



Special Committee on Commerce

Testimony in support of legislative fixes to the HPIP Program

Presented by Chris Baltimore, Managing Director of State Tax Incentives, CBIZ

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Members of the committee, my name is Chris Baltimore, Managing Director of State Tax Incentives at CBIZ. My team works with clients that are evaluating the expansion and/or location of facilities across the United State, including Kansas. I am part of a working group with the Kansas Chamber to address some issues with the HPIP program and to provide suggested changes to the program which will make the program more competitive and achieve the intended goals of the program.

Background

Currently, to qualify for the HPIP program, a qualifying company must meet several requirements to be certified into the program. One of those requirements is that it must exceed the county/region average wage for its NAICS number, or the company can meet the alternative wage standard of 1.5x the statewide average wage (currently \$91,164). The NAICS designation and average wage elements are provided by the Kansas Department of Labor. The company must also be certified in each year that it earns a credit (makes the investment) and in each future year that it uses a carryforward credit.

Issues

Below are some examples of situations where the current average wage methodology creates issues for companies whereby the company does what its supposed to do but the program excludes them from participation.

Wage Standards – the current wage standard methodology has issues

1. The alternative 1.5x statewide average wage standard is now \$91,164, which is very high for many companies, especially in rural areas.
2. If 2 companies in the same NAICS are in the same county and one is an HQ and the other is just an operational site, this situation skews the wage standard and can make the operational site unable to qualify for HPIP wage standard under that NAICS.
3. When a company sells, it often creates a spike in payroll due to bonuses, transaction proceeds, etc. This creates an abnormal increase to the wage standard for that NAICS in that county and distorts the wage standard for everyone else. I had one client that disbursed tens of millions of dollars in payroll to its employees, and the wage standard changed so drastically that another client in the same NAICS code could no longer qualify for HPIP.
4. Companies may get assigned an incorrect NAICS by the Kansas Department of Labor. This can create distortion of that NAICS wage standard, yet there is no visibility into what makes up the underlying data and calculations by the Department of Labor. One example is I have a client in western Kansas. They intend to build a \$100 million grain processing plant and employ over 100



new employees. Their NAICS code wage standard was \$51,000 last year. This year its \$72,000. It's unknown what reason caused this dramatic shift, i.e., wrong NAICS assigned to existing company, new company with that NAICS in the region (doubtful) or a transaction. But it eliminates this company from qualifying for the HPIP program.

Proposed Solutions

Below is a list of proposed solutions to rectify the issues with the HPIP program. These changes will make Kansas more competitive and provide the companies the benefits they are promised when they select to expand or locate in the state of Kansas.

1. Make the alternative wage standard 125% of the statewide average wage.
2. Have the Department of Labor publish a statewide average wage for Rural Counties, and have companies in rural counties have the option of meeting an alternative wage standard of 125% of the statewide Rural Average Wage.
3. If company meets the wage standard, and other HPIP requirements, in the year it earns the credit, then the company can continue to be HPIP certified as long as it continues to meet that average wage for purposes of using the carryforward credits.

Transferability of HPIP Credits

In 2021, Senate Bill 65 was passed allowing for the transfer or sale of up to 50% of the HPIP investment tax credits.

Recently, the Kansas Department of Revenue determined that pass-through entities (LLC's, partnerships, S-corporations, etc.) can only transfer their HPIP credits in the year they are earned and before filing the company tax return for that year.

We believe this was not intended by the legislature under Senate Bill 65. This determination creates inequitable treatment based on company type. For reference, C corporations can transfer any used tax credits in any future year.

Proposed Solution

It is our proposed solution that it should be specifically stated that all entity types may transfer up to 50% of any unused HPIP investment tax credits as long as the credits are still viable through the number of years allowed under carryforward provisions. It would be incumbent on the company to ensure no partner, owner or shareholder of a pass through entity has utilized any credits that are to be transferred. There are existing safeguards in place that place any errors on the company.

We respectfully request this clarifying bill be retroactive to January 1, 2021.