Approved: March 3, 2011

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 3:40 p.m. on February 21, 2011, in Room 783 of the Docking State Office Building.

All members were present except:
Representative Calloway-excused
Representative Tyson-excused

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

Others attending:
See attached list.

Chairman Carlson directed the Committee to the documents placed in their daily packet:

- Kansas Division of Budget Fiscal Note for **HB 2317** (Attachment 1)
- Tax Policy Fact Sheet from the Office of Governor Brownback (Attachment 2)
- Technical Primer on the Governor's Proposal from Dr. Art Hall (Attachment 3)

Discussion and action on:

HB 2317 – Authorizing expensing of investment expenditures as a deduction in calculating Kansas income tax liability and IMPACT program changes

Chris Courtwright, Kansas Legislative Research Department, briefed the Committee on **HB 2317**. Chris Courtwright and Richard Cram, Kansas Department of Revenue, stood for questions.

Representative Kleeb moved **HB 2317** favorable for passage, Representative Goico seconded the motion.

Representative Kleeb moved a technical amendment, the motion was seconded by Representative Goico. Gordon Self, Office of the Revisor of Statutes, briefed the Committee on the proposed amendment (Attachment 4). The motion carried.

Representative Kleeb moved an amendment to eliminate carry forward in favor of net operating loss for expense deduction (Attachment 5). The motion was seconded by Representative Goico. Revisor Self briefed the Committee on the proposed amendment. The motion carried.

Representative Kleeb moved an amendment concerning a change in the HPIP threshold. Representive Goico seconded the motion. Revisor Self briefed the Committee on the proposed amendment. The motion carried.

Representative Kelley moved amendment to change wording to reflect a review of the performance of HPIP credits instead of the January 1, 2017 sunset. Representative Kleeb seconded the motion. The motion carried.

Representative Kleeb closed and moved **HB 2317** passed favorably as amended. The motion carried.

Representative Frownfelter requested an update on a February 14, 2010, request concerning the names of the ten companies that have moved into the State of Kansas, and where they came from. Secretary of Commerce, Pat George, informed the Committee that data would be available to the Committee soon.

The meeting was adjourned at 4:44 p.m.

HOUSE TAXATION COMMITTEE

Date: February 21, 2011

Name	Representing
Mandy Miller	SCofKS
Dan Murray	NFIB
JUDITH BANN	CAPITOL ADVANTAGE
WADE HAPGOOD	" "
Mike Murray	" "
Michelle Butler	Cap. Strategies
Greg Noll	Propane Marketers Assoc
Jim Mear	Spirit AeroSystems
Leslie Kaufman	KS Coop Council
Bob Vancrum	Greater KC Chamber

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Steven J. Anderson, CPA, MBA, Director

Sam Brownback, Governor

February 18, 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 2317 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2317 is respectfully submitted to your committee.

HB 2317 would create the Job Creation Program Fund at the Department of Commerce. Expenditures from the fund would be for the purpose of promoting job creation and economic development by funding projects related to a major expansion of an existing Kansas commercial enterprise; potential location in Kansas of the operations of major employer; award of a significant federal or private sector grant which has a financial matching requirement; potential departure from Kansas or the substantial reduction of the operations of a major Kansas employer; training or retraining activities for employees in Kansas companies; potential closure or substantial reduction of the operations of a major state or federal institution; projects in counties with at least a 10.0 percent population decline during the period from 2000 to 2010; or other unique economic development opportunities. The Department of Commerce would be required to produce an annual report on the expenditures and job creation performance of the Job Creation Program Fund.

The bill would make a number of changes to existing tax credits and economic development programs and would transfer any savings realized from the elimination, modification, or limitation of these programs to the newly created Job Creation Program Fund. The Secretary of Revenue would be required to determine the amount of savings on July 1, 2011 and each year thereafter, and transfer that amount to the Job Creation Program Fund. The changes to existing tax credit and economic development programs would be as follows:

1. Repeal the Business and Job Development Tax Credit beginning in tax year 2012;

2. Raise the minimum investment threshold for the High Performance Incentive Program (HPIP) Tax Credit to \$5.0 million, provide the 10.0 percent tax credit only for the amount of investment exceeding \$5.0 million beginning in tax year 2012, and the sales tax exemption for HPIP qualified projects would expire on January 1, 2017 to coincide with the elimination of the HPIP Tax Credit that would occur in tax year 2017;

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3. Repeal the Business Machinery and Equipment Tax Credit beginning in tax year 2012;

4. Repeal the Enterprise Zone sales tax exemption for qualifying purchases related to the Business and Job Development Tax Credit beginning on January 1, 2012;

5. Repeal the Kansas Economic Opportunity Initiatives Fund (KEOIF) Program of the Department of Commerce effective January 1, 2012; and

6. Amend the Kansas Investments in Major Investments in Major Projects and Comprehensive Training (IMPACT) Act to no longer allow bonds to be issued to finance this program as of December 31, 2011, and would transfer the amount of the 2.0 percent of all Kansas employee withholding taxes that is not currently necessary for debt service on existing bonds or program administration to the Job Creation Program Fund.

The bill would also allow taxpayers beginning in tax year 2012 to elect to take an expense deduction for Kansas tax purposes for the cost of certain tangible property placed in service during the taxable year. If an election is made, the amount of the expense deduction would be equal to the difference between the depreciable amount for federal purposes and the amount of bonus depreciation that is currently allowed under federal law. If the amount of expense deduction exceeds the taxpayer's taxable income, the excess may be carried forward until the total amount is used. If the property is sold and would cause recapture under federal rule, then the expense deduction would be subject to recapture and treated as Kansas taxable income.

The bill would allow any member of a unitary group to elect to take an expense deduction for an investment made by any member of the group, provided that the amount calculated may only be deducted from the Kansas taxable allocated to Kansas by such member making the election. The bill would not allow a taxpayer that elects to expense any investment to be eligible for any tax credit, accelerated depreciation, or deduction for such investment. The amount of saving from not allowing the taxpayer to claim both expensing and any other tax credit, accelerated depreciation, or deduction for such investment would be calculated by the Secretary of Revenue on July 1, 2011, and each year thereafter and transferred to the Job Creation Program Fund.

HB 2317 would decrease revenue to the State General Fund by an estimated $23.2 million in FY 2012 by allowing the Job Creation Program Fund of the Department of Commerce to receive the amount of the 2.0 percent of all Kansas employee withholding taxes that will not be used to pay for debt service on existing IMPACT bonds or program administration. Under current law, the amount of the 2.0 percent of Kansas employee withholding taxes that is not used to pay debt service on existing IMPACT bonds or program administration is retained by the State General Fund. The Department of Revenue estimates that it will receive $2,290.0 million from Kansas employee withholdings in FY 2012 which would allow 2.0 percent or $45.8 million to be transferred to the Department of Commerce. The Department of Commerce is already estimated to use $22.6 million in FY 2012 for debt service on IMPACT bonds, which would allow the remaining $23.2 million to be transferred to the Job Creation Program Fund in FY 2012. For FY 2013, it is estimated that approximately $25.0 million would be transferred to the Job Creation Program Fund from the amount remaining after payments are made for debt service on existing IMPACT bonds and program administration.

The bill would make changes to existing tax credits and economic development programs and would transfer any savings realized from the elimination, modification, or limitation of these programs to the Job Creation Program Fund. The estimated savings that would be captured and transferred to the Job Creation Program Fund in FY 2012 and FY 2013 would be as follows:

	FY 2012	FY 2013
Repeal Business & Job Development Credit	$ --	$5,000,000
Limits on HPIP Tax Credit	--	6,800,000
Repeal Business Machinery & Equipment Credit	--	37,000,000
Repeal Enterprise Zone Sales Tax Exemption	10,000,000	49,500,000
Repeal KEOIF	1,250,000	1,250,000
Changes to IMPACT Program	23,200,000	25,000,000
Expensing Proposal at 5.0% Discount Rate	(6,000,000)	(47,400,000)
	$28,450,000	$77,150,000

The Department of Revenue indicates that the bill would require administrative costs to implement the changes to the various income tax credits and new expensing deduction option and to modify the automated tax system. However, at the time this fiscal note was prepared, the Department was unable to estimate the administrative costs associated with this bill. If the Department determines that the costs associated with implementing this bill cannot be absorbed within existing resources, a revised fiscal note will be prepared.

The Department of Commerce currently operates the IMPACT Program and would be responsible for administering the Job Creation Program Fund that is proposed in HB 2317. The Department indicates that the proposed changes and new responsibilities could be implemented within the agency's existing resources and staff levels. The Department indicates that the bill would provide a deal closing fund which would allow greater flexibility in its business recruitment efforts and would allow the agency to avoid bond issuance fees and interest payments on bonds issued for IMPACT projects. Any fiscal effect associated with HB 2317 is not reflected in *The FY 2012 Governor's Budget Report.*

Sincerely,

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

cc: Steve Neske, Revenue
Traci Herrick, Commerce

Gov. Brownback's 2011 Economic Growth Tax Policy

Creating an Environment for Business and Entrepreneurial Success in Kansas

To maximize economic growth, we must recognize that
every business, every innovation and every entrepreneur matters,
and we must strive to motivate businesses of all sizes to invest in Kansas.
The Governor's 2011 tax policy package seeks to accelerate the growth of business investment and expansion by creating a business environment that induces the maximum amount of such growth without bias related to the size or type of business.

Encourage Investment by Businesses of All Sizes: Our state's economy expands as businesses in Kansas purchase equipment and software to support their growth, and, therefore, our tax policy should encourage this private sector investment. Allowing companies of all sizes to take state tax deductions on equipment and software purchases is an innovative way to accomplish this goal, and Kansas is poised to become the first state in the nation to enable businesses to immediately "expense" such purchases (rather than requiring a prescribed schedule of smaller deductions over multiple years).

As business taxpayers capture the full "time value" of money related to their investments, they will save an estimated $47 million to $50 million per year, which can be used for other purposes such as job creation and wage increases. *Expensing results in uniform income tax treatment for investments of all types and sizes – encouraging broad-based business growth.*

Boost Kansas' Ability to Strategically Attract and Retain Growing Companies: The Governor's plan would create a multi-million dollar fund for closing economic development deals in a highly competitive national marketplace. This job creation fund is designed to complement other state incentive programs and give the Governor and Secretary of Commerce flexibility to make prudent decisions to close deals on prime economic growth opportunities *without additional debt to the state.*

Streamline Economic Incentives: With a goal of exponentially increasing the number of potential businesses benefiting from smart changes to our tax code, the Governor is simplifying and streamlining economic incentives. By adjusting the threshold of the High Performance Incentive Program (HPIP) and retiring other credits and exemptions (business and job development; enterprise zone sales tax; business, machinery, and equipment refundable; and the Kansas Economic Opportunity Initiatives Fund), we will encourage many more businesses to invest in growth in Kansas.

Considered together, the move away from certain limited tax credits – combined with the implementation of expensing, the job creation fund, and rural opportunity zones – forms a thoughtful ***economic growth package*** that balances the needs of larger businesses with the needs of tens of thousands of small- to mid-sized businesses in our state. And, importantly, it begins a much-needed dialogue on modernizing Kansas business tax policy for the 21st century as we work together to create a more vibrant entrepreneurial environment that will make Kansas a magnet for companies and private investment from around the world.

Implementation of Expensing in Kansas:
A Technical Primer on Governor Brownback's Proposal

Art Hall, Executive Director
Center for Applied Economics, KU School of Business

Submitted to the House Taxation Committee
February 16, 2011

Statement of Policy:

Provide to business investors in Kansas the economic value of fully-accelerated depreciation that the federal government tax laws do not provide (but in addition to the economic value provided by federal tax laws for so-called Section 179 property).

The proposed expensing procedure is an option not a requirement. Some taxpayers may choose, for compelling business reasons, to follow federal depreciation procedures only.

Scope

- All business taxpayers shall have an automatic option to expense (immediately write-off for the year placed in service) any eligible investment. The expensing procedure amounts to an additional income tax deduction in Kansas over and above the deductions available for federal income tax purposes.
- The expensing provision applies to any non-real estate investment that can be depreciated for federal income tax purposes.
- There are no restrictions or caps, given the definitions and implementation procedures outlined in the bill.
- Unlimited carry-forward of unused deductions.
- For multi-divisional businesses, the "unitary group" can take the deduction on behalf of investments made by any member of the group.

What is "Expensing"?

- Expensing is a procedure related to the calculation of business income tax. Whenever a business makes a capital investment (whether equipment or structure), it is allowed to take a deduction against income tax for the depreciation of the investment. Expensing is one form of depreciation deduction.
- Expensing is a pro-investment tax policy that does not subsidize businesses. It simply allows them to capture an investment's full time value of money.
- Expensing, properly implemented, is a tax policy that treats *all* businesses equally.

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Comparison of Expensing and Tax Credits
Hypothetical Business Operating Solely within Kansas

Assume a $100,000 Investment in 7-Year Property

Federal Depreciation (200% Declining Balance)								
Year	1	2	3	4	5	6	7	8
Dollars	14,290	24,490	17,490	12,490	8,930	8,920	8,930	4,460

Examples:
- Furniture and fixtures for a call center
- Agricultural machinery
- A new natural gas gathering pipeline
- Manufacturing equipment for many industries

		Year 1 Income Tax Calculation		
		Full Expensing	**Brownback Expensing**	**HPIP Tax Credit**
1	Gross Receipts	500,000	500,000	500,000
2	Less: Cost of Goods Sold	310,000	310,000	310,000
3	Less: Federal Depreciation (on above investment)	14,290	14,290	14,290
4	Equals: Net Profit (Federal Taxable Income)	175,710	175,710	175,710
5	Plus: Kansas Additions to Federal Taxable Income	0	0	0
6	Less: Kansas Deductions from Federal Taxable Income	0	0	0
7	Equals: Apportionable Business Income to Kansas	175,710	175,710	175,710
8	Less: Kansas Expensing Deduction	100,000	15,100 *	0
9	Equals: Kansas Taxable Income	75,710	160,610	175,710
10	Kansas Income Tax (at 4% + 3.05% Surtax over $50,000)	3,813	9,798	10,863
11	Less: HPIP Tax Credit (10%)	0	0	5,000
12	Equals: Kansas Tax Liability	3,813	9,798	5,863

* Uses Kansas Adjustment Factor as explained below.

- This example shows the accounting and tax difference related to expensing and the HPIP investment tax credit (which applies to qualifying investments above $50,000).
- For the example, so-called "full expensing" is the most valuable to a taxpayer; HPIP is next. That is because each delivers more than the time value of money—they, in whole or in part, double count the value of the federal depreciation benefits.
- The Brownback proposal achieves the stated policy goal: it shifts only the time value of money to the taxpayer based on the federal depreciation benefits. It improves the expected investment return, but it does not subsidize like "full expensing" or HPIP.

Expected Rate of Return on Identical Hypothetical Investments (7-Year Property, Full Value of Incentive Captured in Year 1)			
	$1 Million Investment	**$100,000 Investment**	**$50,000 Investment**
No Credit or Expensing	9.20%	9.20%	9.20%
Full Expensing (7.05% Tax Rate)	11.19%	11.19%	11.19%
Brownback Expensing (7.05% Tax Rate)	**9.63%**	**9.63%**	**9.63%**
HPIP Investment Tax Credit	11.92%	10.60%	9.20%

- The goal of an investment incentive is to increase the expected return on investment (ROI). The baseline in this example is a 9.20% after tax investment return assuming no credits or deductions.
- No doubt a 10% tax credit increases expected ROI the most, once the investment is large enough to trivialize the $50,000 HPIP threshold.
- Expensing can become more competitive with HPIP if Kansas decides to go to "full expensing." Of course, like HPIP, this subsidizes business rather than removing the tax penalty imposed by fixed depreciation schedules. The higher the discount rate (that is the larger the Kansas Adjustment Factor), the closer ROI will get to "full expensing."
- Expending treats every business equally—regardless of the size of the investment. A stated policy goal.
- HPIP applies to a few dozen companies a year; expensing to tens of thousands—with no permission required. Relative to HPIP, Brownback expensing will help increase the expected rate of return on an addition $6-7 billion of annual investment—in other words, every business, not the several hundred million dollars of investment made by select businesses.

Formulas for Calculating Taxpayer Value	
Full Expensing	Investment Amount x Tax Rate
Brownback Expensing	Investment Amount x Kansas Adjustment Factor x Tax Rate
HPIP Investment Tax Credit	(Qualifying Investment Expenditure - $50,000) x 10%

Additional Examples of Taxpayer Value
(HPIP subsidizes; Brownback Expensing removes tax penalty)

$50,000 Investment

Property Class	Expensing Deduction 5% Factor	Taxpayer Value: Corporate Rate 7.05%	Taxpayer Value: Top Individual Rate 6.45%	Taxpayer Value: HPIP
3-Year	3,731	263	241	0
5-Year	5,794	408	374	0
7-Year	7,547	532	487	0
10-Year	9,889	697	638	0

$100,000 Investment

Property Class	Expensing Deduction 5% Factor	Taxpayer Value: Corporate Rate 7.05%	Taxpayer Value: Top Individual Rate 6.45%	Taxpayer Value: HPIP
3-Year	7,463	526	481	5,000
5-Year	11,587	817	747	5,000
7-Year	15,095	1,064	974	5,000
10-Year	19,777	1,394	1,276	5,000

$1,000,000 Investment

Property Class	Expensing Deduction 5% Factor	Taxpayer Value: Corporate Rate 7.05%	Taxpayer Value: Top Individual Rate 6.45%	Taxpayer Value: HPIP
3-Year	74,629	5,261	4,814	95,000
5-Year	115,874	8,169	7,474	95,000
7-Year	150,946	10,642	9,736	95,000
10-Year	197,772	13,943	12,756	95,000

Implementation: Understanding the Kansas Adjustment Factor

The key—and novel—implementation feature of the proposal relates to the "Kansas Adjustment Factor," which is described in the example below. Kansas, like many states, piggybacks on the procedures in the federal income tax code. This fact makes the implementation of expensing in Kansas slightly more complicated than it would be at the federal level. In brief, it would require a Kansas business tax preparer to spend about 5-10 minutes to perform one additional calculation.

The purpose of the additional calculation is to keep undisturbed the Kansas procedure of using federal taxable income as the starting point for Kansas corporate income tax calculations (and federal adjusted gross income as the starting point for proprietorships, partnerships, and S-Corporations). These starting-point measures of income already have federal depreciation built in.

An Example: Calculating the Kansas Adjustment Factor

- Federal depreciation procedures rely on a set of prescribed rules.
- When a business taxpayer makes a capital investment, the tax preparer must make a decision about (1) how to classify the property for depreciation purposes and (2) what depreciation method to use. Once the tax preparer makes those decisions, all of the details about the depreciation schedule become known.
- The suggested implementation plan for expensing in Kansas relies on the decision that the tax preparer makes for federal depreciation purposes.

Acme Call Centers has a state-of-the-art facility in Hays, Kansas. Acme purchases $500,000 worth of new furniture to expand its call center. The CFO of Acme knows that furniture is classified as a 7-year form of property for federal depreciation purposes. She decides to use the 200% Declining Balance depreciation method (employing the half-year convention).

Acme Call Centers' Federal Depreciation Deduction Schedule								
Year	1	2	3	4	5	6	7	8
Dollars	71,450	122,450	87,450	62,450	44,650	44,600	44,650	22,300

- Kansas expensing amount if there were no federal depreciation rules: $500,000
- Kansas expensing amount under the proposal: $500,000 x 0.151 = $75,500.

The proposal would provide Acme an additional $75,500 income tax deduction—in Year 1 only. That amount captures the time value of money difference between the federal depreciation schedule and the full expensing amount of $500,000.

Where did the 0.151 number come from? Based on the implementation plan, it is a number that will be published as part of the law or published by the Kansas Department of Revenue. A Kansas Adjustment Factor will be published to correspond to each type of property classification and depreciation procedure (which will result in a table that easily fits on one page).

The actual number derives from taking the difference between the investment amount ($500,000, in this case) and the discounted present value of the federal depreciation schedule (years 2-8) using an interest rate of eight percent (5%). Mathematically, the adjustment factor of 0.151 remains invariant for any investment in 7-year property that a taxpayer depreciates using the 200% Declining Balance method under the half-year convention.

The same procedure used in the Acme Call Centers example would apply for any investment made in Kansas. Different adjustment factors would apply to the several different combinations of property classifications and depreciation methods available to taxpayers under the federal tax rules.

Derivation of the Kansas Adjustment Factor for the Acme Example

The property has a 7-year classification, but the schedule actually has 8 installments.

Present Value of Federal Depreciation Schedule (at 5% rate of interest, Year 1 not discounted):

$$424{,}500 = \frac{71{,}450}{(1.0)^1} + \frac{122{,}450}{(1.05)^2} + \frac{87{,}450}{(1.05)^3} + \frac{62{,}450}{(1.05)^4} + \frac{44{,}650}{(1.05)^5} + \frac{44{,}600}{(1.05)^6} + \frac{44{,}650}{(1.05)^7} + \frac{22{,}300}{(1.05)^8}$$

Difference between Full Investment Amount and Present Value:
$500,000 – $424,500 = $75,500

Calculation of Kansas Adjustment Factor (Invariant to Investment Size):
$75,500 ÷ $500,000 = 0.151

<u>Adjustment Procedures Related to Federal Rules for Accelerated ("Bonus") Depreciation</u>

- The implementation goal of the proposal is to allow Kansas expensing to "flex" with changes in federal law to maintain the Kansas policy goal stated above.
- Two categories of federal law interact with each other and the Kansas proposal: Section 179 of the IRS code and bonus depreciation.
- The following example uses the law as embodied in the Small Business and Jobs Act (Sept. 27, 2010)—and extrapolates to the federal expensing provision expected to be law for 2012:
    - Section 179 ("small business" expensing). In tax years 2010 and 2011, companies can expense up to $500,000 of qualifying property, as long as the purchase price does not exceed $2 million. For every dollar a price tag exceeds $2 million, the allowable expensing amount drops by one dollar. So, an investment of $2.5 million and over may not expense under Section 179. (These threshold amounts are likely to drop after 2011.)

- For 2010, qualifying investments can take so-called "bonus depreciation." The rules for 2010 allow for 50% bonus depreciation. The bonus depreciation rules can be combined with Section 179 rules. (New federal law for 2011 will likely allow 100% rather than 50% bonus depreciation.)

The table below shows the general formula for Kansas expensing proposal as it interacts with the two federal procedures (assuming the same property classification characteristics as the Acme example, but different investment outlays).

Investment Amount	Allowable Sec. 179 Expensing	Allowable Bonus 50% Depreciation	Brownback Expensing Expensing Formula with 50% Bonus Depreciation
500,000	500,000	-	500,000 x 0.151 = 75,500
2,000,000	500,000	750,000	(2,000,000 - 750,000) x 0.151 = 188,750
2,500,000	0	1,250,000	(2,500,000 - 1,250,000) x 0.151 = 188,750
5,000,000	0	2,500,000	(5,000,000 - 2,500,000) x 0.151 = 377,500

- The Kansas proposal makes no adjustment for Section 179, but does make an adjustment for bonus depreciation rules.
- With 50% bonus depreciation, Kansas would still offer value to the investor greater than what the federal rules allow: the stated policy goal of providing the economic value of 100% accelerated depreciation.
- With federal 100% bonus depreciation (as is expected for the tax year 2011 only), Kansas expensing would be eliminated for investments too large for Section 179 rules (per the policy intent) but would automatically renew when the federal rules expire or revert.

House Taxation
Date: 2-21-11
Attachment: 4

Session of 2011

HOUSE BILL No. 2317

By Committee on Taxation

2-11

Proposed Amendments to HB2317
Committee on Taxation
Technical Amendments
By: Office of Revisor of Statutes

AN ACT concerning taxation; relating to IMPACT program, withholding, requirements, limitations; income tax deductions, expensing of investment expenditures; income tax credits; sales tax exemptions; creating job creation program fund, administration, expenditures; amending K.S.A. 2010 Supp. 74-50,104, 74-50,106, 74-50,107, 74-50,109, 74-50,110, 74-50,111, 74-50,132, 79-32,160a, 79-32,206 and 79-3606 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 74-50,151 and 74-50,152.

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

New Section 1. (a) There is hereby created in the state treasury the job creation program fund. The secretary of commerce, in consultation with the secretary of revenue and the governor, shall administer the fund. All expenditures from the fund shall be for the purpose of promoting job creation and economic development by funding projects related to: (1) Major expansion of an existing Kansas commercial enterprise;

(2) potential location in Kansas of the operations of major employer;

(3) award of a significant federal or private sector grant which has a financial matching requirement;

(4) potential departure from Kansas or the substantial reduction of the operations of a major Kansas employer;

(5) training or retraining activities for employees in Kansas companies;

(6) potential closure or substantial reduction of the operations of a major state or federal institution;

(7) projects in counties with at least a 10% population decline during the period from 2000 to 2010; or

(8) other unique economic development opportunities.

(b) All expenditures from the fund shall be for the purposes described in subsection (a) and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of commerce the secretary's designee.

New Sec. 2. (a) For taxable years beginning after December 31, 2011, a taxpayer may elect to take an expense deduction from Kansas [redacted] income allocated or apportioned to this state for the cost of the

net

before expensing or recapture

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following property placed in service in this state during the taxable year: (1) Tangible property eligible for depreciation under the modified accelerated cost recovery system in section 168 of the internal revenue code, as amended, but not including residential rental property, nonresidential real property, any railroad grading or tunnel bore or any other property with an applicable recovery period in excess of 25 years as defined under section 168(c) or (g) of the internal revenue code, as amended; and (2) computer software as defined in section 197(e)(3)(B) of the internal revenue code, as amended, and as described in section 197(e)(3)(A)(i) of the internal revenue code, as amended, to which section 167 of the internal revenue code, as amended, applies. If such election is made, the amount of expense deduction for such cost shall equal the difference between the depreciable cost of such property for federal income tax purposes and the amount of bonus depreciation being claimed for such property pursuant to section 168(k) of the internal revenue code, as amended, for federal income tax purposes in such tax year, but without regard to any expense deduction being claimed for such property under section 179 of the internal revenue code, as amended, multiplied by the applicable factor, determined by using, the table provided in subsection (f), based on the method of depreciation selected pursuant to section 168(b)(1), (2), or (3) or (g) of the internal revenue code, as amended, and the applicable recovery period for such property as defined under section 168(c) or (g) of the internal revenue code, as amended. This election shall be made by the due date of the original return, including any extensions, and may be made only for the taxable year in which the property is placed in service, and once made, shall be irrevocable.

If the section 179 expense deduction election has been made for federal income tax purposes for any asset, the applicable factor to be utilized is in the IRC §168 (b) (1) column of the table provided in subsection (f) for the applicable recovery period of the respective assets.

(b) If the amount of expense deduction calculated pursuant to subsection (a) exceeds the taxpayer's Kansas taxable income allocated or apportioned to this state, such excess amount may be carried forward for deduction in the succeeding taxable year or years until the total of such amount is used.

(c) If the property for which an expense deduction is taken pursuant to subsection (a) is subsequently sold during the applicable recovery period for such property as defined under section 168(c) of the internal revenue code, as amended, and in a manner that would cause recapture of any previously taken expense or depreciation deductions for federal income tax purposes, or if the situs of such property is otherwise changed such that the property is relocated outside the state of Kansas during such applicable recovery period, then the expense deduction determined pursuant to subsection (a) shall be subject to recapture and treated as Kansas taxable income allocated to this state. The amount of recapture shall be the Kansas expense deduction determined pursuant to subsection (a) multiplied by a fraction, the numerator of which is the number of

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years remaining in the applicable recovery period for such property as defined under section 168(c) or (g) of the internal revenue code, as amended, after such property is sold or removed from the state including the year of such disposition, and the denominator of which is the total number of years in such applicable recovery period.

(d) The situs of tangible property for purposes of claiming and recapture of the expense deduction shall be the physical location of such property. If such property is mobile, the situs shall be the physical location of the business operations from where such property is used or based. The situs of computer software shall be apportioned to Kansas based on the fraction, the numerator of which is the number of the taxpayer's users located in Kansas of licenses for such computer software used in the active conduct of the taxpayer's business operations, and the denominator of which is the total number of the taxpayer's users of the licenses for such computer software used in the active conduct of the taxpayer's business operations everywhere.

(e) Any member of a unitary group filing a combined report may elect to take an expense deduction pursuant to subsection (a) for an investment in property made by any member of the combined group, provided that the amount calculated pursuant to subsection (a) may only be deducted from the Kansas [redacted] allocated to or apportioned to this state by such member making the election.

<u>net income before expensing or recapture</u>

(f) The following table shall be used in determining the expense deduction calculated pursuant to subsection (a):

Factors

IRC§168 Recover Period (year)	IRC§168(b)(1) Depreciation Method	IRC§168(b)(2) Depreciation Method	IRC§168(b)(3) or (g) Depreciation Method
2.5	*	.077	.092
3	.075	.091	.106
3.5	*	.102	.116
4	*	.114	.129
5	.116	.135	.150
6	*	.154	.170
6.5	*	.163	.179
7	.151	.173	.190
7.5	*	.181	.199
8	*	.191	.208
8.5	*	.199	.217
9	*	.208	.226
9.5	*	.216	.235
10	.198	.224	.244
10.5	*	.232	.252
11	*	.240	.261
11.5	*	.248	.269
12	*	.256	.277
12.5	*	.263	.285
13	*	.271	.293
13.5	*	.278	.300
14	*	.285	.308
15	*	.299	.323
16	*	.313	.337

16.5	*	.319	.344
17	*	.326	.351
18	*	.339	.365
19	*	.351	.378
20	*	.363	.391
22	*	.386	.415
24	*	.408	.438
25	*	.419	.449

* Not applicable

(g) If a taxpayer elects to expense any investment pursuant to subsection (a), such taxpayer shall not be eligible for any tax credit, accelerated depreciation, or deduction for such investment allowed pursuant to K.S.A. 2010 Supp. 79-32,160a(e), 79-32,182b, 79-32,201, 79-32,204, 79-32,211, 79-32,218, 79-32,221, 79-32,222, 79-32,224, 79-32,227, 79-32,229, 79-32,232, 79-32,234, 79-32,237, 79-32,239, 79-32,246, 79-32,249, 79-32,252, 79-32,255, 79-32,256 and 79-32,258, and amendments thereto.

New Sec. 3. Except as otherwise provided, for taxable years commencing after December 31, 2011, no credits may be earned through the Kansas enterprise zone act, K.S.A. 79-32,160a; or the job expansion and investment tax credit act, K.S.A. 79-32,153. Any carry forward credit that has been earned through the Kansas enterprise zone act, K.S.A. 79-32,160a, and is remaining after December 31, 2011, may be carried forward to succeeding taxable years as long as all requirements continue to be met. Any credit that has been earned through the job expansion and investment tax credit act, K.S.A. 79-32,153, with years left in recomputing the credit after December 31, 2011, may continue for the remainder of the nine-year period as long as all requirements continue to be met.

Sec. 4. K.S.A. 2010 Supp. 74-50,104 is hereby amended to read as follows: 74-50,104. (a) The secretary shall administer the provisions of this act and the IMPACT program established thereunder. The secretary shall encourage Kansas basic enterprises with similar training needs to cooperate in establishing SKILL projects. The secretary shall coordinate the SKILL program with other job training programs administered by the department of commerce. The secretary shall provide opportunities for coordination and cooperation of SKILL projects with other job training activities in Kansas. Subject to the limitation in K.S.A. 74-50,103, *and amendments thereto*, the secretary shall be authorized to make direct investments in educational and related workforce development institutions, for the purpose of promoting improvements in workforce development, human capital, training expertise, infrastructure and job retention.

(b) The secretary shall adopt rules and regulations as follows: (1) Prescribing review standards and priorities for approval of proposed agreements under this act, including appropriate incentives for

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and (2) an amount to the IMPACT program services fund as needed for program administration; and (3) any remaining amounts to the job creation program fund created pursuant to section 1, and amendments thereto.

(b) Commencing July 1, [redacted]*, and on an annual basis thereafter, the secretary of revenue shall* [redacted] *the amount equal to the amount of ~~savings realized from the elimination, modification or~~ limitation of* [redacted] *Whereupon such amount of savings in accordance with appropriation acts shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount to the credit of the job creation program fund created pursuant to section 1, and amendments thereto. In addition, such other amount or amounts of* [redacted] *may be transferred from the state general fund or any other fund or funds in the state treasury to the job creation program fund in accordance with appropriation acts.*

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any credit, deduction or program pursuant to the provisions of this act as compared to the expense deduction provided for in section 2, and amendments thereto

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Sec. 7. K.S.A. 2010 Supp. 74-50,109 is hereby amended to read as follows: 74-50,109. (a) There is hereby created in the state treasury the IMPACT program repayment fund. The secretary of commerce shall administer the IMPACT program repayment fund. Except as provided in subsection (c), all moneys credited to the IMPACT program repayment fund shall be to make payments to the Kansas development finance authority for payment of costs relating to the retirement of bonds issued to finance projects approved by the secretary of commerce under this act, including but not limited to the principal of and interest on such bonds and the expenses of issuance. All expenditures from the IMPACT program repayment fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of commerce or the secretary's designee.

(b) Upon request of the secretary of commerce, the director of accounts and reports shall establish one or more reserve accounts in the IMPACT program repayment fund to secure one or more issues of bonds issued by the Kansas development finance authority for the purposes of this act.

(c) On June 30 of each year, any unencumbered balance in the IMPACT program repayment fund which is not required for payment of such expenses during the ensuing fiscal year, including any such expenses associated with proposed ~~investments~~*investment* agreements and bond issues under consideration for such fiscal year, and which is not credited to any reserve account in the fund, as certified by the secretary of participation and has participated, during the tax year for which the exemption is claimed, in the Kansas industrial training, Kansas industrial retraining or the state of Kansas investments in lifelong learning program or is eligible for the tax credit established in K.S.A. 74-50,132, and amendments thereto, shall be entitled to a credit in an amount equal to 10% of that portion of the qualified business facility investment which exceeds $50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2) without regard to the number of qualified business facility employees engaged or maintained in employment at the qualified business facility. *For tax years beginning on or after January 1, 2012, and before January 1, 2017, such credit shall be in an amount equal to 10% of that portion of the qualified business facility investment which exceeds $5,000,000. Any taxpayer who has filed* [redacted] *prior to December 31, 2011, may claim credits under K.S.A. 74-50,131, 74-50,132 and subsection (e) of 79-32,160a, and amendments thereto, in an amount equal to 10% of that portion of the qualified business facility investment which exceeds $50,000. Timing modifications may be authorized at the discretion of the secretary of commerce and the secretary of revenue during the transition period.* The credit allowed by this subsection shall be a one-time credit. If the amount thereof exceeds the tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income or the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated, *and amendments thereto,* for the taxable year, the amount thereof which exceeds such tax liability may be carried forward for credit in the succeeding taxable year or years until the total amount of the tax credit is used, except that no such tax credit shall be carried forward for deduction after the 10th taxable year succeeding the taxable year in which such credit initially was claimed and no carry forward shall be allowed for deduction in any succeeding taxable year unless the taxpayer continued to be qualified and was recertified for such succeeding taxable year pursuant to K.S.A. 74-50,131, and amendments thereto.

(f) For tax years commencing after December 31, 2005, any taxpayer claiming credits pursuant to this section, as a condition for claiming and qualifying for such credits, shall provide information pursuant to K.S.A. 2010 Supp. 79-32,243, and amendments thereto, as part of the tax return in which such credits are claimed. Such credits shall not be denied solely on the basis of the contents of the information provided by the taxpayer pursuant to K.S.A. 2010 Supp. 79-32,243, and

a certificate of intent to invest in a qualified business facility pursuant to this subsection

and commences investments in a qualified business facility prior to December 31, 2013,

Proposed Amendment to HB 2317

Committee on Taxation

Eliminate carryforward in favor of net operating loss for expense deduction

By: Office of Revisor of Statutes

House Taxation
Date: 2/21/11
Attachment: 5

HOUSE BILL No. 2317

By Committee on Taxation

2-11

AN ACT concerning taxation; relating to IMPACT program, withholding, requirements, limitations; income tax deductions, expensing of investment expenditures; income tax credits; sales tax exemptions; creating job creation program fund, administration, expenditures; amending K.S.A. 2010 Supp. 74-50,104, 74-50,106, 74-50,107, 74-50,109, 74-50,110, 74-50,111, 74-50,132, 79-32,160a, 79-32,206 and 79-3606 and repealing the existing sections; also repealing K.S.A. 2010 Supp. 74-50,151 and 74-50,152.

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

New Section 1. (a) There is hereby created in the state treasury the job creation program fund. The secretary of commerce, in consultation with the secretary of revenue and the governor, shall administer the fund. All expenditures from the fund shall be for the purpose of promoting job creation and economic development by funding projects related to: (1) Major expansion of an existing Kansas commercial enterprise;

(2) potential location in Kansas of the operations of major employer;

(3) award of a significant federal or private sector grant which has a financial matching requirement;

(4) potential departure from Kansas or the substantial reduction of the operations of a major Kansas employer;

(5) training or retraining activities for employees in Kansas companies;

(6) potential closure or substantial reduction of the operations of a major state or federal institution;

(7) projects in counties with at least a 10% population decline during the period from 2000 to 2010; or

(8) other unique economic development opportunities.

(b) All expenditures from the fund shall be for the purposes described in subsection (a) and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of commerce or the secretary's designee.

New Sec. 2. (a) For taxable years beginning after December 31, 2011, a taxpayer may elect to take an expense deduction from Kansas taxable income allocated or apportioned to this state for the cost of the

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following property placed in service in this state during the taxable year: (1) Tangible property eligible for depreciation under the modified accelerated cost recovery system in section 168 of the internal revenue code, as amended, but not including residential rental property, nonresidential real property, any railroad grading or tunnel bore or any other property with an applicable recovery period in excess of 25 years as defined under section 168(c) or (g) of the internal revenue code, as amended; and (2) computer software as defined in section 197(e)(3)(B) of the internal revenue code, as amended, and as described in section 197(e)(3)(A)(i) of the internal revenue code, as amended, to which section 167 of the internal revenue code, as amended, applies. If such election is made, the amount of expense deduction for such cost shall equal the difference between the depreciable cost of such property for federal income tax purposes and the amount of bonus depreciation being claimed for such property pursuant to section 168(k) of the internal revenue code, as amended, for federal income tax purposes in such tax year, but without regard to any expense deduction being claimed for such property under section 179 of the internal revenue code, as amended, multiplied by the applicable factor, determined by using, the table provided in subsection (f), based on the method of depreciation selected pursuant to section 168(b)(1), (2), or (3) or (g) of the internal revenue code, as amended, and the applicable recovery period for such property as defined under section 168(c) or (g) of the internal revenue code, as amended. This election shall be made by the due date of the original return, including any extensions, and may be made only for the taxable year in which the property is placed in service, and once made, shall be irrevocable.

(b) If the amount of expense deduction calculated pursuant to subsection (a) exceeds the taxpayer's Kansas taxable income allocated or apportioned to this state, such excess amount ~~may be carried forward for deduction in the succeeding taxable year or years until the total of such amount is used~~.

shall be treated as a Kansas net operating loss as provided in K.S.A. 79-32,143, and amendments thereto

(c) If the property for which an expense deduction is taken pursuant to subsection (a) is subsequently sold during the applicable recovery period for such property as defined under section 168(c) of the internal revenue code, as amended, and in a manner that would cause recapture of any previously taken expense or depreciation deductions for federal income tax purposes, or if the situs of such property is otherwise changed such that the property is relocated outside the state of Kansas during such applicable recovery period, then the expense deduction determined pursuant to subsection (a) shall be subject to recapture and treated as Kansas taxable income allocated to this state. The amount of recapture shall be the Kansas expense deduction determined pursuant to subsection (a) multiplied by a fraction, the numerator of which is the number of

House Taxation
Date:
Attachment: