As Amended by Senate Committee of the Whole

As Amended by Senate Committee
Session of 2012

SENATE BILL No. 267

By Legislative Educational Planning Committee

1-11

AN ACT concerning taxation; relating to income tax credits for certain contributions to community colleges, technical colleges and postsecondary educational institutions; renewable electric cogeneration facilities; restoration, preservation or operation of certain historic sites; amending K.S.A. 2011 Supp. 79-32,211a, 79-32,246 and 79-32,261 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2011 Supp. 79-32,261 is hereby amended to read as follows: 79-32,261. (a) On and after July 1, 2008, any taxpayer who contributes in the manner prescribed by this section to a community college located in Kansas for capital improvements, to a technical college for deferred maintenance or the purchase of technology or equipment or to a postsecondary educational institution located in Kansas for deferred maintenance, shall be allowed a credit against the tax imposed by the Kansas income tax act, 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 article 11 of chapter 79 of the Kansas Statutes Annotated. The tax credit allowed by this section is applicable for the tax year 2008 for any contributions made on and after July 1, 2008, and for the tax years 2009, 2010, 2011 and 2012 any tax year after tax year 2008 for any contributions made during the entire tax year. The amount of the credit allowed by this section shall not exceed 60% of the total amount contributed during the taxable year by the taxpayer to a community college or a technical college located in Kansas for such purposes. For tax years 2008, 2009, 2010 and 2011, the amount of the credit allowed by this section shall not exceed 50% of the total amount contributed during the taxable year by the taxpayer to a postsecondary educational institution for such purposes. For tax years 2012, 2013, 2014 and 2015, the amount of the credit allowed by this section shall not exceed 60% of the total amount contributed during the taxable year by the taxpayer to a postsecondary educational institution for such purposes. No credit shall be allowed pursuant to this section after tax year 2015. If the amount of the credit...
allowed by this section for a taxpayer who contributes to a community
college or a technical college exceeds the taxpayer's income tax liability
imposed by the Kansas income tax act, such excess amount shall be
refunded to the taxpayer. If the amount of the tax credit for a taxpayer who
contributes to a postsecondary educational institution exceeds the
taxpayer's income tax liability for the taxable year, the amount which
exceeds the tax liability may be carried over for deduction from the
taxpayer's income tax liability in the next succeeding taxable year or years
until the total amount of the tax credit has been deducted from tax liability,
except that no such tax credit shall be carried over for deduction after the
third taxable year succeeding the taxable year in which the contribution is
made. Prior to the issuance of any tax credits pursuant to this section, the
structure of the process in which contributions received by a community
college, a technical college or a postsecondary educational institution
qualify as tax credits allowed and issued pursuant to this section shall be
developed by a community college, a technical college and a
postsecondary educational institution in consultation with the secretary of
revenue and the foundation or endowment association of any such
community college, technical college or postsecondary educational
institution in a manner that complies with requirements specified in the
federal internal revenue code of 1986, as amended, so that contributions
qualify as charitable contributions allowable as deductions from federal
adjusted gross income.

(b) (1) Upon receipt of any such contributions to a community
college made pursuant to the provisions of this section, the treasurer of the
community college shall deposit such contributions to the credit of the
capital outlay fund of such community college established as provided by
K.S.A. 71-501a, and amendments thereto. Expenditures from such fund
shall be made for the purposes described in subsection (a) of K.S.A. 71-
501, and amendments thereto, except that expenditures shall not be made
from such fund for new construction or the acquisition of real property for
use as building sites or for educational programs.

(2) Upon receipt of any such contributions to a technical college
made pursuant to the provisions of this section, such contributions shall be
deposited to the credit of a deferred maintenance fund or a technology and
equipment fund established by the technical college which received the
contribution. Expenditures from such fund shall be made only for the
purpose as provided in this subsection.

(3) Upon receipt of any such contributions to a postsecondary
educational institution made pursuant to the provisions of this section,
such contributions shall be deposited to the credit of the appropriate
defered maintenance support fund of the postsecondary educational
institution which received the contribution. Expenditures from such fund
shall be made only for the purposes designated for such fund pursuant to law.

(c) (1) In no event shall the total amount of credits allowed under this section for taxpayers who contribute to any one such community college or technical college exceed the following amounts: For the tax year 2008, an amount not to exceed $78,125; for the tax year 2009, an amount not to exceed $156,250; and for the tax years 2010, _For tax years 2011 and_, 2012, 2013, 2014 and 2015 an amount not to exceed $208,233.33. If a community college or technical college has not used the maximum amount of allowed credits pursuant to this paragraph as of a date certain, to be determined by the board of regents in conjunction with the department of revenue and after dialogue with the community colleges and technical colleges, such unused credits may be reallocated to another community college or technical college. Such reallocated credits must be used in the same tax year and in the same manner as provided in this section.

(2) In no event shall the total of credits allowed under this section for taxpayers who contribute to postsecondary educational institutions exceed the following amounts: For the tax year 2008, an amount not to exceed $5,625,000; for the tax year 2009, an amount not to exceed $11,250,000; and for the tax years 2010, and 2011 and 2012, an amount not to exceed $15,000,000; and for tax years 2012, 2013, 2014 and 2015, an amount not to exceed $10,000,000. Except as otherwise provided, the allocation of such tax credits for each individual state educational institution shall be determined by the state board of regents in consultation with the secretary of revenue and the university foundation or endowment association of each postsecondary educational institution, and such determination shall be completed prior to the issuance of any tax credits pursuant to this section. Not more than 40% of the total of credits allowed under this section shall be allocated to any one postsecondary educational institution unless all such postsecondary educational institutions approve an allocation to any one such postsecondary educational institution which exceeds 40% of the total of such credits allowed under this section.

(d) As used in this section: (1) "Community college" means a community college established under the provisions of the community college act;

(2) "Deferred maintenance" means the maintenance, repair, reconstruction or rehabilitation of a building located at a technical college or a postsecondary educational institution which has been deferred, any utility systems relating to such building, any life-safety upgrades to such building and any improvements necessary to be made to such building in order to comply with the requirements of the Americans with disabilities act or other federal or state law;

(3) "Postsecondary educational institution" means the university of
Kansas, Kansas state university of agriculture and applied science, Wichita
state university, Emporia state university, Pittsburg state university, Fort
Hays state university and Washburn university of Topeka; and
(4) "technical college" means a technical college as designated
pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475 and 72-4477, and
amendments thereto.
(e) Any taxpayer not subject to Kansas income, privilege or
premiums tax who contributes to a community college, technical college
or postsecondary educational institution, hereinafter designated the
transferor, may sell, assign, convey or otherwise transfer tax credits
allowed and earned pursuant to this section. The sale price of a tax credit
shall be at least 50% of the full value of the credit. Such credit shall be
deemed to be allowed and earned by any such taxpayer which is only
disqualified therefrom by reason of not being subject to such Kansas taxes.
The taxpayer acquiring earned credits, hereinafter designated the
transferee, may use the amount of the acquired credits to offset up to 100%
of the taxpayer's income, privilege or premiums tax liability for the taxable
year in which such acquisition was made. Such credits may be sold or
transferred only one time and, if sold or transferred, shall be transferred in
the tax year such credit is earned or the two successive tax years. A
transferred credit shall be claimed in the year purchased. The transferor
shall enter into a written agreement with the transferee establishing the
terms and conditions of the sale or transfer and shall perfect such transfer
by notifying the secretary of revenue in writing within 30 calendar days
following the effective date of the transfer, subject to the review and
approval or denial of such transfer by the secretary of revenue. The
transferor and transferee shall provide any information pertaining to the
sale or transfer as may be required by the secretary of revenue to
administer and carry out the provisions of this section. The amount
received by the transferor of such tax credit shall be taxable as income of
the transferor, and the excess of the value of such credit over the amount
paid by the transferee for such credit shall be taxable as income of the
transferee.
(f) The secretary of revenue shall submit an annual report to the
legislature to assist the legislature in the evaluation of the utilization of any
credits claimed pursuant to this act, including information specific as to
each community college, technical college or postsecondary educational
institution. Such report shall be due on or before the first day of the
legislative session following the tax year in which the credits were
claimed.
(g) The secretary of revenue shall adopt rules and regulations
necessary to administer the provisions of this section.

{Sec. 2. K.S.A. 2011 Supp. 79-32,246 is hereby amended to read as
follows: 79-32,246. (a) For taxable years commencing after December 31, 2006, and before January 1, 2012, any taxpayer who is awarded a tax credit under this act on or after the effective date of this act by the secretary of commerce and complies with the conditions set forth in this act and the agreement entered into by the secretary and the taxpayer under this act shall be allowed a credit against the taxpayer's tax liability under the Kansas income tax act as provided in subsection (b). Expenditures used to qualify for this credit shall not be used to qualify for any other type of Kansas income tax credit.

(b) The amount of the credit to which a taxpayer is entitled shall be equal to the sum of: (1) An amount equal to 10% of the taxpayer's qualified investment for the first $50,000,000 invested and (2) an amount equal to 5% of the amount of the taxpayer's qualified investment that exceeds $50,000,000. Such credit shall be taken in 10 equal, annual installments, beginning with the year in which the taxpayer places into service the new renewable electric cogeneration facility.

(c) If the amount of an annual installment of a tax credit allowed under this section exceeds the taxpayer's income tax liability for the taxable year in which the annual installment is allowed, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the annual installment of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the 14th taxable year succeeding the taxable year in which the first annual installment is allowed.

(d) (1) Before making a qualified investment, a taxpayer shall apply to the secretary of commerce to enter into an agreement for a tax credit under this act. The secretary shall prescribe the form of the application. After receipt of such application, the secretary may enter into an agreement with the applicant for a credit under this act if the secretary determines that the taxpayer's proposed investment satisfies the requirements of this act. The secretary shall enter into an agreement with an applicant which is awarded a credit under this act. The agreement shall include: (A) A detailed description of the renewable electric cogeneration facility project that is the subject of the agreement, (B) the first taxable year for which the credit may be claimed, (C) the maximum amount of tax credit that will be allowed for each taxable year and (D) a requirement that the taxpayer shall maintain operation of the new renewable electric cogeneration facility for at least 10 years during the term that the tax credit is available.

(2) A taxpayer must comply with the terms of the agreement
described in subsection (d)(1) to receive an annual installment of the tax
credit awarded under this act. The secretary of commerce, in accordance
with rules and regulations of the secretary, shall annually determine
whether the taxpayer is in compliance with the agreement. Such
agreement shall include, but not be limited to, operation of the new
renewable electric cogeneration facility during the tax years when any
installments of tax credits are claimed by the taxpayer. If the secretary
determines that the taxpayer is in compliance, the secretary shall issue a
certificate of compliance to the taxpayer. If the secretary determines that
the taxpayer is not in compliance with the agreement, the secretary shall
notify the taxpayer and the secretary of revenue of such determination
of noncompliance, and any tax credits claimed pursuant to this section
for any tax year shall be forfeited.

(3) The secretary of commerce may adopt rules and regulations to
administer the provisions of this subsection.

Sec. 3. K.S.A. 2011 Supp. 79-32,211a is hereby amended to read as
follows: 79-32,211a. (a) For taxable years commencing after December
31, 2006, subject to the provisions of subsection (d), any taxpayer which
contributes, gifts or donates to a state-owned historic site or an
organization which is exempt from federal income taxation pursuant to
section 501(c)(3) of the federal internal revenue code of 1986, which
such organization owns and operates an historic site, to be used for the
purpose of restoration, preservation or operation of such state-owned
historic site or historic site or the establishment or maintenance of an
endowment to provide for the future stability of such state-owned
historic site or historic site shall be allowed a credit against the tax
imposed by the Kansas income tax act, the premiums tax upon insurance
companies imposed pursuant to K.S.A. 40-252, and amendments thereto,
and the privilege tax 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 in an amount
equal to 50% of such contribution, gift or donation, if the total amount
of such contribution, gift or donation is at least $1,000. The amount of
the credit shall not exceed $2,500 for any one taxpayer in any one
taxable year. In no event shall the total amount of credits allowed under
this section exceed $200,000 in any one fiscal year.

(b) The credit allowed by this section shall be deducted from the
taxpayer's income, premiums or privilege tax liability imposed for the
taxable year in which the contribution, gift or donation is made.

(c) If the amount of the credit allowed by this section exceeds the
taxpayer's income tax liability imposed under the Kansas income tax act,
such excess amount shall be refunded to the taxpayer.

(d) The partnership historic site committee created pursuant to
K.S.A. 2011 Supp. 75-2732, and amendments thereto, shall develop a prioritized list of historic sites other than state-owned historic sites to which contributions, gifts or donations to organizations which own and operate an historic site qualify for the tax credit provided in this section.

As used in this section: (1) "Contributions, gifts or donations" includes monetary contributions, gifts or donations and in kind contributions, gifts or donations that have an established market value;

(2) "historic site" means any building or structure that is significant in the history, architecture, archeology or culture of the state of Kansas or Kansas communities or the nation. Such historic site must be listed on the national register of historic places or the register of historic Kansas places, be open to the public or have the potential to be open to the public for at least 500 hours a year and be owned and operated for the purpose of educating the public about a specific aspect of Kansas and United States history; and

(3) "state-owned historic site" means an historic site under the jurisdiction and control of the state historical society.

(e) Any contribution, gift or donation that is the basis of the credit provided in this section shall not qualify as a qualified expenditure for the purpose of qualifying for the credit provided in K.S.A. 79-32,211, and amendments thereto.

(f) The provisions of this section shall expire on June 30, 2012.

Sec. 2. K.S.A. 2011 Supp. 79-32,211a, 79-32,246 and 79-32,261 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.