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NOTICE 22-11

COMMERCIAL RESTORATION AND PRESERVATION CREDIT

(NOVEMBER 10, 2022)

During the 2022 Legislative Session House Bill 2237 was passed and signed into law. New Sections 13 and 14 of the Bill are known as the Historic Kansas Act. The act provides a tax credit for older commercial structures in the state.

New Section 14 of the Bill establishes, for all taxable years starting after December 31, 2021, a tax credit against a tax liability imposed upon a taxpayer by the Kansas income tax act, the financial institutions privilege tax, or the premium tax, in an amount equal to 10% of the costs and expenses incurred for the restoration and preservation of a commercial structure at least 50 years old that does not receive the historic preservation tax credit provided by KSA 79-32,211. An additional 10% tax credit of costs and expenses will be allowed for the installation of fire suppression materials or equipment by a taxpayer. To qualify for the credit related to the structure, the total amount of costs and expenses for restoration and preservation must be equal to at least $25,000, but not exceed $500,000. Similarly, to qualify for the credit related to fire suppression materials or equipment, the total amount of costs and expenses for fire suppression materials or equipment must be equal to at least $25,000, but not exceed $500,000.

If the tax credit exceeds the taxpayer's income, privilege, or premium tax liability for the year in which the expenditures were made, the excess amount may be carried over for deduction in the next succeeding year or years until the total amount of the credit has been deducted from the tax liability, except no credit may be carried forward after the 10th taxable year succeeding the taxable year in which the expenditures were made.

Any bank, savings and loan association, or savings bank must pay taxes on 50% of the interest earned on loans to taxpayers used for costs and expenses for the restoration and preservation of a commercial structure at least 50 years old or for the installation of fire suppression materials or equipment.

New Section 14(c) creates a "pass-through" of the credit for subchapter S corporations, partnerships, and limited liability companies. The new language provides:

> *(c) If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares*

of the income or loss of the corporation, partnership or limited liability company, or as the corporation, partnership or limited liability company mutually agree as provided in the bylaws or other executed agreement. Credits granted to a partnership, a limited liability company taxed as a partnership or other multiple owners of property shall be passed through to the partners, members or owners respectively pro rata or pursuant to an executed agreement among the partners, members or owners documenting any alternate distribution method.

The new Act allows for the sale, assignment, conveyance, or transfer of these tax credits. The taxpayer acquiring credits (transferee) can use the amount of the acquired credits to offset up to 100% of the transferee's income, privilege, or premium tax liability for either the taxable year in which the costs and expenses were made or the taxable year in which the transferee received the credit. Unused credit may be carried forward for up to five years, with all credits being claimed within ten years following the tax year in which the costs and expenses were made. The transferor and transferee are required to enter into a written agreement which establishes the terms and conditions of the transfer of the credit.

A credit cannot be claimed under the provisions of the new Historic Kansas Act if a credit is claimed under the provisions of the Historic Preservation Tax Credit found in K.S.A. 79-32,211, and amendments thereto.

To apply for the credit an Application for Commercial Restoration and Preservation Credit must be completed and submitted to the Department of Revenue for review. The Department has developed a web application available in our Kansas Customer Service Center at: www.ksrevenue.gov. **The Application must be submitted between December 1st and December 31st of the year in which the costs and expenditures were made. Applications will be reviewed and processed in the order received until all applications have been processed or the $10 million cap has been reached, whichever comes first.** If approved, the Department will issue a Tax Credit Certificate for the credit allowed, no later than February 1st of the following year.

After an Application has been approved and a Tax Credit Certificate has been issued, all or part of the commercial restoration and preservation credit may be transferred to another individual or entity. Transfers become effective per an agreement between the two parties. Once a transfer has been made, the transferor and the transferee should complete and submit Form K-260 Kansas Tax Credit Transfer Notification to the Department of Revenue. Submission of this form notifies the Department that a transfer has taken place and allows the Department to update ownership records for tax reporting purposes. Submission of the Form K-260 should not precede the actual transfer or agreement, and does not constitute the actual transfer.

Additional information regarding the Form K-206 Application for Commercial Restoration and Preservation Credit, the Form K-260 Kansas Tax Credit Transfer Notification, and recent amendments to the Historic Preservation Tax Credit (Notice 22-11), are available through the Department's website at: www.ksrevenue.gov.

TAXPAYER ASSISTANCE

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

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