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NOTICE 24-18

MODIFICATIONS FOR FEDERAL JOBS TAX CREDITS

(AUGUST 13, 2024)

During the 2024 Legislative Session Senate Bill 410 was passed and signed into law. Section 18 of the Bill amends K.S.A. 79-32,117, which requires or permits addition and subtraction modifications to federal adjusted gross income when calculating Kansas adjusted gross income.

As amended, K.S.A. 79-32,117(c)(x) new subparagraph (1) provides that for taxable years beginning after December 31, 2021, any federal credit disallowance under the provisions of 26 U.S.C. § 280C(a) may be claimed as a subtraction modification. 26 U.S.C. § 280C(a) provides that no deduction shall be allowed for wage and salary expenses that are equal to the amount of the credit determined for the taxable year. 26 U.S.C. § 280C(a) also establishes the federal rule for certain federal employment credits, including the Indian employment credit, the employer wage credit for employees who are active-duty members of the uniformed services, the employer credit for paid family and medical leave, the work opportunity credit, and the empowerment zone employment credit.

In addition, K.S.A. 79-32,117(c)(x) new subparagraph (2) provides a subtraction modification for 50% of the federal employee retention credit disallowance under rules similar to the rules of 26 U.S.C. § 280C(a) for taxable years beginning after December 31, 2019, and ending before January 1, 2022. Certain proofs of prior filing and payment of Kansas tax are required. Amended filings and claims of refund under this provision shall be allowed for returns filed on or before April 15, 2025.

Effective July 1, 2024, the amended provisions will provide:

> (c)(x) (1) For taxable years beginning after December 31, 2021, the amount of any federal credit disallowance under the provisions of 26 U.S.C. § 280C(a).
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> (2) For taxable years beginning after December 31, 2019, and ending before January 1, 2022, 50% of the amount of the federal employee retention credit disallowance under rules similar to the rules of 26 U.S.C. § 280C(a). The taxpayer shall be required to prove that such taxpayer previously filed Kansas income tax returns and paid Kansas income tax on the disallowed amount. Notwithstanding any other provision of law to the contrary, any claim for refund or amended return relating to this subparagraph shall be allowed to be filed on or before April 15, 2025, and no claim for refund or amended return shall be allowed or filed after April 15, 2025.

The amendments to the law found in new subparagraph (c)(x)(1) apply retroactively to taxable years beginning after December 31, 2021. A subtraction modification under this provision may be claimed retroactively in one of two ways, depending upon how the original tax return(s) were filed and processed. First, if only an original Kansas income tax return was filed, and the only adjustment made to the original return by the Department was the disallowance of the subtraction modification, a review of the disallowance may be requested, in writing, without the need to file an amended return. Second, if the Department adjusted the original return for a reason not associated with the modification, or if an amended return has already been filed for a reason not associated with the modification, file an amended return to claim the subtraction modification, and attach a copy of the federal income tax return and copies of the federal credit forms to substantiate the claimed modification. The amended return(s) needs to be filed prior to the expiration of the statute of limitation according to K.S.A. 79-3230.

When filing a new or amended return for 2020 or 2021 that claims a subtraction modification for an Employee Retention Tax Credit, as provided in new subparagraph (c)(x)(2), please include copies of original and amended federal Form 941 Employer's Quarterly Federal Tax Returns, IRS adjustments to the federal Form 941, copies of amended federal income tax returns (if applicable), and an explanation of changes made on any amended returns. Also include a signed statement by which you certify the amount of salary and wages actually paid and affirm the deduction for salary and wages was reduced by the amount of the Employee Retention Tax Credit on both the federal and state income tax returns. The amended return needs to be filed on or before April 15, 2025 as provided in K.S.A. 79-32,117(c)(x).

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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