SESSION OF 2011

SUPPLEMENTAL NOTE ON SENATE BILL NO. 196

As Amended by Senate Committee of the Whole

Brief*

SB 196, as amended, would provide a new state income tax deduction known as "expensing" for certain qualified investments; repeal or phase out a number of existing state income tax credit and sales tax exemptions; repeal the Kansas Economic Opportunity Initiative Fund (KEOIF); and create a new fund, the Job Creation Program Fund (JCPF).

Expensing Provisions

New Section 2 of the bill allows taxpayers to claim an expense deduction from Kansas net income before expensing or recapture for the cost of certain machinery and equipment depreciable under Section 168 of the federal Internal Revenue Code and certain canned software defined under Section 197 placed into service beginning in tax year 2012. The property must be located in Kansas to qualify for expensing. A member of a unitary group of corporations filing a combined report may, under certain circumstances, take the expense deduction for an investment made by another member of the group.

Any amount of excess expensing deduction would be treated as a net operating loss for state income tax purposes.

Any property sold during the applicable recovery period defined by federal law or relocated outside the state during such period would be subject to have a portion of its expense deduction "recaptured" for Kansas income tax purposes.

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*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

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

Repeal or Modification of Existing Tax Incentives

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

Provisions relating to HPIP income tax credits would be modified such that in tax year 2012, the current $50,000 minimum investment threshold in six urban counties (Douglas, Johnson, Leavenworth, Sedgwick, Shawnee, and Wyandotte) would be increased to $1 million. Beginning in tax year 2017, no new HPIP credits could be earned anywhere in the state.

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

A sales tax exemption relative to projects that qualify for the business and job development income tax credit program would be repealed on January 1, 2012; and a second sales tax exemption associated with enterprise zone HPIP-qualified projects would be repealed on January 1, 2017.

Job Creation Program Fund

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

The two percent of withholding tax receipts under current law that is earmarked for the Investments in Major Projects and Comprehensive Training (IMPACT) program would begin becoming earmarked for the JCPF on July 1, 2011, except that transitional language generally would provide that current debt services for the IMPACT program repayment fund be met, as well as administrative costs associated with the IMPACT Program Services Fund.

Various statutes relating to another program, KEOIF, also would be repealed on January 1, 2012.

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

Background

The bill was requested for introduction by the Governor and supported by the Secretary of Revenue and the Secretary of Commerce. A number of conferees applauded the proposed expensing provisions but expressed concern about elimination of existing tax credit and incentive programs.

The original bill would have increased the HPIP qualifying minimum investment threshold in all 105 counties to $5 million beginning in 2012. The Senate Committee amendments included leaving the threshold at $50,000 in 99 counties while reducing the proposed increase to only $1 million in the six aforementioned urban counties.

The Senate Committee of the Whole amended the bill to add technical language relating to the phase out of the IMPACT program; and to add the JCPF reporting requirements for the Secretary of Commerce.

The latest fiscal note available from the Department of Revenue indicates that the bill would be expected to increase State General Fund (SGF) receipts by $2.874 million in FY 2012 and by $39.540 million in FY 2013; increase State Highway Fund (SHF) receipts by $1.126 million in FY 2012 and by $5.560 million in FY 2013; and increase Economic Development Initiatives Fund (EDIF) available revenues by $1.3 million for both fiscal years as a result of the proposed repeal of the KEOIF program. The net provisions of the bill therefore would produce an additional $5.3 million of available resources in FY 2012 and an additional $46.4 million in available resources in FY 2013. As noted previously, these net amounts -- notwithstanding the fact that the monies would be in three separate funds -- are contemplated being designated for ultimate appropriation to the JCPF. The following table summarizes the fiscal note provisions:

($ in millions)

	FY 2012	FY 2013
State General Fund		
Expensing	$ (6.000)	$ (47.400)
Sunset Ent. Zone, Job Exp. Credits	0.000	5.000
HPIP Credit Changes	0.000	1.000
Repeal Mach./EQ. Prop. Tax Credits	0.000	37.000
Repeal Sales Tax Exemptions	8.874	43.940
Total SGF Impact	**$ 2.874**	**$ 39.540**
State Highway Fund		
Repeal Sales Tax Exemptions	$ 1.126	$ 5.560
Eco. Devo. Initiatives Fund		
Repeal KEOIF	$ 1.300	$ 1.300
Net All Funds Impact	**$ 5.300**	**$ 46.400**