

Office of the Secretary
915 SW Harrison St.
Topeka, KS 66612-1588



phone: 785-296-3041
fax: 785-368-8392
www.ksrevenue.org

Nick Jordan, Secretary

Sam Brownback, Governor

January 30, 2012

House Committee on Commerce and Economic Development

Briefing by The Kansas Department of Revenue

Presented by Secretary Nick Jordan and Richard Cram, Director of Policy and Research

Chairman Anthony Brown and Members of the Committee:

We appreciate the opportunity to appear before the Committee and present information requested by Chairman Brown on incentives and claw backs for businesses and corporations. Chairman Brown also requested information on business taxes, especially penalties for errors in reporting charged to businesses versus actual taxes due. We have attached information for your review and stand ready to answer any questions you may have.

House Commerce & Economic
Development Committee
Date: 01/30/2012
Attachment #: 2-1

TAX CREDITS

Program Name	Description	Nonrefundable or Refundable Credit	Fiscal Year Limitation	Carryforward Period	Transferability	Sunset	Clawbacks	TY 2009 # of filers	TY 2009 Credit Allowed
Abandoned Well Plugging Credit K.S.A. 79-32,207	A taxpayer that makes expenditures to plug an abandoned oil or gas well on their land may be eligible for a credit of 30% of the amount expended. An income tax credit shall be allowed in an amount equal to 20% of the cost of liability insurance paid by a registered agritourism operator that operates an agritourism activity.	Nonrefundable	\$250,000 for any one fiscal year First come, first served	Carryforward until used.	No	None	None	*CONFIDENTIAL	*CONFIDENTIAL
Agritourism Liability Insurance Credit K.S.A. 74-50,173	A credit is allowed for any individual, association, partnership, limited liability company, limited partnership, or corporation that makes expenditures for a qualified alternative-fueled motor vehicle licensed in the state of Kansas or that makes expenditures for a qualified alternative-fuel fueling station.	Nonrefundable	None	3 year carryforward period.	No	None	None	24	\$4,208
Alternative Fuel Tax Credit K.S.A. 79-32,201		Nonrefundable	None	3 year carryforward period.	No	None	None	33	\$166,316
Angel Investor Credit K.S.A. 74-81,333	A 50% income tax credit shall be allowed to any angel investor that makes a cash investment in the qualified securities of a qualified Kansas business.	Nonrefundable	\$2,000,000 (\$4,000,000 effective 7/1/07, TY 2008 & after \$6,000,000) for any one fiscal year. \$6,250 in any one fiscal year.	Carryforward until used.	Yes	Prior to January 1, 2017	None	212	\$3,342,910
Assistive Technology Contribution Credit K.S.A. 65-71,07	An 25% income tax credit shall be allowed to any person or entity who makes a contribution to an individual development account reserve fund to be used to purchase assistive technology.	Any credit amount that exceeds the tax liability shall be lost.	KATCO allocates no more than \$6,250 per year. \$2,000,000 for any one fiscal year.		No	None	None	0	\$0
Center for Entrepreneurship Credit K.S.A. 74-99,c09	A tax credit shall be allowed for a contributor making a contribution to the Kansas Center for Entrepreneurship. The credit is 75% of the total amount of cash donated.	Nonrefundable	Commerce allocates no more than \$2M per year.	Carryforward until used.	No	None	None	221	\$1,388,863
Child Day Care Assistance Credit K.S.A. 79-32,190	A taxpayer may be eligible for a credit if they pay for child day care services for its employees children, locate child day care services for the employees children, or provide facilities and necessary equipment for child day care services for its employees children.	Refundable	\$3,000,000 for any one fiscal year. First come, first served. \$4,130,000 for any one fiscal year.		No	None	None	11	\$73,293
Community Service Contribution Credit K.S.A. 79-32,197	Any business firm which contributes to an approved community service organization engaged in providing community services may be eligible to receive a tax credit of at least 50% of the total contribution made.	Refundable	Commerce allocates no more than \$4.13M per year.		Yes	None	None	1,252	\$2,673,101

Kansas Business Tax Credits

Program Name	Description	Nonrefundable or Refundable Credit	Fiscal Year Limitation	Carryforward Period	Transferability	Sunset	Clawbacks	TY 2009 # of filers	TY 2009 Credit Allowed
Deferred Maintenance Education Institution Credit K.S.A. 79-32,261	Any taxpayer that contributes to a designated educational institution for purposes of deferred maintenance may be allowed a credit of 50% (60% for community colleges and designated technical colleges).	Refundable for credits issued by community colleges and designated technical colleges.	Community Colleges and Designated Technical Colleges 2008: \$78,125 each 2009: \$156,250 each 2010, 2011, 2012: \$208,233.33 each Postsecondary Educational Institutions 2008: \$5,625,000 2009: \$11,250,000 2010, 2011, 2012: \$15,000,000	3 year carryforward period for postsecondary educational institutions.	Yes for nonprofits only	12/31/2012	None	147	\$799,681
Disabled Access Credit K.S.A. 79-32,175 and K.S.A. 79-1117	Individual and business taxpayers that incur certain expenditures to make their property accessible to the disabled may be eligible to receive a credit.	Nonrefundable for individuals that have a liability of less than \$2,250	None	4 year carryforward period.	No	None	None	28	\$65,688
Environmental Compliance Credit K.S.A. 79-32,222	An income tax credit is allowed for a taxpayer that makes qualified expenditures for an existing refinery to comply with environmental standards.	Nonrefundable	None	4 year carryforward period.	No	None	None	0	\$0
Film Production Credit K.S.A. 79-32,258	An eligible film production company that makes direct production expenditures in Kansas that are directly attributable to the production of a film in Kansas may be allowed a credit of 30% of the expenditures. A qualified firm making a cash investment in the training and education of its employees can receive a credit equal to the portion of the investment in the training and education that exceeds 2% of the businesses total payroll costs.	Nonrefundable	\$2,000,000 per tax year	3 year carryforward period.	No	Prior to January 1, 2013	None	0	\$0
High Performance Incentive Program K.S.A. 74-50,132 K.S.A. 79-32,160a(e)	A credit is available for those qualified firms that make an investment in a qualified business facility. The investment credit is 10% of the qualified business facility investment which exceeds \$50,000.	Nonrefundable- Investment Credit Any credit amount that exceeds the tax liability shall be lost- Training and Education Credit	None	Investment Credit-10 year carryforward period.	No (except for certain transfers between related taxpayers)	None	None	192	\$33,176,973
Historic Preservation Credit K.S.A. 79-32,211	An income tax credit is allowed for expenditures incurred in the restoration and preservation of a qualified historic structure.	Nonrefundable	None	10 year carryforward period. (transfers different)	Yes	None	None	301	\$8,171,378
Historic Site Contribution Credit K.S.A. 79-32,211	Any taxpayer that contributes to a state-owned historic site or a 501(c)(3) organization which owns and operates a state-owned historic site may receive a tax credit of 30% of the contribution.	Refundable	\$200,000 in any one fiscal year		No	June 30, 2012	None	91	\$140,874

Kansas Business Tax Credits

Program Name	Description	Nonrefundable or Refundable Credit	Fiscal Year Limitation	Carryforward Period	Transferability	Sunset	Clawbacks	T.Y. 2009 # of Filers	T.Y. 2009 Credit Allowed
Individual Development Account Credit K.S.A. 74-50,208	A 50% tax credit shall be allowed for any program contributor that contributes to an individual development account (reserve fund).	Refundable	Commerce allocates no more than \$500K per year.		No	None	None	73	\$78,197
Law Enforcement Training Center Credit K.S.A. 79-32,242	A 50% tax credit shall be allowed for a business firm that contributes cash to the Kansas Law Enforcement Training Center.	Nonrefundable	None	Carryforward until used.	No	None	None	0	\$0
National Guard Employer Health Insurance Credit K.S.A. 79-32,213	An employer of any member of the Kansas National Guard may receive an income tax credit in an amount equal to the amount paid by the employer for the health insurance of such member during any period or consecutive period of state active duty in excess of 30 days.	Nonrefundable	None	Carryforward until used.	No	None	None	0	\$0
Owners Promoting Employment Across Kansas (PEAK) Credit 2011 SB 193	Effective for all taxable years commencing after December 31, 2010, a tax credit shall be allowed in an amount equal to 95% of a resident individual's tax liability for Kansas source income received from a qualified company that is business income attributable to business activities conducted at the business facility, office, department or other operation relocated to Kansas. The taxpayer must own the qualified company and materially participate in the business activities conducted at the relocated business facility, office, department or other operation of the qualified company which qualified for benefits under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments thereto.	Any credit amount that exceeds the tax liability shall be lost.	None FY 2005-\$2,500,000 FY 2006-\$2,500,000 FY 2007 thru FY 2012-\$2,000,000 Commerce allocates no more than fiscal limitation per year.	None	No	None	None		
Regional Foundation Credit K.S.A. 74-50,154	Any taxpayer that contributes to an organization designated as a regional foundation may be eligible to receive a tax credit of 75% of the total amount contributed.	Refundable	Commerce allocates no more than fiscal limitation per year.		No	Prior to January 1, 2013	None	60	\$396,845
Research and Development Credit K.S.A. 79-32,182b	A taxpayer with qualifying expenditures in research and development activities conducted within Kansas may be eligible to receive a credit of 6 1/2% of the amount expended for research.	Nonrefundable	None	Carryforward until used.	No	None	None	206	\$2,401,110
Rural Opportunity Zone Credit 2011 SB 198	Effective for all taxable years commencing after December 31, 2011, a tax credit shall be allowed for certain taxpayers that relocate to counties that have been designated as rural opportunity zones. The credit is 100% of the taxpayer's total tax liability.	Any credit amount that exceeds the tax liability shall be lost.	None	None	No	Prior to January 1, 2017	None		
Single City Port Authority Credit K.S.A. 79-32,212	An income tax credit is allowed equal to 100% of the amount attributable to the retirement of indebtedness authorized by a single city port authority established before January 1, 2002.	Any credit amount that exceeds the tax liability shall be lost.	\$300,000 for any one fiscal year.		No	Prior to January 1, 2022	None		
Small Employer Health Benefit Plan Credit K.S.A. 40-2246	An income tax credit is allowed for any small employer establishing a small employer health benefit plan for the purpose of providing a health benefit plan.	Refundable	None		No	None	None	167	\$357,036

2-4

Kansas Business Tax Credits

Program Name	Description	Nonrefundable or Refundable/Credit	Fiscal Year Limitation	Carryforward Period	Transferability	Sunset	Clawbacks	TV 2009 # of filers	TV 2009 Credit Allowed
Swine Facility Improvement Credit K.S.A. 79-32,204	An income tax credit of 50% of the cost incurred is allowed for a taxpayer making required improvements to a qualified swine facility.	Nonrefundable	None	4 year carryforward period.	No	None	None	0	\$0
Telecommunications Credit K.S.A. 79-32,210	A credit for property tax paid by telecommunications companies is allowed on property initially acquired and first placed in service after January 1, 2001 that has an assessment rate of 33%. The credit is equal to the amount of property taxes timely paid for the difference between an assessment level of 25% and the actual assessment of 33%. Any individual, corporation, partnership, trust, estate and other legal entity who enters into an agreement with the Secretary of Social and Rehabilitation Services to provide financial support to a person who receives Temporary Assistance for Families (TAF) is allowed a credit of 70% of the amount of financial assistance given.	Refundable	None		No	None	None	160	\$4,604,389
Temporary Assistance to Families Contribution Credit K.S.A. 79-32,200 K.S.A. 39-7,132		Any credit amount that exceeds the tax liability shall be lost.	None		No	None	None	0	\$0
Venture Capital Credits and Local Seed Capital Credits K.S.A. 74-8206 K.S.A. 74-8304 K.S.A. 74-8401 K.S.A. 74-8316	A 25% tax credit shall be allowed for those taxpayers that invest in stock issued by Kansas Venture Capital, Inc., certified Kansas venture capital companies, certified local seed capital pools, or Sunflower Technology Venture, LP.	Nonrefundable	None	Carryforward until used.	No	None	None	*CONFIDENTIAL	*CONFIDENTIAL
Total of CONFIDENTIAL Filers								12	\$556,926
								3,190	\$58,597,788

*CONFIDENTIAL-This information is confidential as there are less than 5 filers. This information is not included in the total.
Does not include credits allowed for insurance companies

Other Incentives

OTHER INCENTIVES

Program Name	Description	Clawback
<p>Expensing 2011 SB 196</p>	<p>SB 196 creates an expense deduction against Kansas taxable income for businesses that invest in machinery and equipment depreciable under the Modified Accelerated Cost Recovery System (MACRS) in section 168 of the Internal Revenue Code, or canned software as defined in section 197 of the Internal Revenue Code. The property must be located in Kansas.</p>	<p>None</p>
<p>PEAK (Promoting Employment Across Kansas) K.S.A. 74-50,210 et seq.</p>	<p>PEAK is intended to encourage economic development in Kansas by incenting companies to relocate, locate or expand business operations and jobs in Kansas. The Secretary of Commerce has discretion to approve applications of qualified companies and determine the benefit period. During the benefit period, participating PEAK companies may retain 95 percent (95%) of the payroll withholding tax of PEAK-Eligible employees/jobs that pay at or above the county median wage where the operations and jobs will be located. Depending on the number of PEAK jobs/employees to be hired in Kansas and their wage levels, the Secretary of Commerce can approve benefit periods for up to 10 years.</p> <p>PEAK requires the qualified company to commit to creating five new jobs in non-metropolitan counties or ten (10) new jobs in the metropolitan counties of Shawnee, Douglas, Wyandotte, Johnson, Leavenworth and Sedgewick over a two-year period. The qualified company must also pay wages to the PEAK jobs/employees, that when aggregated, meet or exceed the county median wage or North American Industry Classification System (NAICS) average wage for their industry. Qualified applicants include for-profit companies in eligible NAICS codes and not-for-profit headquarters facilities. Such companies must make available to its full-time employees "adequate" health insurance coverage (see Definitions) and be paying at least 50% of the premium.</p>	<p>The Secretary of Commerce may terminate the agreement should the qualified company fail to comply with the terms. The qualified company shall not be entitled to any further benefits and shall be required to remit to the state an amount equal to the aggregate Kansas payroll withholding taxes retained by the company as of the date the agreement is terminated. (K.S.A. 74-50,213(d))</p> <p>The Secretary of Commerce has also provided numerous default provisions in the PEAK agreement between each qualified company whereby the company not meeting requirements shall be required to repay Kansas withholding taxes.</p>

Selected Kansas Tax Rates with Statutory Citation

					K.S.A.:
Bingo Tax					79-4704
Bingo faces	\$0.002				
Retail price - Instant	1.00%				
Car Line Tax/gross earnings		2.5%			79-907
Cigarette Tax	Package of 20	\$0.79	Package of 25	\$0.99	79-3310
Corporation Tax	total taxable income @	4.00%	plus	3.05% surtax on taxable income over \$50,000	7.050% (TY09/10)
	total taxable income @	4.00%	plus	3.00% surtax on taxable income over \$50,000	7.000% (TY11)
Corporate Franchise Tax	TY07 .125%; TY08 .09375%; TY09 .0625%; TY10 .03125% for entities \$1,000,000 or more TY11 and after, no franchise tax.				79-5401
Drycleaning					
Environmental Surcharge/gross receipts		2.5%			65-34,141
Solvent Fee (chlorinated)/gallon		\$5.50			65-34,150
Solvent Fee (non-chlorinated)/gallon		\$0.55			65-34-151
Drug Stamp Tax					79-5202
<u>Marijuana:</u>					
<u>Controlled Substance:</u>					
Processed -	\$3.50 per gram or portion of gram	Cont. Substance/gram or portion of gram-		\$200/gram or portion of gram	
Wet Plant -	\$0.40 per gram or portion of gram	Cont. Substance/50 dose unit or portion of unit-		\$2,000/50 dose unit or portion of unit	
Dry Plant -	\$0.90 per gram or portion of gram				
Environ. Fee/gallon petroleum product	\$0.01	each of two funds has maximum and minimum limits			65-34,117
Individual Income Tax					79-32,110
Tax Rates, Resident, married, joint					
taxable income not over	\$30,000	@	3.50%		
taxable income not over	\$60,000	@	\$1,050 plus	6.25% over \$30,000	
taxable income over	\$60,000	@	\$2,925 plus	6.45% over \$60,000	
Tax Rates, Resident, others					
taxable income not over	\$15,000	@	3.50%		
taxable income not over	\$30,000	@	\$525 plus	6.25% of excess over \$15,000	
taxable income over	\$30,000	@	\$1,462.50 plus	6.45% of excess over \$30,000	
Liquor Gallonage Tax					
Strong Beer and CMB/gallon		\$0.18			41-501
Alcohol & Sprints/gallon		\$2.50			41-501
Light Wine/gallon		\$0.30			41-501
Fortified Wine/gallon		\$0.75			41-501
Liquor Excise Tax (Drinking Establishments)		10.00%	Gross receipts		79-41a02
Liquor Enforcement (Liquor Stores)		8.00%	Gross receipts		79-4101
Mineral Tax					79-4217, 4219
Oil/gross taxable value		8.00%	with	3.67% property tax credit	
Gas/gross taxable value		8.00%	with	3.67% property tax credit	
Coal/ton		\$1.00			
Motor Fuel Tax/per Gallon					
Regular Motor Fuel/gallon		\$0.24			79-34,141
Gasohol/gallon		\$0.24			79-34,141
Diesel/gallon		\$0.26			79-34,141
LP-Gas/gallon		\$0.23			79-34,141
E-85/gallon		\$0.17			79-34,141
Compress Nat Gas/120 CF = gallon		\$0.23			KAR. 92-14-9
Trip Permits/each		\$13.00/24 hr; \$25.00/72 hr (eff 7/1/2006)			79-34,118
Oil Inspection Fee/barrel (50 gallons)		\$0.015/barrel			55-426
Prepaid Wireless 911 Fee		1.06% per retail transaction			75-5133
Privilege Tax					
Banks	total net income @	2.25%	plus	2.125% surtax on taxable income over \$25,000	4.375%
Trusts and S&Ls	total net income @	2.25%	plus	2.25% surtax on taxable income over \$25,000	4.50%
Property Tax (State Levy) Assessed Valuation					76-6b01
State School District Finance Levy					76-6b02
Sales and Use Tax					
State Retailers Sales Tax		6.3%	eff July 1 2010		79-3603
State Compensating Use Taxes		6.3%	eff July 1 2010		79-3703
Local Retailers Sales Tax	up to 1% general & 1% special for counties; up to 2% general & 1% special for cities				12-189
Local Use Sales Tax	up to 1% general & 1% special for counties; up to 2% general & 1% special for cities				12-191
Sand Royalty/per ton		\$0.15/ton			70a-102
Tire Tax/per tire (New Tires)		\$0.25			65-3424
Tobacco Tax (wholesale price)		10.00%			79-3371
Vehicle Rental Excise Tax/gross receipts		3.5%	for rentals not exceeding 28 days		79-5117
Water Protection Fee/1,000 gallons		\$0.032			82a-954
(S0.03 is collected for the Kansas Water Office and S.002 is collected for H&E, K.A.R. 28-15-12.)					
Clean Drinking Water Fee/1,000 gallons		\$0.030			82a-2101

Tax Penalty Provisions

Income Tax (also applicable to employer withholding tax)

K.S.A. 79-3228(c) provides a penalty for failure to pay income tax when due of 1% of the unpaid balance per month, not to exceed 24%, plus interest pursuant to K.S.A. 79-2968.

K.S.A. 79-3228(d) provides a penalty for an incorrect or insufficient return of 50% of the unpaid balance due, plus interest pursuant to K.S.A. 79-2968.

K.S.A. 79-3228(e) provides a penalty for fraudulent non-payment of tax of 100% of the unpaid balance, and it is a criminal misdemeanor offense, subject to \$1000 fine, 30 days to a year imprisonment, or both.

K.S.A. 79-3228(f) provides that the act of willfully signing a fraudulent return is a criminal felony offense, subject to imprisonment of up to five years.

Sales Tax (also applicable to other excise taxes)

K.S.A. 79-3615(d) provides that failure to remit sales tax by the due date is subject to a penalty of 1% of the unpaid balance per month, up to a maximum of 24%, plus interest pursuant to K.S.A. 79-2968.

K.S.A. 79-3615(e) provides a penalty for fraudulent failure to pay or sign a return of 50% of the unpaid balance.

K.S.A. 79-3615(h) provides a penalty for willful failure to make a return or pay tax due, or making a fraudulent return, is subject to a fine of \$500 to \$10,000, imprisonment in the county jail from one to six months, or both.