**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-107** |

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| **Tax Type:** | **Corporate Income Tax** |
| **Brief Description:** | **High Performance Incentive Program (HPIP) credits.** |
| **Keywords:** |  |
| **Approval Date:** | **08/28/2001** |

**Body:**

Office of Policy & Research

August 28, 2001

XXXXX
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Dear XXXXX:

Thank you for your request for a private letter ruling regarding whether XXXXX is entitled to the High Performance Incentive Program credits set forth in K.S.A. 74-50,132 and K.S.A. 79-32,160a(e) which were originally secured by XXXXX.

K.S.A. 79-32,156(a) provides,

“If a taxpayer, hereafter referred to in this section as “transferor,” shall have established a qualified business facility and, prior to the expiration of the ten-year period during which the credit allowed by K.S.A. 79-32,153, and amendments thereto, may be claimed by the transferor, all or a portion of such qualified business facility, is acquired by, or leased to, a related taxpayer, as defined in subsection (h) of K.S.A. 79-32,154, and amendments thereto, and hereafter referred to in this section as “transferee,” the transferor shall elect either to allow the transferee to claim such credit as provided in subsection (b), or to retain such credit as provided in subsection (c).”

Based on the reading of this statute, it specifically states that a credit allowed by K.S.A. 79-32,153 may be transferred to a related taxpayer. K.S.A. 79-32,153 allows an investment credit and job creation credit under the Job Expansion and Investment Credit Act of 1976. K.S.A. 79-32,156(a) does not address any other type of credit, such as the “enhanced” business and job development credit allowed under K.S.A. 79-32,160a or the high performance incentive program investment credit allowed under K.S.A. 79-32,160a(e).

However, K.S.A. 79-32,160a(f), provides:

“This section and K.S.A. 79-32,160b and amendments thereto shall be part of and supplemental to the job expansion and investment credit act of 1976 and acts amendatory thereof and supplemental thereto.”

Therefore a reasonable reading and interpretation of the Act would indicate that the provisions within the original act were meant to apply to the newer provisions in K.S.A. 79-32,160a, thereby allowing a transfer of the credit earned under K.S.A. 79-32,160a(e) to a related taxpayer.

K.S.A. 79-32,154(h) provides the definition of related taxpayer as,

“Related taxpayer” shall mean (1) a corporation, partnership, trust or association controlled by the taxpayer; (2) an individual, corporation, partnership, trust or association in control of the taxpayer; or (3) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer. For the purposes of this act, “control of a corporation” shall mean ownership, directly or indirectly, of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation; “control of a partnership or association” shall mean ownership of at least 80% of the capital or profits interest in such partnership or association; and “control of a trust” shall mean ownership, directly or indirectly, of at least 80% of the beneficial interest in the principal or income of such trust.”

XXXXX may transfer the credits secured through HPIP (K.S.A. 74-50,132 and K.S.A. 79-32,160a(e)) to XXXXX if the following conditions are met:
· XXXXX and XXXXX must be considered as “related taxpayers” as defined in K.S.A. 79-32,154(h) (Based on the information you have provided, I am unable to make this determination);
· XXXXX must become HPIP certified and continue to be qualified and recertified for each succeeding taxable year; and
· XXXXX must sell or lease the qualified business facility to XXXXX.

This is a private letter ruling pursuant to Kansas Administrative Regulation 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this ruling.

If I may be of further assistance, please contact me at your earliest convenience.

Sincerely,

Kathleen M. Smith
Tax Specialist, Office of Policy and Research

**Date Composed: 10/04/2001 Date Modified: 10/10/2001**