

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 3:33 p.m. on February 3, 2011, in Room 783 of the Docking State Office Building.

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
Michael Wales, Kansas Legislative Research Department
Marla Morris, Committee Assistant
Allen Jeffus, Office Assistant

Conferees:

Richard Cram, Policy and Research Director, Kansas Department of Revenue
Ed Bryan, HPIP Manager, Kansas Department of Commerce
Katrin Osterhaus, Principal Auditor, Legislative Division of Post Audit

Others attending:

See attached list.

Bill Introductions:

Representative Schwab moved introduction of a bill to require KPERS to divest of any funds invested in Iranian interests. Seconded by Representative Brunk, the motion carried.

Representative Goico moved introduction of a bill to outlaw demonstrations at military funerals. Representative Gatewood seconded the motion. The motion carried.

Representative Calloway moved introduction of a committee bill addressing changes on the Kansas Child and Dependent Care Credits tax form. The motion was seconded by Representative Schwab and the motion carried.

Representative Kleeb moved introduction of a committee bill regarding a streamline sales tax. Seconded by Representative Schwab, the motion carried.

Representative Kleeb moved introduction of a committee bill addressing an unemployment tax deficit solution. The motion was seconded by Representative Dillmore. The motion carried.

Representative Carlson moved introduction of a bill on the tax study commission. The motion was seconded by Representative Frownfelter. The motion carried.

Representative Carlson moved introduction of a bill that cleans up language on counties certifying the amount of AdValerom tax to be levied by school districts. The motion was seconded by Representative Powell, and the motion carried.

Representative Carlson moved introduction of a bill pertaining to the submission of a one-quarter percent sales tax question for several specific purposes requested by the The Douglas County Commission. Representative Kleeb seconded the motion. The motion carried.

Rep. Kleeb moved committee introduction of a bill regarding the Promoting Employment Across Kansas (PEAK) Act. Representative Goico seconded the motion and the motion carried.

Chairman Carlson opened the hearing on:

HB 2117 – Removal of outdated sales tax imposition language

Chris Courtwright, Policy and Research Director, Kansas Legislative Research Department, briefed the Committee on **HB 2117**, repealing defunct language appearing in the sales tax code, requires no policy change, and has no fiscal note associated. He stood for questions.

CONTINUATION SHEET

Minutes of the House Taxation Committee at 3:33 p.m. on February 3, 2011, in Room 783 of the Docking State Office Building.

There were no proponents or opponents present, therefore, Chairman Carlson closed the hearing on **HB 2117**.

Without objection from the Committee, Chairman Carlson sought discussion and action on **HB 2117**.

Representative Brunk moved **HB 2117** favorable for passage, the motion was seconded by Representative Schwab.

Representative Kleeb moved an amendment to **HB 2117** (Attachment 1), which strikes out language pertaining to defunct projects by the Sunflower Ammunition Plant near Desoto, and the ammunition plant near Parsons. Representative Frownfelter seconded the motion. Following discussion, Representative Kleeb moved the amendment. The motion carried.

Representative Brunk moved to pass **HB 2117** favorable for passage as amended. The motion carried.

In response to the Chairman's January 26, 2011, request for the Kansas Department of Revenue (KDOR) and the Kansas Department of Commerce to present a review of the High Performance Incentive Program (HPIP), Richard Cram, Policy and Research Director, KDOR, briefed the Committee on Unitary Business Concepts, Expensing and Depreciation (Attachment 2). Mike Boekhaus, Director of the Audit Bureau, and Charla Wagner, Auditor from KDOR assisted in the preparation of the briefing. Mr. Cram stood for questions.

Ed Bryan, HPIP Manager, Kansas Department of Commerce, explained the intent of the HPIP program (Attachment 3). He discussed the three main tax incentives:

- Investment Tax Credits
- Employee Training Tax Credit
- State Sales Tax Exemption

His presentation included a copy of the recently simplified Kansas HPIP application form (Attachment 4).

Katrin Osterhaus, Principal Auditor, Legislative Division of Post Audit, provided a copy of Part I of the three part report prepared by the Legislative Division of Post Audit in 2010. The *Performance Audit Report, Part I: Reviewing Tax Credits* is available online at <http://www.kansas.gov/postaudit/audits>. Her presentation directed the Committee to pages 17, 18, 27, 35 and 36 of the report relating to HPIP (Attachment 5).

Chairman Carlson thanked the Kansas Department of Revenue, Kansas Department of Commerce and the Legislative Division of Post Audit for their valuable assistance in providing the Committee insight into HPIP.

Chairman Carlson adjourned the meeting at 5:00 p.m.

HOUSE TAXATION COMMITTEE

DATE: February 3, 2011

NAME	REPRESENTING
Bernie Koch	KEPCO
Joe Mosimann	Amica of KS
Mandy Little	SOAPS
JUALTH GANA	CAPITOL ADVANTAGE
Scott Paradise	HOC
Don Murray	NFIB
CHARRA WAGNER	KDOR
Michelle Butler	Cap. Strategies
Steve Ahler	KS. Inc
Katrin Osterhaus	LRA
Mike Murray	Capitol Advantage
Mike Jones	Dallas Braden
Colin Curtis	Sandstone Group
Melissa Ward	Hein Law Firm
Ron Sucher	KLFA/KARA/KA20

Proposed Amendments to
House Bill No. 2117

HOUSE BILL No. 2117

By Committee on Taxation

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AN ACT concerning sales taxation; relating to imposition of tax; exemptions; amending K.S.A. 2010 Supp. 79-3603 and repealing the existing section, _____ and use _____ and 79-3703 _____ sections

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

Section 1. K.S.A. 2010 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3%, and commencing July 1, 2010, at the rate of 6.3%, and commencing July 1, 2013, at the rate of 5.7%. ~~Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project] upon:~~

Strike

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) the gross receipts from intrastate, interstate or international telecommunications services and any ancillary services sourced to this state in accordance with K.S.A. 2010 Supp. 79-3673, and amendments thereto, except that telecommunications service does not include: (1) Any interstate or international 800 or 900 service; (2) any interstate or international private communications service as defined in K.S.A. 2010 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice data service; (4) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (5) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation

House Taxation

Date: 2-3-11

Attachment: 1

under the provisions of this act, and whether furnished by municipally or privately owned utilities, except that, on and after January 1, 2006, for sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for all sales of propane gas, LP gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises, the state rate shall be 0%, but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier;

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

(f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated;

(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501, and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties;

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes

1 paid thereon;

2 (i) the gross receipts from the rendering of dry cleaning, pressing,
3 dyeing and laundry services except laundry services rendered through a
4 coin-operated device whether automatic or manually operated;

5 (j) the gross receipts from the rendering of the services of washing
6 and washing and waxing of vehicles;

7 (k) the gross receipts from cable, community antennae and other
8 subscriber radio and television services;

9 (l) (1) except as otherwise provided by paragraph (2), the gross
10 receipts received from the sales of tangible personal property to all
11 contractors, subcontractors or repairmen for use by them in erecting
12 structures, or building on, or otherwise improving, altering, or repairing
13 real or personal property.

14 (2) Any such contractor, subcontractor or repairman who maintains
15 an inventory of such property both for sale at retail and for use by them
16 for the purposes described by paragraph (1) shall be deemed a retailer
17 with respect to purchases for and sales from such inventory, except that
18 the gross receipts received from any such sale, other than a sale at retail,
19 shall be equal to the total purchase price paid for such property and the
20 tax imposed thereon shall be paid by the deemed retailer;

21 (m) the gross receipts received from fees and charges by public and
22 private clubs, drinking establishments, organizations and businesses for
23 participation in sports, games and other recreational activities, but such
24 tax shall not be levied and collected upon the gross receipts received
25 from: (1) Fees and charges by any political subdivision, by any
26 organization exempt from property taxation pursuant to paragraph *Ninth*
27 of K.S.A. 79-201, and amendments thereto, or by any youth recreation
28 organization exclusively providing services to persons 18 years of age or
29 younger which is exempt from federal income taxation pursuant to
30 section 501(c)(3) of the federal internal revenue code of 1986, for
31 participation in sports, games and other recreational activities; and (2)
32 entry fees and charges for participation in a special event or tournament
33 sanctioned by a national sporting association to which spectators are
34 charged an admission which is taxable pursuant to subsection (e);

35 (n) the gross receipts received from dues charged by public and
36 private clubs, drinking establishments, organizations and businesses,
37 payment of which entitles a member to the use of facilities for recreation
38 or entertainment, but such tax shall not be levied and collected upon the
39 gross receipts received from: (1) Dues charged by any organization
40 exempt from property taxation pursuant to paragraphs *Eighth* and *Ninth*
41 of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships
42 in a nonprofit organization which is exempt from federal income taxation
43 pursuant to section 501 (c)(3) of the federal internal revenue code of

1 1986, and whose purpose is to support the operation of a nonprofit zoo;

2 (o) the gross receipts received from the isolated or occasional sale of
3 motor vehicles or trailers but not including: (1) The transfer of motor
4 vehicles or trailers by a person to a corporation or limited liability
5 company solely in exchange for stock securities or membership interest in
6 such corporation or limited liability company; or (2) the transfer of motor
7 vehicles or trailers by one corporation or limited liability company to
8 another when all of the assets of such corporation or limited liability
9 company are transferred to such other corporation or limited liability
10 company; or (3) the sale of motor vehicles or trailers which are subject to
11 taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and
12 amendments thereto, by an immediate family member to another
13 immediate family member. For the purposes of clause (3), immediate
14 family member means lineal ascendants or descendants, and their
15 spouses. ~~Any amount of sales tax paid pursuant to the Kansas retailers~~
16 ~~sales tax act on the isolated or occasional sale of motor vehicles or trailers~~
17 ~~on and after July 1, 2004, which the base for computing the tax was the~~
18 ~~value pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105,~~
19 ~~and amendments thereto, when such amount was higher than the amount~~
20 ~~of sales tax which would have been paid under the law as it existed on~~
21 ~~June 30, 2004, shall be refunded to the taxpayer pursuant to the procedure~~
22 ~~prescribed by this section. Such refund shall be in an amount equal to the~~
23 ~~difference between the amount of sales tax paid by the taxpayer and the~~
24 ~~amount of sales tax which would have been paid by the taxpayer under~~
25 ~~the law as it existed on June 30, 2004. Each claim for a sales tax refund~~
26 ~~shall be verified and submitted not later than six months from the~~
27 ~~effective date of this act to the director of taxation upon forms furnished~~
28 ~~by the director and shall be accompanied by any additional~~
29 ~~documentation required by the director. The director shall review each~~
30 ~~claim and shall refund that amount of tax paid as provided by this act. All~~
31 ~~such refunds shall be paid from the sales tax refund fund, upon warrants~~
32 ~~of the director of accounts and reports pursuant to vouchers approved by~~
33 ~~the director of taxation or the director's designee. No refund for an~~
34 ~~amount less than \$10 shall be paid pursuant to this act. In determining the~~
35 ~~base for computing the tax on such isolated or occasional sale, the fair~~
36 ~~market value of any motor vehicle or trailer traded in by the purchaser to~~
37 ~~the seller may be deducted from the selling price;~~

38 (p) the gross receipts received for the service of installing or
39 applying tangible personal property which when installed or applied is
40 not being held for sale in the regular course of business, and whether or
41 not such tangible personal property when installed or applied remains
tangible personal property or becomes a part of real estate, except that no
tax shall be imposed upon the service of installing or applying tangible

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1 personal property in connection with the original construction of a
2 building or facility, the original construction, reconstruction, restoration,
3 remodeling, renovation, repair or replacement of a residence or the
4 construction, reconstruction, restoration, replacement or repair of a bridge
5 or highway.

6 For the purposes of this subsection:

7 (1) "Original construction" shall mean the first or initial construction
8 of a new building or facility. The term "original construction" shall
9 include the addition of an entire room or floor to any existing building or
10 facility, the completion of any unfinished portion of any existing building
11 or facility and the restoration, reconstruction or replacement of a building,
12 facility or utility structure damaged or destroyed by fire, flood, tornado,
13 lightning, explosion, windstorm, ice loading and attendant winds,
14 terrorism or earthquake, but such term, except with regard to a residence,
15 shall not include replacement, remodeling, restoration, renovation or
16 reconstruction under any other circumstances;

17 (2) "building" shall mean only those enclosures within which
18 individuals customarily are employed, or which are customarily used to
19 house machinery, equipment or other property, and including the land
20 improvements immediately surrounding such building;

21 (3) "facility" shall mean a mill, plant, refinery, oil or gas well, water
22 well, feedlot or any conveyance, transmission or distribution line of any
23 cooperative, nonprofit, membership corporation organized under or
24 subject to the provisions of K.S.A. 17-4601 et seq., and amendments
25 thereto, or municipal or quasi-municipal corporation, including the land
26 improvements immediately surrounding such facility;

27 (4) "residence" shall mean only those enclosures within which
28 individuals customarily live;

29 (5) "utility structure" shall mean transmission and distribution lines
30 owned by an independent transmission company or cooperative, the
31 Kansas electric transmission authority or natural gas or electric public
32 utility; and

33 (6) "windstorm" shall mean straight line winds of at least 80 miles
34 per hour as determined by a recognized meteorological reporting agency
35 or organization;

36 (q) the gross receipts received for the service of repairing, servicing,
37 altering or maintaining tangible personal property which when such
38 services are rendered is not being held for sale in the regular course of
39 business, and whether or not any tangible personal property is transferred
40 in connection therewith. The tax imposed by this subsection shall be
41 applicable to the services of repairing, servicing, altering or maintaining
42 an item of tangible personal property which has been and is fastened to,
3 connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) ~~on and after January 1, 2005~~, the gross receipts received from the sale of prewritten computer software and the sale of the services of modifying, altering, updating or maintaining prewritten computer software, whether the prewritten computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;

(t) the gross receipts received for telephone answering services;

(u) the gross receipts received from the sale of prepaid calling service and prepaid wireless calling service as defined in K.S.A. 2010 Supp. 79-3673, and amendments thereto; and

(v) ~~the gross receipts received from the sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701, et seq., and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1, 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before July 1, 2002.~~ from and after July 1, 2002, all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701 et seq., and amendments thereto, shall be exempt from taxes imposed pursuant to this section.

~~Sec. 2. K.S.A. 2010 Supp. 79-3603 is hereby repealed.~~ and 79-3703 are

~~Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.~~

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Sec. 2. K.S.A. 2010 Supp. 79-3703 is hereby amended to read as follows: 79-3703: There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using, storing, or consuming within this state any article of tangible personal property. Such tax shall be levied and collected in an amount equal to the consideration paid by the taxpayer multiplied by the rate of 5.3%, and commencing July 1, 2010, at the rate of 6.3%, and commencing July 1, 2013, at the rate of 5.7%. ~~Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax of 2% until the earlier of: (1) The date the bonds issued to finance or refinance the redevelopment project undertaken in the district have been paid in full; or (2) the final scheduled maturity of the first series of bonds issued to finance the redevelopment project.~~ All property purchased or leased within or without this state and subsequently used, stored or consumed in this state shall be subject to the compensating tax if the same property or transaction would have been subject to the Kansas retailers' sales tax had the transaction been wholly within this state.

High Performance Incentive Program (HPIP)

Kansas Department of Commerce

HB 2051

The intent of the HPIP incentive program is to encourage companies to invest in Kansas raise Kansas employee wage and skills levels through income tax credits and sales tax project exemption. In the past two years alone, 322 companies in 54 Kansas counties have availed themselves of the benefits of this unique economic development tool. This program is geared toward and effectively attracts those projects heavy in capital invest such as those intending to build or lease large new facilities. These are the employers which plan to operate in a location the long term, the type of employers all states vigorously pursue and compete for.

HPIP can offer three main tax incentives.

- 1) **Investment Tax Credit:** This is equal to 10% of all eligible capital investment which exceeds \$50,000 per tax year. There is no cap and a ten year carry-forward.
- 2) **Employee Training Tax Credit:** This is a dollar for dollar tax credit, up to a maximum of \$50,000, for training and education expenditures which exceed 2% of total payroll at the worksite. There is no tax credit carry-forward here.
- 3) **State Sales Tax Exemption:** This exempts the company from having to pay sales tax on the purchases of all materials and services related to capital investment at the worksite.

To qualify for HPIP the company must be "for profit", subject to state taxes, pay above average wages (as compared to firms with the same NAICS codes in their geographical area) and make a significant investment in employee training.

Also, the company must be a manufacturer or in another eligible category if most of its sales revenue is derived from a combination of Kansas Manufacturers, out-of-state businesses and/or government agencies. Ineligible NAICS categories include retailers, mining, agriculture and construction companies. A business in any category may qualify if they are a headquarters or back-office operation of a national or multi-national firm as those companies are capable of being located anywhere geographically.

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Attachment: 3-1

The first step to becoming HPIP certified is the submission of the Project Description form which demonstrates foreknowledge of the program. This form identifies future intended capital investment and must be received by Commerce prior to the company making any formal commitment to invest. HPIP is intended to provide companies with tax incentives that will cause the company to expand the scope of their investment beyond that which would have otherwise occurred. This inherently requires that the company decision-makers be aware of the program benefits while they are still making these decisions. Therefore, currently, only investment spending that has been pre-identified to Commerce on a Project Description form is potentially eligible for HPIP tax credits.

In fiscal year 2010 well over 300 Project Description forms were submitted identifying intended projects totaling over \$2 billion. In addition, while job creation is not the thrust of HPIP, jobs certainly follow investment. Along with over \$2 billion in intended capital investment during this period these companies also estimated the creation of over 12,000 new jobs.

After submission of the Project Description form, the company must then apply for and obtain HPIP-certification at the investment worksite for the timeframe in which the investment spending occurs and the related assets will be placed into service. It can then claim credits for investment spending on its tax filing. Revenue is the agency with the authority to determine what does and does not constitute eligible investment for the purpose of earning Kansas tax credits.

First time certification periods are generally for one year, but program requirements must be satisfied during the 4 prior quarters called the "measurement period." To claim tax credits which are unused during the first year the company must file for re-certification each year until the credits are used up. Although currently unused tax credits can be carried-forward for ten years, this committee has been asked to double this period to 20 years because "we are in a recession and profits are down." Therefore, the question for this committee is; will doubling the carry-forward period (creating a 20 year tail vs a 10 year tail) make this a more attractive program for economic development and be worth the additional fiscal note? When the economic climate turns around, it will be hard to ever go back. This bill purports to allow a few companies to utilize earned credits which would have expired, this committee must decide, however, whether

a company that had not become profitable in ten years could become profitable in 20 and would allowing for this possibility be in the best interest of Kansas.

Like filing a tax return, the process of filing an HPIP application is always the same, but is looking at different time periods. It has been suggested to this committee that the process of having to re-file annually is an onerous and overly burdensome exercise and that the application for re-certification was 2 to 3 inches thick or as big as a zippered notebook. This is not the case. I took this program over more than two years ago and my charge was to streamline and make it more user friendly. I convened a focus group inviting current HPIP companies which included many of the proponents. Also invited were companies which had considered HPIP and elected not to pursue it, outside consultants, attorneys and representatives from Department of Revenue. From their comments and suggestions I revamped our website and streamlined the process. The application has been simplified with step by step instructions and back-up documentation is very minimal. The committee has a copy of our current application and, as you can see; it is 4 pages long and only requires about 2 pages of actual information.

Regarding the need or fairness of annual re-certification for carry-forwards, a big question is: If a company can show satisfaction of the HPIP program requirements, qualify for certification and earn tax credits, then why should they have to re-certify annually to be able to take advantage of those credits which they were not able to use up in the first year but which they still own? The answer, in my mind, is that the 1992 legislature intended to provide very generous benefits but to only those companies which were "high performing." The benefits are intentionally of such magnitude that few, if any, companies can use all of their earned tax credits in that first year. The plan was to create continuous incentives, over a number of years, so the companies would maintain a high level of commitment to their employees and not just in the first year. The legislative body believed this would create stronger companies and a more robust economy in the long term. The only way to insure that a company continues to be high performing is to verify this on a regular basis through the recertification process. Without the incentive to do otherwise, I believe the first cut backs will be in employee training and then at some point wage increases. These issues all really boil down to what is best for Kansas.

Attached: HPIP Application

Ed R Bryan, Manager
High Performance Incentive Program
Ph. 785-296-7174
ebryan@kansascommerce.com

Kansas High Performance Incentive Program (HPIP) Application

For the worksite seeking HPIP certification, the person completing this application will need access to payroll records, training expenditures and customer records which identify the sources of sales revenues.

Commerce Representative: _____

Project Description Number: _____

Outside Consultant: _____ ☐ First Certification ☐ Recertification

Date: _____ Waiting on HPIP Sales Tax Exemption: ☐ Yes ☐ No

Company Name: _____

Company FEIN: _____ Company Fiscal Year End: _____ / _____
Month Day

Company Address – Mailing: _____

City: _____ State: _____ Zip: _____

(Proposed) Worksite Address: _____

City: _____ County: _____

Contact: _____ Title: _____

Contact Phone: () - _____ Fax: () - _____

E-mail: _____

If your company is a subsidiary, please provide the parent company's

(a) Name: _____

(b) Address: _____

(c) Contact Phone: () - _____

(d) FEIN: _____

**PLEASE REFER TO THE "GUIDELINES & INSTRUCTIONS"
AS YOU COMPLETE EACH OF THE FOLLOWING SECTIONS**

For-Profit Entity

- 1) Is your firm a for-profit business enterprise subject to Kansas income, sales or property taxes or combination of these taxes? ☐ If YES, go to item 2 ☐ If NO, stop here. It appears your company does not qualify for HPIP benefits at this time.

"Measurement" and "Certification" Periods

- 2) (a) What four-calendar-quarter **measurement period** have you decided will best suit your company's needs? _____ through _____
mm/dd/yy mm/dd/yy
- (b) What date during the first calendar quarter following your measurement period do you wish to start and end your **certification period**. _____ through _____
mm/dd/yy mm/dd/yy

Assigned North American Industry Classification System (NAICS) Code

- 3) (a) To what six-digit NAICS category has the Kansas Department of Labor assigned the worksite which is seeking HPIP certification in this application? _____
NAICS Code
- (b) Please provide a brief description of the product or service produced at this worksite:

Business Activities at the Worksite

- 4) Based on your NAICS category, is your worksite classed as a manufacturer (i.e., first 3 digits of your NAICS category are 311 through 339)?
☐ If YES, skip to item 8 ☐ If NO, go to item 5
- 5) Regardless of its NAICS designation, has Commerce determined your worksite to be a "headquarters or back-office operation" of a national or multi-national corporation?
☐ If YES, go to item 8 ☐ If NO, skip to item 6
- 6) Is your worksite classed in other eligible major NAICS?
☐ If YES, go to item 7 ☐ If NO, stop here. It appears your company does not qualify for HPIP benefits at this time.

Sources of Revenue

- 7) Does your worksite meet the statutory sources of revenue requirement for 51 percent of the revenue? ☐ If YES, complete this section and go to item 8 ☐ If NO, stop here. It appears your company does not qualify for HPIP benefits at this time.
- (a) Actual percent of total annual sales which meet this requirement: _____ %

- (b) Describe how you capture this data in your sales or accounting system: (Please attach separate sheet if necessary.)

Worksite Average Wage Level

- 8) What is the HPIP wage standard in your region based on your NAICS assignment?
\$ _____
- 9) What was the "average annual wage" amount you calculated in item (3) on the "Average Wage Calculations" form? \$ _____
- 10) Is your average annual wage higher than the HPIP wage standard based on your NAICS assignment for your chosen measurement period? ☐ If YES, skip to item 12 ☐ If NO, go to item 11
- 11) Is your worksite's average wage higher than one and one half times the statewide average wage? ☐ If YES, go to item 12 ☐ If NO, stop here. It appears your company does not qualify for HPIP benefits at this time.

IMPORTANT NOTE: By utilizing this alternative wage threshold and executing this document you are hereby attesting that in recalculating the worksite's total wage, all wages paid to employees with 5 percent equity or more have been removed.

Worksite Training/Training Tax Credit

- 12) Has your company satisfied the HPIP training requirement through its use of the KIT, KIR or SKILL workforce training programs? ☐ If YES, complete this section ☐ If NO, skip to item 13

- (a) Training Program: _____
- (b) Contract Number: _____
- (c) Required KIR match Amount: \$ _____
- (d) Training Project Timeframe: _____ through _____
mm/dd/yy mm/dd/yy

- 13) The training requirement can also be met through the company's independent training efforts and may earn a tax credit, as follows:

- (a) Calculate 2 percent of the aggregate "total wages paid" shown in item 3 on the "Average Wage Calculations" form:

<u>2% times</u>	<u>Total wages paid</u>	<u>equals</u>	<u>Minimum required cash outlay for training if not involved in KIT/KIR/SKILL</u>
.02 x \$	_____	= \$	_____

- (b) Show the cash outlay you calculated for employee training and education during your measurement period \$ _____

- (c) If the amount in item 13(b) is equal to the amount calculated in item 13(a), you have met the minimum HPIP training requirement. If 13(b) exceeds 13(a), you have earned a training credit equal to this "excess" amount up to a maximum of \$50,000.

<i>Non-match training cash outlay (from item 13(b) above)</i>	<i>minus</i>	<i>Minimum required cash outlay (from item 13(a) above)</i>	<i>equals</i>	<i>Excess over minimum requirement</i>
\$ _____	-	\$ _____	=	\$ _____

- 14) **Congratulations!** By meeting the requirement outlined in this application, your company is designated as a "high performance" business due to its willingness to invest above-average amounts in employee wages and training.

PLEASE READ CAREFULLY BEFORE SIGNING

- 15) Your signature below verifies the accuracy and completeness of all representations made in this application and confirms that the company will respond in a timely fashion to inquiries about its use of HPIP benefits and other related questions. Your signature verifies that the company agrees to make available within a reasonable timeframe and allow access to such company records as are deemed appropriate within the sole judgment of Commerce and/or Kansas Department of Revenue (KDOR), in order to facilitate verification of the company's program eligibility and entitlement to any HPIP benefits claimed. The company specifically agrees that this authorization by itself is sufficient notice for its employees to allow the requested access and provide any requested information.

The company also authorizes KDOR and the Kansas Department of Labor (KDOL) to share with Commerce such information as is deemed appropriate in the sole judgment of Commerce and KDOR and KDOL to facilitate verification of the company's program eligibility and entitlement to any HPIP benefits claimed. With this authorization the company specifically waives any right to confidentiality that may otherwise be extended to the company by law, insofar as it concerns the transfer of information about the company among Commerce, KDOR and KDOL with respect to verifying HPIP eligibility and claims.

Signature

Date

Printed name

Title

(must be the owner, CEO or the company officer responsible for preparing and filing the company's tax return)

Please sign, date and return this application with the required supporting documentation to:

Ed R. Bryan, HPIP Manager • Kansas Department of Commerce • 1000 S.W. Jackson Street,
Suite 100 • Topeka, Kansas 66612-1354 • Phone: (785) 296-7174
E-mail: ebryan@kansascommerce.com

High Performance Incentive Program Tax Credit – Summary from Performance Audit Report #10PA03.1

Recently, we completed a performance audit on whether the State's Tax Credits and Exemptions are accomplishing their intended purpose, or have outlived their usefulness. We released the audit in three parts during last year's legislative session.

This is not a full presentation about the audit's findings. Given HB 2051 dealing with the HPIP tax credit, I will quickly cover some information from Part 1 of the audit related to the HPIP credit.

- **Page 17 – Starts tax credit summary by category.**
 - Page 18 lists HPIP credit: categorized as a Business or Economic Development related credit. With its 2007 cost of over \$37 million, it is one of the costliest credits the State provides in this area. The tax credit has two components, one for training, and one for investment. Over 90% of the claimed credits stem from the investment portion. 133 taxpayers claimed the credit in 2007.
- **Page 27 - We concluded the HPIP tax credit, along with eight other credits, appears to be accomplishing the Legislature's policy goals.**
 - Dr. Hall – economic evaluation study (investment portion only)
 - Department of Commerce – important tool in the State's toolbox.
 - Missouri and Colorado have similar credits. (unable to determine if KS's HPIP credit more or less generous than similar credits in those two states)
- **Page 35 – Data reliability issues with tax credits, including the HPIP credit**
 - KDOR records tax credit information in separate databases, independent from its tax return computer system. Additionally, many of the tax credits cannot be submitted electronically. Translation, lots of hand-entering from paper forms.
 - For Economic Development credits, KDOR must provide an annual evaluation to the Legislature. It does so by summarizing a number of outcome data submitted on tax returns for 2 tax credits: the HPIP and Business and Job tax credits.
 - In its Tax Effectiveness Report to the 2009 Legislature, the Department's 2006 tax figures understated the State's cost for the HPIP credit by \$12.6 million, or 55%. We discovered the inconsistency when comparing the report to the database information for this credit.
 - The Department ended up revising the data, which also changed many of the outcome data; some increased, some decreased. See HPIP portion (right) in the table on page 36. Numbers changed because some taxpayers amend their tax return. Additionally, KDOR staff must process tax returns at the lowest level. When shareholder A, B, and C claim portions of the credit, but report the same # of jobs created as result of the credit, the Dept. must do considerable clean up to try to prevent duplication.
 - The outcome data is self-reported on tax returns, and aren't reviewed or audited by the Department. We also didn't do further work to confirm the numbers.
 - Decisions based on Cost and Outcome data for the HPIP tax credit should be made carefully as there may be accuracy issues.

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