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NOTICE 21-12

HIGH PERFORMANCE INCENTIVE PROGRAM (HPIP) CHANGES

(JULY 19, 2021)

During the 2021 Legislative Session Senate Bill 65 was passed and signed into law. Section 2 of the Bill amends K.S.A. 79-32,160a to remove participation in the Kansas Industrial Training (KIT) program or the Kansas Industrial Retraining (KIR) program as a requirement to qualify for the High Performance Incentive Program (HPIP) investment tax credit.

Section 2 of the Bill also allows an entity to transfer up to 50 percent of its HPIP investment tax credit to another entity or individual. Transferability is allowed only for projects placed into service on or after January 1, 2021, and must occur within a single tax year.

A transferee must claim the credit transferred to them in the year of the transfer. In the event a transferee's tax liability is less than the amount transferred, the transferee may carry the credit forward to the succeeding taxable year or years until the total amount of the tax credit is used, except that no such credit shall be carried forward for deduction after the 16th taxable year succeeding the taxable year in which such credit was initially claimed. The bill states in the event the Secretary of Revenue determines a tax credit, or portion thereof, is not allowable, the taxpayer who originally earned the credit is liable for the amount that is disallowed. The new language, found in subsections (f) and (g) states:

> *(f) For projects placed into service on and after January 1, 2021, a taxpayer may transfer up to 50% of the tax credit allowed under subsection (e), as provided in this subsection. The taxpayer may make a transfer to one or more transferees, but the total of all transfers shall not exceed 50% of the taxpayer's tax credit. The taxpayer shall make the transfer or transfers within a single tax year. The credit may be transferred to any individual or entity and shall be claimed in the year the credit was transferred against the transferee's tax liability for the income tax under the Kansas income tax act or the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The amount of the credit that exceeds the transferee's tax liability for such year may be carried forward for credit in the succeeding taxable year or years until the total amount of the tax credit is used, except that no such credit shall be carried forward for deduction after the 16th taxable year succeeding the taxable year in which such credit was initially claimed. The taxpayer or transferee shall provide such documentation of the tax credit transfer to the secretary of revenue as may be required by the secretary.*

(g) In the event the tax credit earned by the taxpayer and transferred to a transferee is later disallowed in whole or in part by the secretary of revenue, the taxpayer that originally earned the tax credit shall be liable for repayment to the state in the amount disallowed.

To learn more about transferring an investment credit earned through the High Performance Incentive Program, please visit the Kansas Department of Commerce website at: kansascommerce.gov/program/business-incentives-and-services/hpip/

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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