Income Tax—Expensing

House Sub. for SB 196 provides a new state income tax deduction known as "expensing" for certain qualified investments; repeals or phases out a number of existing state income tax credit and sales tax exemptions; repeals the Kansas Economic Opportunity Initiative Fund (KEOIF); and creates a new fund, the Job Creation Program Fund (JCPF). Finally, an additional provision establishes a new individual income tax checkoff for the Kansas Hometown Heroes Fund.

Expensing Provisions

One section of the bill allows taxpayers to claim an expense deduction from Kansas net income before expensing or recapture for the cost of certain machinery and equipment depreciable under Section 168 of the federal Internal Revenue Code and certain canned software, defined under Section 197, placed into service beginning in tax year 2012. The property must be located in Kansas to qualify for expensing. A member of a unitary group of corporations filing a combined report may, under certain circumstances, take the expense deduction for an investment made by another member of the group. Any amount of excess expensing deduction is to be treated as a net operating loss for state income tax purposes. Any property sold during the applicable recovery period, as defined by federal law or relocated outside the state during such period will be subject to have a portion of its expense deduction "recaptured" for Kansas income tax purposes.

Taxpayers electing to expense qualified investments are prohibited from also claiming a number of existing tax incentives that might otherwise apply to such investments, including tax credits for the high performance incentive program (HPIP); research and development; alternative fueled vehicles; swine facility improvements; historic preservation; carbon dioxide capture equipment; film production; refineries; oil or gas pipelines; integrated coal or coke gasification nitrogen fertilizer plants; biomass-to-energy plants; integrated coal gasification power plants; renewable electric cogeneration facilities; and biofuel storage and blending equipment. Taxpayers claiming expensing also are prohibited from claiming accelerated depreciation otherwise available for the latter seven of these investment purposes.

Repeal or Modification of Existing Tax Incentives

Beginning in tax year 2012, income tax credits may no longer be earned pursuant to the Kansas Enterprise Zone Act; and the Job Expansion and Investment Credit Act. Transitional language authorizes certain extant credits earned under both programs in tax year 2011 or previous years to continue to be carried forward.

Provisions relating to HPIP income tax credits are modified such that beginning in tax year 2012, the current $50,000 minimum investment threshold in five urban counties

(Douglas, Johnson, Sedgwick, Shawnee, and Wyandotte) is increased to $1 million. All HPIP related tax incentives also are required to be reviewed prior to January 1, 2017.

Another income tax credit relative to property taxes paid on commercial and industrial machinery and equipment is repealed beginning in tax year 2012.

A sales tax exemption relative to projects that qualify for the business and job development income tax credit program is repealed on January 1, 2012.

Job Creation Program Fund

The bill further creates the Job Creation Program Fund (JCPF), which will be administered by the Secretary of Commerce, in consultation with the Secretary of Revenue and the Governor, to promote job creation and economic development by funding projects related to: the major expansion of an existing Kansas commercial enterprise; potential relocation to Kansas of a major employer; the award of a significant grant that has a financial matching requirement; the potential departure from the state or substantial reduction of operations of an existing employer; training or retraining activities; the potential closure or substantial reduction of a major state or federal institution; projects in counties with at least a 10 percent population decline over the last decade; or other "unique" economic development opportunities.

The two percent of withholding tax receipts under prior law that was earmarked for the Investments in Major Projects and Comprehensive Training (IMPACT) program will be earmarked for the JCPF on July 1, 2012, except that transitional language generally provides that current debt services for the IMPACT Program Repayment Fund be met, as well as administrative costs associated with the IMPACT Program Services Fund.

Additional language requires the Secretary of Revenue to estimate annually beginning on July 1, 2012, the amount of net savings realized under the provisions of the bill in anticipation of such amount being appropriated to the JCPF. The Secretary of Commerce also is required to report annually on JCPF expenditures and the cost-effectiveness of such expenditures.

Income Tax Checkoff Provisions

A new income tax checkoff program is placed on the state individual income tax form, whereby taxpayers may voluntarily contribute to the Kansas Hometown Heroes Fund. All moneys deposited in the Fund are required to be used solely for the veteran services program of the Kansas Commission on Veterans' Affairs. The expensing related provisions of the bill are expected to increase State General Fund (SGF) receipts by $2.874 million in FY 2012 and by $39.490 million in FY 2013; increase State Highway Fund (SHF) receipts by $1.126 million in FY 2012 and by $5.560 million in FY 2013;

and increase revenues available to the Economic Development Initiatives Fund (EDIF) by $1.3 million for both fiscal years as a result of the repeal of the KEOIF program. The net provisions from this part of the bill therefore will produce an additional $5.3 million of available resources in FY 2012 and an additional $46.350 million in available resources in FY 2013.