MEMORANDUM

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To: Members, Legislative Post Audit Committee
From: Josh Luthi, Principal Auditor
Date: December 12, 2023
Subject: **Evaluating New Economic Development Incentive Programs Created in 2022**

State law (K.S.A. 46-1137) requires us to evaluate all new economic development incentive programs defined in K.S.A. 74-50,226 the year after they begin. In 2022, the Kansas Legislature created 8 tax credits and 2 programs that meet this requirement. The Department of Commerce also created a program that meets this requirement. State law requires the evaluations to include several components: a description of the incentive including its history and goals, a literature review including a comparison to other states, and an estimate of each incentive's economic and fiscal impacts. This memo is intended to satisfy these statutory requirements.

There was little data for us to review about these incentives because they're so new. Thus, our review and evaluation of the new incentives was limited. The following is a summary of each new incentive. Beginning on page 12, we identify some important issues that may need resolution.

New Economic Development Programs

Attracting Powerful Economic Expansion Program

- Description: The Attracting Powerful Economic Expansion (APEX) program (K.S.A. 74-50,311 et seq.) provides tax and reimbursement incentives to businesses that agree to invest at least $1 billion in a facility in Kansas. Businesses can receive a refundable income tax credit for their capital investments, a sales tax exemption for their construction costs, and reimbursements for payroll, training, and relocation costs. Such businesses' suppliers may also be eligible for benefits. The Department of Commerce negotiates with businesses to set the terms of their agreements (e.g., the size of the incentives businesses will get and what they must do). The State Finance Council must then approve an agreement for it to take effect.

  State law limits Commerce to 1 APEX agreement per year. State law also requires the state corporate income tax rate decrease by 0.5% in the tax year after a business with an agreement starts construction of its facility.

- Statutory Goals: According to state law (K.S.A. 74-50,312), the purpose of APEX is to attract large capital investments for new facilities or headquarters in Kansas. APEX is also supposed to encourage the development of Kansas-based supply chains for businesses that participate in the program.

- History: The APEX program was included in House Substitute for Senate Bill 347. It was signed into law in February 2022. State law prohibits new businesses from participating in APEX after 2023. APEX businesses' suppliers can join the program until May 2024.

- Economic and Fiscal Impacts: Commerce has entered into agreements with 2 businesses: Panasonic and Integra. Because both projects are still in their early stages, we can't say what the economic and fiscal impacts are or will be.

    - Panasonic is opening a battery manufacturing facility in De Soto. Under its agreement, Panasonic must open the facility and invest at least $1 billion in it by November 2027. Panasonic must maintain commercial operations at the facility for a further 15 years. The agreement does not require Panasonic to create or retain a certain number of jobs. Panasonic has begun construction at the De Soto facility and has hired some of its top executives. Panasonic anticipates investing about $4 billion and creating about 4,000 full-time jobs at the De Soto facility by the time the project is complete.

      In exchange, Panasonic is to receive a 12.5% refundable tax credit on its capital investments for 5 years. It may also earn a 10% rebate on its payroll costs for 10 years, a 50% reimbursement (limited to $5 million per year) for new employee training for 5 years, and a 50% reimbursement (limited to $1 million per year) for relocation expenses for 10 years. Panasonic is also eligible for a 100% sales tax exemption for purchases related to facility construction. To date, Panasonic has the sales tax exemption, but it hasn't yet claimed any other benefits. We can't say how much sales tax Panasonic has been exempted from because neither Commerce nor Revenue had that data. Revenue officials told us they estimate foregone sales tax revenue based on APEX businesses' estimated project costs. But that doesn't help us determine the benefits Panasonic has received to date.

    - Integra is opening a semiconductor manufacturing facility in Wichita. Under its agreement, Integra must open the facility, invest at least $1.5 billion in it, and create and retain at least 1,600 jobs by February 2028. Integra must maintain commercial operations at the facility for a further 15 years. Integra has not begun construction at the Wichita facility or hired any staff. According to Commerce officials, Integra won't proceed with this project unless it receives funding under the federal Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act.

      Under the state agreement, Integra may receive several state tax incentives. These include a 10% refundable tax credit on its capital investments for 5 years. It may also earn an 8.5% rebate on its payroll costs for 10 years, a 50% reimbursement (limited to $5 million per year) for new employee training for 5 years, and a 50% reimbursement (limited to $1 million per year) for relocation expenses for 10 years. Integra is also eligible for a 100% sales tax exemption for purchases related to facility construction. To date, Integra hasn't yet received any of these incentives.

- Literature Review: We didn't identify any literature that evaluated the effectiveness of megaproject incentive programs (i.e., programs that incent businesses to invest $1 billion or more in a project).

- Comparison to Other States: 2 other states, Ohio and Oklahoma, have megaproject incentive programs similar to Kansas's APEX program. Virginia is considering a megaproject incentive program for data centers.

Strategic Economic Expansion and Development Program

- Description: The Department of Commerce created the Strategic Economic Expansion and Development (SEED) program. It uses funds from the Technology-Enabled Fiduciary Financial Institutions Development and Expansion Fund for the SEED program as allowed by state law (K.S.A. 9-2324). Through the SEED program, Commerce makes grants of up to $50,000 to organizations like counties or economic development organizations for community development projects in rural areas. Grant recipients can use funds for projects related to childcare, senior programming, community vibrancy, library, and food retail projects. For example, Commerce funded a community vibrancy project that involved revitalizing downtown areas.

- Statutory Goals: SEED isn't a statutory program, so there are no statutory goals. According to Commerce, the purpose of the program is to support the revitalization of rural Kansas through quality-of-life projects.

- History: Commerce created the program in 2022. There is no sunset date for the program. But the program depends on funding generated by technology-enabled fiduciary financial institutions (TEFFIs). Therefore, the continuation of the SEED program is dependent upon the continuation and success of TEFFIs.

- Economic and Fiscal Impacts: In 2023, Commerce awarded about $2.7 million to 61 grantees. Each grantee was in a different county. As of September 2023, Commerce had distributed about $2.2 million to grantees. Commerce gave each grantee half their award upfront. Each grantee receives the other half when their project is 50% complete. Commerce hadn't distributed all funds at the time of our work because not all projects were 50% complete.

- Literature Review: We didn't identify any literature that evaluated the effectiveness of state-based grants for community development projects.

- Comparison to Other States: 2 other states, Arkansas and North Dakota, have programs to incent investment in quality-of-life projects for rural communities.

Attracting Professional Sports to Kansas Fund

- Description: K.S.A. 74-8793 authorizes the Attracting Professional Sports to Kansas Fund. Commerce administers the fund. Commerce may use the fund to benefit any professional sports team. It may also use the fund to service state or municipal bonds issued for the construction or maintenance of professional sports facilities. This fund is funded with sports wagering revenues on an annual basis.

- Statutory Goals: State law doesn't identify a goal for this fund. The general goal of the program is to attract professional sports team to Kansas as implied by the fund's name.

- History: The Attracting Professional Sports to Kansas Fund was included in House Substitute for Senate Bill 84, which was signed into law in May 2022.

- Economic and Fiscal Impacts: The fund's balance as of September 2023 was about $4.1 million. Commerce officials said the fund hasn't been used for anything. However, they also said they're in discussion about several possible projects that would use the fund's balance. State law requires Commerce to return any funding that exceeds what Commerce needs to benefit professional sports teams to the lottery operating fund at the end of each month. Commerce officials told us they are waiting to return funds to the lottery operating fund until their negotiations about the possible projects are complete.

- Literature Review: The literature we reviewed found professional sports teams often try to leverage their location to get public funding for things like stadiums. But the literature didn't evaluate whether public subsidies are independently effective at incenting teams to move.

- Comparison to Other States: 1 other state, Florida, has a program dedicated to attracting professional sports teams. While many other states don't have dedicated programs, we identified at least 14 states that provided public funding for facilities for professional sports teams.

New Tax Credits

Affordable Housing Tax Credit

- Description: K.S.A. 79-32,304 et seq. establishes the Kansas Affordable Housing Tax Credit Act. The act creates a state tax credit to match the federal low-income housing tax credit (LIHTC). If a housing project gets some amount of federal LIHTCs, then that project also gets an equal amount of Kansas Affordable Housing tax credits. Both credits subsidize the creation of affordable rental housing.

  The Kansas Housing Resources Corporation (KHRC) administers both the state and federal tax credit programs. KHRC awards credits to projects based on competitive application processes. Owners of the housing projects to which KHRC awards credits can sell the state and federal tax credits to investors in exchange for investment in their housing projects. This helps the owners reduce project costs, which in turn allows them to offer lower rents. Investors who purchase the state tax credit can use it to reduce their state income, privilege, or premium tax liabilities. Investors may carry forward unused tax credits for up to 11 years. That is, if an investor doesn't have enough tax liability to fully use a credit, they can hold onto the credit for use in the following 11 years.

Additionally, an investor can claim the tax credit they purchased every year for 10 years. This is separate from the carryforward provision. KHRC awards tax credits to housing projects every year. But the credits awarded to a project can be claimed annually for 10 years. For example, if KHRC awards a project $1 million in each of state and federal tax credits, the owner of the project can sell $1 million in credits every year for 10 years. The investors who purchase the credits can claim them once the project is complete and occupied. In this example, the total cost of the tax credit is $10 million in foregone state and federal tax revenues over 10 years.

- Statutory Goals: State law doesn't identify a goal for this tax credit. According to KHRC officials, the tax credit's goal is to build and rehabilitate affordable housing across the state. They said the tax credit makes projects feasible in areas where market conditions make it difficult to develop affordable housing.

- History: This tax credit was included in 2022 House Bill 2237. Tax year 2023 is the first year in which state law allows taxpayers to claim the credit. However, because Kansas allocates credits 1 year in advance, the first year in which taxpayers will be able to claim the credit is 2024. This tax credit has no sunset.

- Economic and Fiscal Impacts: In 2023, KHRC awarded about $25.1 million in Kansas Affordable Housing tax credits to 24 housing projects. Because the credits may be redeemed annually each year for 10 years, this represents about $251 million in state tax credits over the next decade. KHRC officials told us the 24 housing projects have a total estimated development budget of about $540 million and will produce almost 2,200 housing units that will remain affordable for 30 years.

  According to the Department of Revenue, to date, no taxpayers have claimed the tax credit. Taxpayers can't claim the credit until the project it's associated with has been built and occupied by residents. So, it may be a few years before taxpayers are able to claim this credit.

  In the long run, the cost of this program to the state could be significant. That's because KHRC will continue awarding new credits in future years. And as previously discussed, each award creates credits that can be redeemed annually for 10 years. For example, if KHRC awards about $25 million in credits every year, then after about 10 years, the annual cost to the state will be about $250 million in foregone tax revenues. However, the actual cost will depend on the credits

KHRC awards each year. Prior to the creation of the Kansas Affordable Housing Tax Credit, KHRC officials said they didn't get as many applications for federal LIHTCs as it did in 2023. If demand for the state and federal credits decreases and is closer to historical levels, the cost to the state will be less. For example, based on historical data, KDOR estimated the cost of the state tax credit could be about $144 million per year. State law doesn't limit the amount of credits KHRC can award each year. The state credit is therefore limited only by the amount of federal credits that may be awarded (about $28 million in 2023, equal to $280 million over the next 10 years).

Finally, tax revenues created by the housing projects that occurred because of the state tax credit may help offset the cost of the credit. For example, the state may collect income, sales, and construction-related tax revenues it otherwise wouldn't have received, but it's too early to evaluate those economic effects. KHRC officials told us this state credit is helping them allocate more of the tax-exempt bond (private activity bond) amounts the federal government gives the state each year.

- <u>Literature Review:</u> Audits and evaluations from 4 other states (Colorado, Georgia, Missouri, and Oklahoma) found state low-income housing tax credits helped create affordable housing. However, the 2014 audit from Missouri found such tax credits may be economically inefficient. The audit found only about $0.42 of every $1 of state tax credit went toward the construction of low-income housing. That's because the rest of the credit value is absorbed by things like federal income taxes and administrative costs associated with selling credits. The audit also concluded some Missouri projects that received state-level housing tax credits likely would have happened even if the state-level credit hadn't existed. By contrast, a 2022 evaluation from Georgia evaluated the economic effects of housing projects that wouldn't have been economically feasible without state tax credits. That evaluation found each dollar of foregone state tax revenues generated about $5.79 in economic activity and about $0.17 in state and local tax revenues.

- <u>Comparison to Other States:</u> According to Novogradac, a professional services organization that works in the affordable housing arena, there are 28 states (including Kansas and Washington D.C.) with state tax credit programs that link to the federal low-income housing tax credit.

Housing Investor Tax Credit

- <u>Description:</u> K.S.A. 79-32,310 et seq. establishes the Kansas Housing Investor Tax Credit Act. Under the act, KHRC is to allocate tax credits to housing projects in counties with populations of less than 75,000. Like the affordable housing tax credit, housing project owners can use this tax credit to attract investment to their projects. Under state law, KHRC can allocate up to $30,000 to $35,000 in credits per unit to projects. Projects that receive this credit can't also be eligible for low-income housing tax credit programs. KHRC is also required to issue at least $2.5 million in credits to counties with populations of less than 8,000 and

$2.5 million in credits to counties with populations of between 8,000 and 25,000. KHRC may issue up to $13 million in credits per year. If KHRC doesn't issue $13 million in a year, it can carry forward the unused amount to the next year. Taxpayers can carry this credit forward for up to 4 years. The credit is transferrable.

- Statutory Goals: According to K.S.A. 79-32,310, the purpose of this tax credit is to bring housing investment dollars to communities that lack adequate housing. This is supposed to help these communities attract businesses, employees, and new residents.

- History: This tax credit also was included in 2022 House Bill 2237. It was first available for tax year 2022. This tax credit has no sunset. In 2023, the Legislature amended state law to make the Housing Investor Tax Credits easier to transfer. Previously, a tax credit had to be transferred one time in its full amount. Now, any amount of a credit can be transferred any number of times.

- Economic and Fiscal Impacts: In 2022 and 2023, KHRC allocated about $19.5 million in credits to 41 projects. These credit allocations will help produce more than 800 housing units. Some of the units will be rental units, others will be owner-occupied. KHRC plans to allocate up to $6 million more credits, but it won't announce the awards until early 2024. According to the Department of Revenue, to date, no taxpayers have claimed this credit.

- Literature Review: We didn't identify any literature that evaluated how effective tax credit programs are at increasing investment in communities without adequate housing.

- Comparison to Other States: We didn't identify any other states with similar programs.

Targeted Employment Tax Credit

- Description: Under K.S.A. 79-32,298 et seq., Kansas employers who employ individuals with developmental disabilities can claim a tax credit against their income, privilege, or premium taxes. The tax credit is equal to the number of hours individuals with disabilities worked multiplied by either half their hourly wages or $7.50, whichever is less. Additionally, the employed individuals must be working in a similar setting and at a similar wage as individuals without disabilities. The total annual cap on this credit is $5 million.

- Statutory Goals: According to K.S.A. 79-32,298, the purpose of this tax credit is to incentivize the employment of Kansans with disabilities and to decrease their reliance on governmental programs. Its purpose is also to reduce taxpayer costs associated with funding government programs for persons with disabilities.

- History: This tax credit was included in 2022 House Bill 2703. The tax credit is available for tax years 2022 through 2027. The tax credit sunsets in 2028.

- Economic and Fiscal Impacts: According to the Department of Revenue, fewer than 5 taxpayers claimed this tax credit for tax year 2022. To preserve the confidentiality of taxpayer information, we can't report data related to this credit.

- Literature Review: We didn't identify any literature that focused specifically on the effectiveness of tax credit programs at incenting the employment of individuals with developmental disabilities. Instead, we reviewed a few studies that evaluated the federal Targeted Jobs Tax Credit (now expired) and Work Opportunity Tax Credit. Those credits have similar purposes as Kansas's Targeted Employment Tax Credit, but they incent employment of other groups of individuals too, e.g., economically disadvantaged youths. The studies found the tax credits helped employ targeted populations, but the tax credits didn't significantly change employers' hiring practices. That is, businesses generally hired the same people they otherwise would have hired and collected the tax credit for any new employees who qualified them for the credit.

- Comparison to Other States: 4 other states (Delaware, Maryland, New York, and North Dakota) have similar tax credits.

Commercial Restoration and Preservation Tax Credit

- Description: Under K.S.A. 79-32,211c, taxpayers can claim a tax credit against their income, privilege, or premium taxes for restoring or preserving historic commercial structures. The credit is equal to 10% of the costs of restoring or preserving a commercial structure at least 50 years old. These costs must be between $25,000 and $500,000. State law also allows an additional credit equal to 10% of the costs of installing fire suppression materials or equipment. These costs must also be between $25,000 and $500,000. The total annual statewide cap on this credit is $10 million. The credit may be carried forward for up to 10 years. The credit is also transferrable, but the recipient taxpayer can only carry the credit forward for up to 5 years. Finally, state law also requires financial institutions to pay taxes on only 50% of the interest earned on loans for the restoration or preservation of commercial structures at least 50 years old.

  This credit is different from the existing Historic Preservation Tax Credit. That tax credit is for restoration or preservation expenses of buildings either defined as historic structures by the federal internal revenue code, listed in the register of Kansas historic places, or located in a district in the register. The newer credit for commercial structures doesn't require structures to be historic or have a preservation plan. According to Revenue officials, the newer credit is meant to be more accessible. Projects can receive only one of the two tax credits, not both. That is, a project that benefits from the Commercial Restoration and Preservation Tax Credit cannot also benefit from the Historic Preservation Tax Credit and vice-versa.

- Statutory Goals: State law doesn't identify a goal for this tax credit. Based on the activities the credit rewards, the credit's general goal is to encourage the repair and maintenance of historic buildings.

- History: This tax credit was included in 2022 House Bill 2237 as part of the Historic Kansas Act. It was first effective for tax year 2022. This tax credit has no sunset date.

- Economic and Fiscal Impacts: According to the Department of Revenue, fewer than 5 taxpayers claimed this tax credit for tax year 2022. To preserve the confidentiality of taxpayer information, we can't report data related to this credit.

- Literature Review: We reviewed 3 studies that evaluated the effects of state tax credits for the restoration of all types of historic buildings, including residential and commercial structures. All 3 studies found tax credits were effective at increasing the restoration and preservation of historic structures, but only 1 study accounted for how much of the effect was caused by the tax credit.

- Comparison to Other States: 14 other states offer tax credits to incent the restoration and preservation of historic income-producing structures. These other states' credits are similar to Kansas's, but there were some differences. Some states' credits require rehabilitation projects to meet federal standards. Kansas's does not. And some states' credits target "income-producing properties," which include things like housing developments. It's not clear Kansas's tax credit is for any kind of income-producing property because "commercial structure" is not defined in state law.

Community College or Technical College Contribution Tax Credit

- Description: Under K.S.A. 79-32,261, a taxpayer who donates to a Kansas technical or community college can earn a tax credit against their income, privilege, or premium taxes. The tax credit is equal to 60% of their donation. The donation must be for capital improvements, deferred maintenance, or technology or equipment purchases. The credit is limited to $250,000 per taxpayer per year. Further, no college can generate more than $500,000 in credits per year. The total annual statewide cap on the credit is $5 million. The credit isn't transferable. It also can't be carried forward.

- Statutory Goals: State law doesn't identify a goal for this tax credit. Based on the activities the credit rewards, the credit's general goal is to incent donations to Kansas technical and community colleges.

- History: This tax credit was included in 2022 Senate Substitute for House Bill 2239. It's effective for tax years 2022 through 2026.

- Economic and Fiscal Impacts: According to the Department of Revenue, in tax year 2022, 30 taxpayers earned about $240,000 in tax credits for donating about $420,000 to the state's technical and community colleges. To date, taxpayers used about $235,000 of the credits they earned to reduce their 2022 state tax liabilities.

- Literature Review: We didn't identify any literature that evaluated how effective tax credit programs are at incenting donations to technical or community colleges.

- Comparison to Other States: 1 other state, Alaska, has a loosely similar tax credit. Alaska's credit is more expansive than Kansas's. It allows for donations to any college or university, and for more things than just capital improvements and equipment purchases.

Aviation and Aerospace Tax Credit

- Description: K.S.A. 79-32,290 et seq., provides 3 state tax credits for qualified aviation and aerospace employers and their employees. Qualified employers include businesses in the aviation sector involved in things like manufacturing, maintenance, or research and development. Qualified employees are individuals newly employed full-time by a qualified employer on or after January 1, 2022. Qualified employees must also have graduated from an engineering or technology degree program, associate of applied science degree program, or career technical program.

    - A qualified employer can claim an income tax credit equal to 50% of tuition reimbursements it pays a qualified employee. An employee must have graduated within a year of becoming employed. The employer can claim the credit in each of the employee's first 4 years of employment. The credit cannot be carried forward. It is also not transferrable.

    - A qualified employer can claim an income tax credit equal to 10% of its compensation to qualified employees during their first 5 years of employment. The credit is limited to $15,000 per employee per year. The credit cannot be carried forward. It is also not transferrable.

    - A qualified employee can claim a $5,000 tax credit in the year they become a qualified employee. They can also claim the credit in the 4 following years if they remain a qualified employee (i.e., $25,000 in total over 5 years). Unused credit can be carried forward for up to 4 years, but it is not transferrable.

- Statutory Goals: State law doesn't identify a goal for this tax credit. According to the Department of Commerce, the tax credit helps the aviation sector recruit talent and lowers the cost of doing business in Kansas.

- History: This tax credit was included in 2022 Senate Substitute for House Bill 2239. It's effective for tax years 2022 through 2026.

- Economic and Fiscal Impacts: According to the Department of Revenue, to date, no employers have yet claimed the tuition reimbursement tax credit. And fewer than 5 employers have claimed the credit for employee compensation. To preserve the confidentiality of taxpayer information, we can't report data related to that credit. However, at the time of our analysis, Revenue reported 467 qualified employees had claimed about $2 million in credits for tax year 2022. However, these employees only used about $1.1 million of the credits they have earned so far. That's because they didn't have enough tax liability to use all their credits. Because they can carry their credits forward, they may use the remaining credit in the future.

- Literature Review: We reviewed incentive evaluations from Washington and Oklahoma. According to those evaluations, tax credits for the aerospace industry have positive effects. For example, the Washington evaluation found the state's tax credit helped reduce the cost of doing business in the state. However, the evaluations didn't clearly account for the extent to which the credits influenced industry behaviors.

- Comparison to Other States: 3 other states (Colorado, Oklahoma, and Washington) have similar aviation or aerospace tax credit programs.

Teacher's Purchases of School and Classroom Supplies Tax Credit

- Description: Under K.S.A. 79-32,296, public or private school teachers who live in Kansas can claim a state income tax credit equal to their expenditures for school and classroom supplies. However, the credit is limited to $250 per taxpayer per year. The credit cannot be carried forward. It is also not transferrable.

- Statutory Goals: State law doesn't identify a goal for this tax credit. Based on how it works, the credit's general goal is to reduce the financial burden of teachers purchasing materials for their classrooms.

- History: This tax credit was included in 2022 Senate Substitute for House Bill 2239. It was first effective for tax year 2022. This tax credit has no sunset date.

- Economic and Fiscal Impacts: According to the Department of Revenue at the time we did our work, in tax year 2022, about 9,600 taxpayers earned and used almost $2.4 million in tax credits. These taxpayers reported spending about $3.3 million on school and classroom supplies. However, Revenue is still reviewing taxpayers claims, so these figures are subject to change.

- Literature Review: We didn't identify any literature that evaluated how effective tax credit programs are at reducing the financial burden of teachers purchasing classroom supplies.

- Comparison to Other States: 3 other states (Illinois, Indiana, and South Carolina) offer a tax credit to teachers who purchase classroom supplies. 4 additional states offer a deduction. A federal tax deduction for educator expenses is also available.

Short Line Railroad Tax Credit

- Description: Under K.S.A. 79-32,297, eligible taxpayers can claim a state income tax credit equal to 50% of their expenditures for railroad track maintenance expenditures. Eligible taxpayers include class II or class III railroads in Kansas and owners or lessees of rail siding next to such railroads. The credit is limited to $5,000 per siding or mile of track owned in the state. There's also a statewide cap of $8.72 million per year. The credit is non-refundable, but it can be carried forward for up to 5 years. It can also be transferred to the customers and vendors of eligible taxpayers.

- Statutory Goals: State law doesn't identify a goal for this tax credit. However, testimony from bill hearings suggests the tax credit's goal is to incent investment in the state's short line railroad infrastructure. This would help increase railroad safety and efficiency for rural customers.

- History: This tax credit was included in 2022 Senate Substitute for House Bill 2239. It's effective for tax years 2022 through 2031.

- Economic and Fiscal Impacts: According to the Department of Revenue, at the time of our review, 6 railroad companies had earned about $8 million in credits. The companies earned the credit based on about $19 million in maintenance expenses in 2022. The companies have transferred nearly all the credits to other taxpayers. However, Revenue officials told us no taxpayers have claimed the credit yet.

- Literature Review: We identified 2 studies that evaluated the effects of railroad tax credits: 1 from Oklahoma and 1 that looked at a federal tax credit for railroad maintenance. Both studies found tax credits for short line railroad maintenance were effective at increasing expenditures on and safety of railroads.

- Comparison to Other States: 6 other states (Alabama, Georgia, Kentucky, Mississippi, Oklahoma, and Oregon) offer a tax credit to incent the upkeep of short line railroad infrastructure. A federal tax credit for railroad maintenance is also available.

Issues for Further Consideration

We identified a few additional issues the Legislature or agencies may want to address. Because of the early and limited nature of this new incentives evaluation work, we did not fully develop these issues.

- **Neither Commerce nor Revenue currently have a systematic way to track how much in sales tax exemptions businesses have gotten under APEX.** So, no one can say how much sales tax Panasonic has been exempted from so far. Commerce officials told us they're developing a process to track this information.

We think it's important Commerce or Revenue does this so it can accurately report the costs of APEX incentives to the state. Having this information would also be important if the state needs to claw back incentives from Panasonic or Integra.

- **State law's (K.S.A. 74-8793) requirements for the transfer of funding for the Attracting Professional Sports to Kansas Fund are confusing.** Statute requires that funding is placed in the sports fund annually, but it requires Commerce to report on and return excess funding monthly. It's also not clear what constitutes excess funding. One literal interpretation could result in the sport funds not having any funding for most of the year. Another interpretation could result in Commerce holding on to funds indefinitely. It's not clear whether the Legislature intended for Commerce to be able to hold onto money in the sports funds while Commerce is in conversations with sports teams about potential projects to use the money. The Legislature should consider clarifying whether and how long Commerce can hold money in the fund.

- **State law (K.S.A. 79-32,304 et seq.) doesn't cap the amount of Kansas Affordable Housing Tax Credits that can be awarded each year beyond tying them to the federal low-income housing tax credit cap.** Housing Resources awards the same amount of state credits as it does federal credits. As we discussed earlier, this means the cost of this tax credit could be significant (i.e., in the hundreds of millions annually) in the long run. Many other states with similar tax credits cap the amount of state credits that can be awarded each year. For example, Oklahoma caps its annual awards at $4 million per year. The Legislature may want to consider setting a cap for the Kansas Affordable Housing Tax Credit.

- **State law (K.S.A. 79-32,211c) doesn't define "commercial structure."** This means it's unclear what buildings are eligible for the Commercial Restoration and Preservation Tax Credit. For example, it's unclear whether buildings that are residential and income-producing (e.g., rental units) should qualify for this credit. This means Revenue is currently using its discretion to decide what buildings qualify for the credit. The Legislature should consider defining "commercial structure" for this tax credit.