendments thereto.

(d) The secretary of revenue shall adopt rules and regulations regarding the filing of documents that support the qualifications of the taxpayer for the credit claimed pursuant to this section.

History: L. 2011, ch. 115, § 13; L. 2012, ch. 135, § 38; L. 2013, ch. 87, § 5; April 25.

79-32,204. Kansas income tax credit for corporations for required improvements to qualified swine facility.

(a) As used in this section:

(1) Terms have the meanings provided by K.S.A. 65-1,178, and amendments thereto;

(2) "qualified swine facility" means a swine facility that: (A) Is owned and operated by a sole proprietorship or partnership or by a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust, as defined by K.S.A. 17-5903, and amendments thereto; and (B) is utilizing its swine waste management system on January 1, 1998; and

(3) "required improvements to a qualified swine facility" means capital improvements that the secretary of health and environment certifies to the director of taxation: (A) Are required for a qualified swine facility to comply with the standards and requirements established pursuant to K.S.A. 65-1,178 through 65-1,198, and amendments thereto, or pursuant to the amendments made by this act to K.S.A. 65-171d, and amendments thereto; and (B) are not required because of expansion for which a permit has not been issued or applied for before the effective date of this act.

(b) There shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act an amount equal to not more than 50% of the costs incurred by the taxpayer for required improvements to a qualified swine facility. The tax credit allowed by this subsection shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the taxpayer may carry over the amount thereof that exceeds such tax liability for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the year in which the costs are incurred.

(c) The provisions of this section shall be applicable to all taxable years commencing after December 31, 1997.

(d) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

History: L. 1998, ch. 143, § 28; L. 2012, ch. 135, § 24; January 1, 2013.