

2023 Kansas Statutes

79-32,306. Tax credit for qualified development; amount; allocation; requirements; allocation in pass-through entity; carry forward. (a) For all taxable years commencing after December 31, 2022, there shall be allowed a credit against the income tax liability imposed pursuant to the Kansas income tax act, the privilege tax liability imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premium tax liability imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, for each qualified development for each year of the credit period, in an amount equal to the federal tax credit allocated or allowed by the KHRC to such qualified development, except that there shall be no reduction in the credit allowable in the first year of the credit period due to the calculation in section 42(f)(2) of the federal internal revenue code.

(b) The KHRC shall issue an allocation certificate to an owner of a qualified development to which a credit has been allocated. The KHRC shall issue an allocation certificate to the qualified development simultaneously with issuance of federal form 8609 with respect to the federal tax credits.

(c) All allocations shall be made pursuant to the qualified allocation plan.

(d) If an owner of a qualified development receiving an allocation of a credit is a pass-through entity, the owner may allocate the credit among its partners or members in any manner agreed to by such persons regardless of whether: (1) Any such person is allocated or allowed any portion of any federal tax credit with respect to the qualified project; (2) the allocation of the credit under the terms of the agreement has substantial economic effect within the meaning of section 704(b) of the federal internal revenue code; or (3) any such person is deemed a partner for federal income tax purposes, if the partner or member would be considered a partner or member under applicable state law governing such entity and has been admitted as a partner or member on or prior to the date for filing the qualified taxpayer's tax return, including any amendments to such tax return, with respect to the year of the credit. In the case of multiple tiers of pass-through entities, the credit may be so allocated through any number of pass-through entities in any manner agreed by the owners of such pass-through entities, none of which shall be considered a transfer. Any pass-through entity allocating a credit to its partners or members shall attach a pass-through certification to its tax return annually. Each partner or member shall be allowed to claim or further allocate such amount subject to any restrictions set forth in this act.

(e) An owner of a qualified development to which a credit has been allocated and each qualified taxpayer to which such owner has allocated a portion of such credit, if any, shall file with their state income, privilege or premium tax return a copy of the allocation certificate issued by the KHRC with respect to such qualified development and a copy of any pass-through certification, as prescribed by the director.

(f) No credit shall be allocated pursuant to this act unless the qualified development is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development and is in accordance with the accessibility and adaptability requirements of the federal tax credits and title VIII of the civil rights act of 1968, as amended by the fair housing amendments act of 1988, for a period of 15 taxable years, or such longer period as may be agreed to between the KHRC and the owner of the qualified development, beginning with the first taxable year of the credit period.

(g) The allocated credit amount may be taken against the income, privilege or premium taxes imposed for each taxable year of the credit period. Any amount of credit that exceeds the income, privilege or premium tax liability of a qualified taxpayer for a taxable year may be carried forward as a credit against subsequent years' tax liability up to 11 tax years following the tax year in which the allocation was made and shall be applied first to the earliest years possible. Any amount of the credit that is not used shall not be refunded to the taxpayer.

(h) Unless otherwise provided in this act or the context or law requires otherwise, the KHRC shall determine eligibility for a credit and allocate credits in accordance

with the standards and requirements set forth in section 42 of the federal internal revenue code. Any combination of federal tax credits and credits allowed pursuant to this act shall be the least amount necessary to ensure the financial feasibility of a qualified development.

History: L. 2022, ch. 85, § 3; July 1.