**Opinion Letter**

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| **Brief Description:** | **Calculation of HPIP investment tax credit.** |
| **Keywords:** |  |
| **Approval Date:** | **10/03/2001** |

**Body:**

Office of Policy & Research

October 3, 2001

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Dear XXXXX:

This letter is in regards to our conversation regarding the calculation of the high performance incentive program (HPIP) investment tax credit.

K.S.A. 2000 Supp. 79-32,160a(e) provides,

“Notwithstanding the foregoing provisions of this section, any taxpayer qualified and certified under the provisions of K.S.A. 2000 Supp. 74-50,131, and amendments thereto; which, prior to making a commitment to invest in a qualified Kansas business, has filed a certificate of intent to invest in a qualified business facility in a form satisfactory to the secretary of commerce and housing; and that has received written approval from the secretary of commerce and housing for 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. 2000 Supp. 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. 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 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. 2000 Supp. 74-50,131, and amendments thereto.”

In reading the authorizing statute for the HPIP investment tax credit, the calculation of the credit is tied directly to the definition of qualified business facility investment.

K.S.A. 2000 Supp. 79-32,154(e) provides the definition of qualified business facility investment as,

“the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, which constitutes the qualified business facility, or which is used by the taxpayer in the operation of the qualified business facility, during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. The value of such property during such taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.”

When computing the investment tax credit for HPIP purposes many factors must be considered:
· What is the certification period of the qualified firm?
· What is the taxpayer’s tax year?
· When is the investment available for use or used by the taxpayer in the operation of the qualified business facility?

**CERTIFICATION PERIOD**
The certification period is important because only those expenditures made during the certification period will qualify for the credit and then only if those expenditures are capable of being used by the taxpayer or are in use by the taxpayer in the operation of the qualified business facility.

For a qualified business facility in operation for less than an entire taxable year, the computation of the qualified business facility investment shall begin with the first full month in which the investment is first available for use or is being used by the taxpayer, but only if this is during the certification period. If that investment is not available for use during the certification period, there will be no HPIP investment tax credit. In other words, the real and tangible property will not be in the computation of the investment tax credit until it is capable of being used by the taxpayer or is in use by the taxpayer in the operation of the qualified business facility. This property will also be present in the property factor for apportionment purposes.

In the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer prior to the investment, a taxpayer shall begin the computation of the qualified business facility investment with the first month in the taxpayer’s tax year in which the investment is first available for use or is being used by the taxpayer, but will only include in that computation of qualified business facility investment, the amount of investment as of the last business day of each calendar month during the certification (recertification) period for the taxable year. This investment is then reduced by the average amount of the investment of the taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

**TAX YEAR**
The time period for computing qualified business facility investment is based on the taxpayer’s taxable year. If the taxpayer is on a **calendar** tax year then qualified business facility investment shall be computed on a **calendar** tax year. If the taxpayer is on a **fiscal** tax year then qualified business facility investment shall be computed on that **fiscal** tax year.

**INVESTMENT AVAILABLE FOR USE**
The real and tangible property will not be in the computation of the investment tax credit until it is capable of being used by the taxpayer or is in use by the taxpayer in the operation of the qualified business facility. This property will also be present in the property factor for apportionment purposes. K.A.R. 92-12-85 does not allow construction in progress (CIP) to be included in the property factor.

For purposes of the HPIP investment tax credit, qualified business facility investment shall include investment made during the HPIP certification (recertification) period. Therefore to maximize the benefit of the credit, a business making a large investment should try to establish its certification period to coincide with the timeframe during which expenditures are made and in which the investment is first available for use or is being used by the taxpayer.

In a multi-phase project spanning more than one twelve month period, where a facility is brought on line section by section, the Department does allow expenditures into the calculation of the investment tax credit for each separate section of a facility as that portion of the facility is brought on line or becomes usable by the taxpayer. Kansas does not require the **entire** project to be complete before claiming the HPIP investment credit as long as the investment consists of property used by the taxpayer in the operation of the business. However, if more than one HPIP investment tax credit is claimed by the taxpayer, the taxpayer must reduce each credit claimed, by the minimum amount of investment of $50,000.

If you should have any questions regarding the calculation of the HPIP investment tax credit, please do not hesitate to contact me at your earliest convenience.

Sincerely,

Kathleen M. Smith
Tax Specialist, Office of Policy and Research

**Date Composed: 10/04/2001 Date Modified: 10/10/2001**