

SENATE BILL No. 267

By Legislative Educational Planning Committee

1-11

1 AN ACT concerning taxation; relating to *{income}* tax credits ~~for~~;
2 certain contributions to community colleges, technical colleges and
3 postsecondary educational institutions; *{renewable electric*
4 *cogeneration facilities; restoration, preservation or operation of*
5 *certain historic sites;}* amending K.S.A. 2011 Supp. *{79-32,211a, 79-*
6 *32,246 and}* 79-32,261 and repealing the existing ~~section~~*{sections}*.
7

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

9 Section 1. K.S.A. 2011 Supp. 79-32,261 is hereby amended to read as
10 follows: 79-32,261. (a) On and after July 1, 2008, any taxpayer who
11 contributes in the manner prescribed by this section to a community
12 college located in Kansas for capital improvements, to a technical college
13 for deferred maintenance or the purchase of technology or equipment or to
14 a postsecondary educational institution located in Kansas for deferred
15 maintenance, shall be allowed a credit against the tax imposed by the
16 Kansas income tax act, the premium tax or privilege fees imposed
17 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as
18 measured by net income of financial institutions imposed pursuant to
19 article 11 of chapter 79 of the Kansas Statutes Annotated. The tax credit
20 allowed by this section is applicable ~~for the tax year 2008 for any~~
21 ~~contributions made on and after July 1, 2008, and for the tax years 2009,~~
22 ~~2010, 2011 and 2012 any tax year after tax year 2008~~ for any
23 contributions made during the entire tax year. The amount of the credit
24 allowed by this section shall not exceed 60% of the total amount
25 contributed during the taxable year by the taxpayer to a community college
26 or a technical college located in Kansas for such purposes. ~~For tax years~~
27 ~~2008, 2009, 2010 and 2011,~~ The amount of the credit allowed by this
28 section shall not exceed 50% of the total amount contributed during the
29 taxable year by the taxpayer to a postsecondary educational institution for
30 such purposes. ~~For tax years 2012, 2013, 2014 and 2015, the amount of~~
31 ~~the credit allowed by this section shall not exceed 60% of the total amount~~
32 ~~contributed during the taxable year by the taxpayer to a postsecondary~~
33 ~~educational institution for such purposes. No credit shall be allowed~~
34 ~~pursuant to this section after tax year 2015.~~ If the amount of the credit

1 allowed by this section for a taxpayer who contributes to a community
2 college or a technical college exceeds the taxpayer's income tax liability
3 imposed by the Kansas income tax act, such excess amount shall be
4 refunded to the taxpayer. If the amount of the tax credit for a taxpayer who
5 contributes to a postsecondary educational institution exceeds the
6 taxpayer's income tax liability for the taxable year, the amount which
7 exceeds the tax liability may be carried over for deduction from the
8 taxpayer's income tax liability in the next succeeding taxable year or years
9 until the total amount of the tax credit has been deducted from tax liability,
10 except that no such tax credit shall be carried over for deduction after the
11 third taxable year succeeding the taxable year in which the contribution is
12 made. Prior to the issuance of any tax credits pursuant to this section, the
13 structure of the process in which contributions received by a community
14 college, a technical college or a postsecondary educational institution
15 qualify as tax credits allowed and issued pursuant to this section shall be
16 developed by a community college, a technical college and a
17 postsecondary educational institution in consultation with the secretary of
18 revenue and the foundation or endowment association of any such
19 community college, technical college or postsecondary educational
20 institution in a manner that complies with requirements specified in the
21 federal internal revenue code of 1986, as amended, so that contributions
22 qualify as charitable contributions allowable as deductions from federal
23 adjusted gross income.

24 (b) (1) Upon receipt of any such contributions to a community
25 college made pursuant to the provisions of this section, the treasurer of the
26 community college shall deposit such contributions to the credit of the
27 capital outlay fund of such community college established as provided by
28 K.S.A. 71-501a, and amendments thereto. Expenditures from such fund
29 shall be made for the purposes described in subsection (a) of K.S.A. 71-
30 501, and amendments thereto, except that expenditures shall not be made
31 from such fund for new construction or the acquisition of real property for
32 use as building sites or for educational programs.

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

39 (3) Upon receipt of any such contributions to a postsecondary
40 educational institution made pursuant to the provisions of this section,
41 such contributions shall be deposited to the credit of the appropriate
42 deferred maintenance support fund of the postsecondary educational
43 institution which received the contribution. Expenditures from such fund

1 shall be made only for the purposes designated for such fund pursuant to
2 law.

3 (c) (1) In no event shall the total amount of credits allowed under this
4 section for taxpayers who contribute to any one such community college
5 or technical college exceed the following amounts: ~~For the tax year 2008,~~
6 ~~an amount not to exceed \$78,125; for the tax year 2009, an amount not to~~
7 ~~exceed \$156,250; and for the tax years 2010, 2011 and ,~~ **For tax years 2011 and ,**
8 **2012, 2013, 2014 and 2015** an amount not to exceed \$208,233.33. ~~If a~~
9 ~~community college or technical college has not used the maximum amount~~
10 ~~of allowed credits pursuant to this paragraph as of a date certain, to be~~
11 ~~determined by the board of regents in conjunction with the department of~~
12 ~~revenue and after dialogue with the community colleges and technical~~
13 ~~colleges, such unused credits may be reallocated to another community~~
14 ~~college or technical college. Such reallocated credits must be used in the~~
15 ~~same tax year and in the same manner as provided in this section.~~

16 (2) In no event shall the total of credits allowed under this section for
17 taxpayers who contribute to postsecondary educational institutions exceed
18 the following amounts: ~~For the tax year 2008, an amount not to exceed~~
19 ~~\$5,625,000; for the tax year 2009, an amount not to exceed \$11,250,000;~~
20 ~~and for the tax years 2010, and 2011 and 2012, an amount not to exceed~~
21 ~~\$15,000,000; and for tax years 2012, 2013, 2014 and 2015, an amount not~~
22 ~~to exceed \$10,000,000.~~ Except as otherwise provided, the allocation of
23 such tax credits for each individual state educational institution shall be
24 determined by the state board of regents in consultation with the secretary
25 of revenue and the university foundation or endowment association of
26 each postsecondary educational institution, and such determination shall
27 be completed prior to the issuance of any tax credits pursuant to this
28 section. Not more than 40% of the total of credits allowed under this
29 section shall be allocated to any one postsecondary educational institution
30 unless all such postsecondary educational institutions approve an
31 allocation to any one such postsecondary educational institution which
32 exceeds 40% of the total of such credits allowed under this section.

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

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

43 (3) "postsecondary educational institution" means the university of

1 Kansas, Kansas state university of agriculture and applied science, Wichita
2 state university, Emporia state university, Pittsburg state university, Fort
3 Hays state university and Washburn university of Topeka; and

4 (4) "technical college" means a technical college as designated
5 pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475 and 72-4477, and
6 amendments thereto.

7 (e) Any taxpayer not subject to Kansas income, privilege or
8 premiums tax who contributes to a community college, technical college
9 or postsecondary educational institution, hereinafter designated the
10 transferor, may sell, assign, convey or otherwise transfer tax credits
11 allowed and earned pursuant to this section. The sale price of a tax credit
12 shall be at least 50% of the full value of the credit. Such credit shall be
13 deemed to be allowed and earned by any such taxpayer which is only
14 disqualified therefrom by reason of not being subject to such Kansas taxes.
15 The taxpayer acquiring earned credits, hereinafter designated the
16 transferee, may use the amount of the acquired credits to offset up to 100%
17 of the taxpayer's income, privilege or premiums tax liability for the taxable
18 year in which such acquisition was made. Such credits may be sold or
19 transferred only one time and, if sold or transferred, shall be transferred in
20 the tax year such credit is earned or the two successive tax years. A
21 transferred credit shall be claimed in the year purchased. The transferor
22 shall enter into a written agreement with the transferee establishing the
23 terms and conditions of the sale or transfer and shall perfect such transfer
24 by notifying the secretary of revenue in writing within 30 calendar days
25 following the effective date of the transfer, subject to the review and
26 approval or denial of such transfer by the secretary of revenue. The
27 transferor and transferee shall provide any information pertaining to the
28 sale or transfer as may be required by the secretary of revenue to
29 administer and carry out the provisions of this section. The amount
30 received by the transferor of such tax credit shall be taxable as income of
31 the transferor, and the excess of the value of such credit over the amount
32 paid by the transferee for such credit shall be taxable as income of the
33 transferee.

34 (f) The secretary of revenue shall submit an annual report to the
35 legislature to assist the legislature in the evaluation of the utilization of any
36 credits claimed pursuant to this act, including information specific as to
37 each community college, technical college or postsecondary educational
38 institution. Such report shall be due on or before the first day of the
39 legislative session following the tax year in which the credits were
40 claimed.

41 (g) The secretary of revenue shall adopt rules and regulations
42 necessary to administer the provisions of this section.

43 *{Sec. 2. K.S.A. 2011 Supp. 79-32,246 is hereby amended to read as*

1 follows: 79-32,246. (a) For taxable years commencing after December
2 31, ~~2006~~ 2011, and before January 1, ~~2012~~ 2017, any taxpayer who is
3 awarded a tax credit under this act on or after the effective date of this
4 act by the secretary of commerce and complies with the conditions set
5 forth in this act and the agreement entered into by the secretary and the
6 taxpayer under this act shall be allowed a credit against the taxpayer's
7 tax liability under the Kansas income tax act as provided in subsection
8 (b). Expenditures used to qualify for this credit shall not be used to
9 qualify for any other type of Kansas income tax credit.

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

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

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

43 (2) A taxpayer must comply with the terms of the agreement

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

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

16 *Sec. 3. K.S.A. 2011 Supp. 79-32,211a is hereby amended to read as*
17 *follows: 79-32,211a. (a) For taxable years commencing after December*
18 *31, 2006, subject to the provisions of subsection (d), any taxpayer which*
19 *contributes, gifts or donates to a state-owned historic site or an*
20 *organization which is exempt from federal income taxation pursuant to*
21 *section 501(c)(3) of the federal internal revenue code of 1986, which*
22 *such organization owns and operates an historic site, to be used for the*
23 *purpose of restoration, preservation or operation of such state-owned*
24 *historic site or historic site or the establishment or maintenance of an*
25 *endowment to provide for the future stability of such state-owned*
26 *historic site or historic site shall be allowed a credit against the tax*
27 *imposed by the Kansas income tax act, the premiums tax upon insurance*
28 *companies imposed pursuant to K.S.A. 40-252, and amendments thereto,*
29 *and the privilege tax imposed upon any national banking association,*
30 *state bank, trust company or savings and loan association pursuant to*
31 *article 11 of chapter 79 of the Kansas Statutes Annotated in an amount*
32 *equal to 50% of such contribution, gift or donation, if the total amount*
33 *of such contribution, gift or donation is at least \$1,000. The amount of*
34 *the credit shall not exceed \$2,500 for any one taxpayer in any one*
35 *taxable year. In no event shall the total amount of credits allowed under*
36 *this section exceed \$200,000 in any one fiscal year.*

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

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

43 *(d) The partnership historic site committee created pursuant to*

1 *K.S.A. 2011 Supp. 75-2732, and amendments thereto, shall develop a*
2 *prioritized list of historic sites other than state-owned historic sites to*
3 *which contributions, gifts or donations to organizations which own and*
4 *operate an historic site qualify for the tax credit provided in this section.*
5 *As used in this section: (1) "Contributions, gifts or donations" includes*
6 *monetary contributions, gifts or donations and in kind contributions,*
7 *gifts or donations that have an established market value;*

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

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

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

22 ~~(f) The provisions of this section shall expire on June 30, 2012;~~

23 ~~Sec. 2-4.} K.S.A. 2011 Supp. {79-32,211a, 79-32,246 and} 79-~~
24 ~~32,261 is{are} hereby repealed.~~

25 ~~Sec. 3-5.} This act shall take effect and be in force from and after its~~
26 ~~publication in the statute book {Kansas register}.~~

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