**Opinion Letter**

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| **Letter Number:** | **O-2002-011** |

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| **Tax Type:** | **Corporate Income Tax; Individual Income Tax** |
| **Brief Description:** | **High Performance Incentive Program (HPIP) credit allowed against total tax liability.** |
| **Keywords:** |  |
| **Approval Date:** | **05/21/2002** |

**Body:**

Office of Policy & Research

May 21, 2002

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Dear XXXXX:

Thank you for your letter regarding whether the HPIP credit is limited when it flows through from an S Corporation to a shareholder.

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

“Notwithstanding the foregoing provisions of this section, any taxpayer qualified and certified under the provisions of K.S.A. 2001 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. 2001 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,**

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**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. 2001 Supp. 74-50,131, and amendments thereto”. (emphasis added)

The HPIP credit shall be allowed against the taxpayer’s tax liability, no matter what type of income the tax liability was generated from. Therefore, if an S corporation (or other flow through entity) should qualify for an HPIP credit, that credit shall flow to the shareholders (partners, members) to be claimed on that shareholders return. Should the shareholder have other income besides that generated from the S corporation that generated the HPIP credit, the HPIP credit shall be allowed against the shareholder’s TOTAL Kansas tax liability.

If we may be of further assistance, please contact us at your earliest convenience.

Sincerely,

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

**Date Composed: 05/31/2002 Date Modified: 05/31/2002**