Landon State Office Building
900 S.W. Jackson, Room 504
Topeka, KS 66612

Kansas
Division of the Budget

phone: 785-296-2436
fax: 785-296-0231
steve.anderson@budget.ks.gov

Steven J. Anderson, CPA, MBA, Director

Sam Brownback, Governor

February 14, 2011

The Honorable Richard Carlson, Chairperson
House Committee on Taxation
Statehouse, Room 274-W
Topeka, Kansas 66612

Dear Representative Carlson:

SUBJECT: Fiscal Note for HB 2220 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2220 is respectfully submitted to your committee.

HB 2220 would amend the Promoting Employment Across Kansas Act (PEAK). The bill would allow an income tax credit equal to the resident individual's income tax liability for the owner of a qualified company which meets the qualifications under PEAK to relocate jobs from an out-of-state facility, office, or operation to Kansas. The maximum refund amount would be equal to the amount withheld, payments other than wages, or paid as estimated taxes. The income tax credit would be effective for tax year 2011 and each year thereafter.

The bill would also allow not-for-profit corporations which locate a regional, national, or international headquarters to the State of Kansas; any out-of-state company which creates at least ten jobs in an urban area; and any out-of-state company that creates at least five jobs in a rural area to qualify for benefits under PEAK. The bill would allow a third party employer, either related or unrelated, to serve as the legal employer of the new employees providing services to the qualified company. The bill also defines the term “retained job” to mean an existing job which will be lost without participation by the employer in PEAK.

The bill would allow the average wage to be used in determining if a qualified company is eligible to retain 95.0 percent of the withholding taxes. Also, the employer can retain 95.0 percent of withholding taxes for all new jobs, not just those equal to or above the wage threshold (as under current law), and the employer would retain the withholding taxes for the maximum stated term length, eliminating discretion by the Secretary of Commerce to reduce that term length. The bill would allow any qualified company that retains employees of an existing business unit for a period of two years, to be eligible to retain the withholding taxes on these employees for a period of five years.

The Secretary of Commerce would be allowed to provide PEAK benefits to companies in certain situations that that would allow the company and jobs to remain in Kansas. The

Secretary would be required to establish and verify that a prospective company has competitive alternatives that it is seriously considering and that the company's relocation is imminent. The Secretary would be required to assess whether the retention is important to the economic vitality of the state, the area where the operations are located, or whether the retention is important to a particular industry due to factors such as the quantity, quality, or pay of the retained jobs. The Secretary would also be able to use PEAK in conjunction with other economic development programs to develop a retention package. The bill would eliminate the $4.8 million cap that was set to begin in FY 2012 on the amount of PEAK benefits for expansions of businesses that are already located in Kansas.

Estimated State Fiscal Effect				
	FY 2011 SGF	FY 2011 All Funds	FY 2012 SGF	FY 2012 All Funds
Revenue	--	--	($26,100,000)	($26,100,000)
Expenditure	--	--	$111,300	$111,300
FTE Pos.	--	--	--	1.50

The Department of Revenue estimates that HB 2220 would decrease State General Fund revenues by $26.1 million in FY 2012. The decrease in revenues and how the November 2, 2010 consensus revenue estimate for FY 2012 would be affected are shown in the following table:

Effect on FY 2012 Consensus Revenue Estimates
(Dollars in Thousands)

Receipt Description	Consensus Revenue Estimates (Nov. 2, 2010)	Change in Revenue FY 2012	Proposed Adjusted CRE FY 2012
Motor Carrier	$ 27,000	$ --	$ 27,000
Income Taxes:			
Individual	2,705,000	(26,100)	2,678,900
Corporate	275,000	--	275,000
Financial Institutions	21,000	--	21,000
Excise Taxes:			
Retail Sales	2,090,000	--	2,090,000
Compensating Use	295,000	--	295,000
Cigarette	97,000	--	97,000
Corporate Franchise	8,000	--	8,000
Severance	94,300	--	94,300
All Other Excise Taxes	96,400	--	96,400
Other Taxes	127,000	--	127,000
Total Taxes	$5,835,700	($ 26,100)	$5,809,600

Other Revenues:			
Interest	$ 11,800	$ --	$ 11,800
Transfers	(93,700)	--	(93,700)
Agency Earnings	56,800	--	56,800
Total Other Revenues	($ 25,100)	$ --	($ 25,100)
Total Receipts	$5,810,600	($ 26,100)	$5,784,500

The fiscal effect to state revenues during subsequent years would be as follows:

	FY 2013	FY 2014	FY 2015	FY 2016
State General Fund	($36,100,000)	($46,100,000)	($56,100,000)	($66,100,000)

To formulate these estimates, the Department of Revenue reviewed data on the PEAK Program from the Department of Commerce. Based on information received from the Department of Commerce, it is estimated that the FY 2012 State General Fund reduction of $26.1 million would be broken out as follows:

1. Allowing employers to retain withholding on all new jobs, maximum term limit, and giving employers the choice of using average county wage or median county wage is estimated to cost $11.0 million.

2. Accelerate by six months (to July 1, 2011, instead of Jan. 1, 2012) the date when employers expanding existing facilities in Kansas can start receiving benefits is estimated to cost $2.5 million.

3. Eliminating the $4.8 million cap on benefits to employers expanding in existing facilities that was set to begin in FY 2012 is estimated to cost $2.5 million.

4. Allowing related third party employers to qualify for PEAK benefits is estimated to cost $100,000.

5. Allowing retained jobs to qualify for PEAK is estimated to cost $10.0 million.

The bill would require the Department of Commerce to perform additional administrative responsibilities that require oversight, compliance, reporting, and audit activities. The Department of Commerce estimates that applications for benefits under PEAK would increase as a result of the changes proposed in this bill. The Department indicates the bill would require $82,500 in FY 2012 for salary and wages and operational expenses for 1.50 new FTE position to manage the application process and to collect, record, track, and verify data on the PEAK Program.

The Department of Revenue indicates the bill would require $28,800 to modify the automated tax system. The required programming for this bill by itself (960 hours of in-house programming and implementation) would be performed by existing staff of the Department of

Revenue. However, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, expenditures for outside contract programmer services beyond the Department's current budget may be required. Any fiscal effect associated with HB 2220 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Traci Herrick, Commerce
Steve Neske, Revenue