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NOTICE 15-15

CREDIT FOR TAXES PAID TO ANOTHER STATE (AUGUST 10, 2015)

Kansas law allows a credit against the individual income tax liability of a Kansas resident for taxes paid to another state. The controlling statute, K.S.A. 79-32,111 provides, in subsection (a):

> (a) The amount of income tax paid to another state by a resident individual, resident estate or resident trust on income derived from sources in another state, and included in Kansas adjusted gross income, shall be allowed as a credit against the tax computed under the provisions of this act. Such credit shall not be greater in proportion to the tax computed under this act than the Kansas adjusted gross income for such year derived in another state while such taxpayer is a resident of this state is to the total Kansas adjusted gross income of the taxpayer. As used in this subsection, "state" shall have the meaning ascribed thereto by subsection (h) of K.S.A. 79-3271, and amendments thereto. The credit allowable hereunder for income tax paid to a foreign country or political subdivision thereof shall not exceed the difference of such income tax paid less the credit allowable for such income tax paid by the federal internal revenue code. No redetermination of income tax paid for the purposes of determining the credit allowed by this subsection shall be required for the taxable year for which an income tax refund payment pursuant to the provisions of section 18 of article 10 of the Missouri constitution is made, but the income tax paid allowable for credit in the next following taxable year shall be reduced by the amount of such refund amount, except that, for tax year 1998, the income tax paid allowable for credit shall be reduced by the amount of such refunds made for all taxable years prior to tax year 1998.

As noted in the language quoted above, the definition of the term "state" is found in K.S.A. 79-3271. Subsection (i) of that statute provides:

> (i) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

On May 18, 2015, the United States Supreme Court issued its ruling in the case of Maryland v. Wynne (Docket No. 13-485). The Court's decision indicates that, under state law similar to that in Kansas, an income tax credit for taxes paid to another state should recognize both income or earnings taxes imposed by the other state, and income or earnings taxes imposed by local units of government of the other state.

Although the Court's decision in Maryland v. Wynne did not specifically address Kansas law, the Department of Revenue is following the Court's direction going forward. In addition, for refund claims timely filed within the applicable statute of limitations in K.S.A. 79-3230, the Department of Revenue will allow Kansas residents who claim a credit for taxes paid to another state to include income or earnings taxes imposed by and paid to such state government as well as any local jurisdiction within that state when computing the amount of the credit. This will apply to local jurisdictions within the United States and local jurisdictions of a foreign country.

Any taxpayer claiming a credit for income taxes paid to another state which includes tax paid to a local jurisdiction within that state should include with the Kansas return: (1) a copy of the income tax return filed with other state; (2) a copy of the income or earnings tax return filed with the local jurisdiction (or, if not required to be filed with the local jurisdiction, a copy of the completed return showing the amount of tax paid to the local jurisdiction); (3) a copy of the Worksheet for Credit Calculation (from the instructions for Kansas Form K-40), and; (4) a copy the federal W-2 form. This is true for both returns filed for tax year 2015 and future tax years, and for amended returns filed to claim a refund for a prior tax year within the applicable statute of limitations. An amended Kansas return, including the above documentation, will be required for each prior tax year for which the credit is sought.

Taxpayers claiming a credit for taxes paid to another state should complete and include the appropriate Worksheet for computing the credit contained in the Form K-40 instructions. When the taxpayer has paid both income or earnings taxes to the state government of another state as well as to any political subdivision within such state, the total amount of such payments shall be entered on Line 1 of the Worksheet used for computing the credit for taxes paid to that state. Such credit shall then be computed according to the Worksheet directions.

Taxpayer Assistance

Additional copies of this notice, forms or publications are available from our web site, **www.ksrevenue.org**. If you have questions about this Notice, please contact:

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