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NOTICE 24-14

PREGNANCY RESOURCE ACT TAX CREDIT AND EXEMPTION

(JULY 1, 2024)

During the 2024 Legislative Session House Bill 2465 was passed and signed into law. The Bill establishes the Pregnancy Resource Act, which provides an income, privilege, and premium tax credit for certain contributions to eligible charitable organizations, as well as allowing a sales tax exemption for pregnancy resource centers and residential maternity facilities.

New Section 8(a) establishes the Act.

Definitions

New Section 8(b) defines certain terms used in the act. It provides:

(1) "Eligible charitable organization" means an organization that is:

(A) Exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(B) a nonprofit organization organized under the laws of this state; and

(C) (i) a member of an organization whose members are pregnancy centers or residential maternity care facilities based in the state; or

(ii) a pregnancy center or residential maternity facility that:

(a) Maintains a dedicated phone number for clients;

(b) maintains in this state its primary physical office, clinic or residential home that is open for clients for a minimum of 20 hours a week, excluding state holidays;

(c) offers services, at no cost to the client, for the express purpose of providing assistance to women in order to carry their pregnancy to term, encourage parenting or adoption, prevent abortion and promote healthy childbirth; and

(d) utilizes trained healthcare providers to perform any available medical procedures.

(2) "Healthcare provider" means an individual licensed, registered or certified by the:

(A) State board of healing arts;

(B) board of nursing; or

(C) behavioral sciences regulatory board.

Tax Credit

New Section 8(c)(1) creates the tax credit. It provides that, for taxable years commencing after December 31, 2023, a credit shall be allowed against the income, privilege or premium tax liability imposed upon a taxpayer pursuant to the Kansas income tax act, the privilege tax imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premiums tax and privilege fees imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, in an amount equal to 70% of the total amount contributed during the taxable year by a taxpayer to an eligible charitable organization. Please not that for purposes of the new credit, the Department of Revenue will allocate credits on the basis of a calendar tax year.

New Section 8(c)(2) provides a contribution for which a credit is claimed must be a voluntary contribution and shall not be a payment for services rendered.

New Section 8(c)(3) provides that if the amount of the credit exceeds the taxpayer's tax liability for such tax year, the taxpayer may carry over the amount that exceeds their current tax liability for deduction from the taxpayer's liability in the next succeeding tax year or years until the total amount of the tax credit has been deducted from tax liability. However, no credit can be carried over for deduction after the fifth tax year succeeding the tax year in which the contribution was made.

New Section 8(c)(4) provides that in no event shall the total amount of credits allowed under this section for contributions to a single eligible charitable organization exceed $5,000,000 per tax year. Similarly, New Section 8(c)(5) provides the aggregate amount of credits claimed shall not exceed $10,000,000 per tax year.

Reporting Requirements

New Section 8 also establishes several reporting requirements.

New Section 8(d) requires that taxpayers claiming a credit authorized by Section 8 provide the name of the eligible charitable organization and the amount of the contribution to the Department of revenue on forms provided by the Department.

New Section 8(e) requires that an eligible charitable organization provide the Department with a written certification, pursuant to subsection (f), that it meets all criteria to be considered an eligible charitable organization. The organization shall also notify the Department of any changes that may affect eligibility under this section.

New Section 8(f) provides the eligible charitable organization's written certification must be signed by an officer of the organization under penalty of perjury, and that the written certification shall include the following:

(1) Verification of the organization's status under section 501(c)(3) of the federal internal revenue code of 1986;
(2) a statement that the organization does not provide, pay for, refer for or provide coverage of abortions and does not financially support, partner with or affiliate with any other entity that provides, pays for, refers for or provides coverage of abortions, including nonsurgical abortions and abortifacients;
(3) a statement that the organization maintains its principal office or presence in this state and that at least 50% of its clients claim to be residents of this state; and
(4) any other information that the Department requires to administer this section.

To implement New Section 8(f), the Department has developed a web application that is available through our Kansas Customer Service Center. An organization must apply to the Kansas Department of Revenue to be considered as an eligible charitable organization for purposes of the Pregnancy Resource Act by completing the application and submitting any requested documentation.

New Section 8(g) requires that the Department review each written certification and determine whether the organization meets all the criteria to be considered an eligible charitable organization and notify the organization of its determination. Once certified, the eligible charitable organization will be allowed to receive contributions through the Pregnancy Resource Act. The Department may also periodically request recertification from the organization. The Department is also required to compile and make available to the public a list of eligible charitable organizations.

Pass-Through Entities

New Section 8(h) provides tax credits that are earned by a partnership, limited liability company, S corporation or other similar pass-through entity are to be allocated among all partners, members or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners, members or shareholders mutually agree as provided in an executed agreement.

Application for Credit

New Section 8(i) provides that, prior to claiming any credit on a return, a taxpayer must apply for credits with the Department on forms prescribed by the Department. In the application the taxpayer must certify to the Department the dollar amount of the contribution made or to be made during the calendar year.

To implement New Section 8(i), the Department has developed a web application. Prior to claiming a tax credit on the tax return, a taxpayer must apply for a tax credit by completing, signing, and dating the application and submitting it to the eligible charitable organization with their contribution. The eligible charitable organization will then sign, date, and submit the

completed application to the Kansas Department of Revenue through the web application specifically designed for this tax credit program.

If the contributor is pledging a contribution at the time the application is submitted to the eligible charitable organization rather than actually making a contribution, the contributor will need to indicate by checking the box that provides the contribution will be made at a later date. Contributions can be made by cash, check, credit card, money order, or cashier's check. A contribution must be made by 90 days from the pledge date or the last day of the taxpayer's tax year, whichever is earlier.

Allocation of Credit

New Section 8(c)(4) provides that in no event shall the total amount of credits allowed under this section for contributions to a single eligible charitable organization exceed $5 million per tax year. Similarly, New Section 8(c)(5) provides the aggregate amount of credits claimed shall not exceed $10 million per tax year.

Should a contributor submit an application to an eligible charitable organization with a promise or pledge to make a contribution, the applicable amount of credit associated with that pledge shall reduce the amount of tax credits that may be issued within any one calendar year and shall also go towards the limitation of $5 million per eligible charitable organization per tax year for that particular eligible charitable organization to whom the pledge was made. A contribution must be received by the eligible charitable organization within 90 days of the date the contributor made the pledge or by the end of the calendar year, whichever is earlier. If the contribution is not received within the 90 days, the credit amount that has been allocated based on the contributor's pledge shall be canceled and returned to the Kansas Department of Revenue for reallocation.

Confirmation of Credit

Upon receipt of form K-96, Pregnancy Resource Act Contributor Application and payment of the contribution, and after allocation of the credit to the eligible charitable organization a Tax Credit certificate for the contributor will be available for download by the eligible charitable organization through the web application. The eligible charitable organization will be responsible for ensuring the Tax Credit certificate is given (emailed, mailed or other) to the contributor.

Claiming the Credit

To claim the credit a contributor should submit schedule K-94, Pregnancy Resource Act Tax Credit with their income, privilege, or premium tax return. The credit schedule will not be available until mid to late December of 2024, at which time it will be available through the Department's website at: www.ksrevenue.gov.

Sales Tax Exemption

K.S.A. 79-3606 is part of the Kansas sales tax act. It delineates the numerous exemptions from Kansas sales tax.

Section 11 amends K.S.A. 79-3606 to add subsection (rrrr), which later legislation redesignated as subsection (wwww). The new subsection provides a sales tax exemption for all sales of tangible personal property or services purchased by a pregnancy resource center or residential maternity facility, as defined in the subsection. Each qualified pregnancy resource center will need to apply, and be approved, for a tax-exempt entity exemption certificate for their purchases to be exempt from sales tax. For information regarding the application process, see: https://www.ksrevenue.gov/prpecwelcome.html

Effective Date

Unless otherwise noted, the provisions of the new Act are effective July 1, 2024.

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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