

As Further Amended by Senate Committee

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Session of 2006

SENATE BILL No. 389

By Committee on Agriculture
(By request of Select Joint Committee on Energy)

1-18

13 AN ACT concerning income taxation; relating to credits; biofuels mixing
14 facility.

15

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

17 Section 1. (a) Any taxpayer who makes expenditures for **construc-**
18 **tion of** a qualified biofuels mixing facility located in Kansas and placed
19 in service on and after January 1, 2006, shall be allowed a credit against
20 the income tax imposed by article 32 of chapter 79 of the Kansas Statutes
21 Annotated, an amount equal to 40% of the total amount expended for
22 **construction of** each qualified biofuels mixing facility, but not to exceed
23 ~~\$160,000~~ **\$200,000** for each mixing facility. **A taxpayer may only claim**
24 **the credit provided in this section one time for expenditures for**
25 **construction of a qualified biofuels mixing facility for ethanol and**
26 **one time for expenditures for construction of a qualified biofuels**
27 **mixing facility for biodiesel. In no event shall the total amount of**
28 **credits allowed under this section exceed \$2,000,000 for any one**
29 **fiscal year. Expenditures used to qualify for this tax credit shall not**
30 **be used to qualify for any other type of Kansas income tax credit.**

31 (b) The tax credit under subsection (a) shall be deducted from the
32 taxpayer's income tax liability for the taxable year in which the expendi-
33 tures are made by the taxpayer. If the amount of the tax credit exceeds
34 the taxpayer's income tax liability for the taxable year, the amount which
35 exceeds the tax liability may be carried over for deduction from the tax-
36 payer's income tax liability in the next succeeding taxable year or years
37 until the total amount of the tax credit has been deducted from tax li-
38 ability, except that no such tax credits shall be carried over for deduction
39 after the third taxable year succeeding the taxable year in which the ex-
40 penditures are made.

41 (c) ~~Any person, hereinafter designated the assignor, may sell, assign,~~
42 ~~convey or otherwise transfer tax credits allowed and earned pursuant to~~
43 ~~subsection (a). The taxpayer acquiring credits, hereinafter designated the~~

1 assignee, may use the amount of the acquired credits to offset up to 100%
2 of its income, privilege or premiums tax liability for the taxable year in
3 which such acquisition was made. Unused credit amounts claimed by the
4 assignee may be carried forward for up to five years, except that all such
5 amounts shall be claimed within 10 years following the tax year in which
6 the qualified credits were allowed. The assignor shall enter into a written
7 agreement with the assignee establishing the terms and conditions of the
8 agreement and shall perfect such transfer by notifying the department of
9 revenue in writing within 90 calendar days following the effective date of
10 the transfer and shall provide any information as may be required by the
11 department of revenue and carry out the provisions of this section. The
12 amount received by the assignor of such tax credit shall be taxable as
13 income of the assignor, and the excess of the value of such credit over
14 the amount paid by the assignee for such credit shall be taxable as income
15 of the assignee.

16 ~~(d)~~ As used in this section:

17 (1) ~~“Biofuels~~ **Qualified biofuels** mixing facility” means the property
18 which is directly related to the blending of biofuels with petroleum-based
19 fuels resulting in a product intended for use or offered for sale as a fuel
20 for engines **prior to delivery to a retail facility.** ~~Each qualified bio-~~
21 ~~fuels mixing facility shall have at least one tank for ethanol or one~~
22 ~~tank for biodiesel;~~

23 (2) “biofuels” shall include, but not limited to, ethanol and biodiesel;

24 (3) **“biodiesel” means mono-alkyl esters derived from vegetable**
25 **oil, recycled cooking oil or animal fat and shall conform with the**
26 **specification D6751-02, issued March 2002, by the American soci-**
27 **ety of testing and materials or a later version as adopted by rules**
28 **and regulations;**

29 (4) **“ethanol” means denatured fuel ethanol that meets ASTM**
30 **4806-99;**

31 ~~(5)~~ (5) “taxpayer” means any person who makes expenditures for a
32 qualified biofuels mixing facility;

33 ~~(6)~~ (6) “person” means every natural person, association, partnership,
34 limited liability company, limited partnership or corporation.

35 ~~(d)~~ (d) The provisions of this section shall apply to all taxable years
36 commencing after December 31, 2005.

37 Sec. 2. This act shall take effect and be in force from and after its
38 publication in the statute book.