

1990, that such employer did not employ prior to such activation and deployment and who is unemployed at the time of such employment shall be allowed a credit against the income tax imposed by the Kansas income tax act in an amount equal to 25% of the amount paid during the taxable year by such employer to such member as salary or compensation. Such credit shall not exceed \$7,000 for each member employed by such employer. The credit provided in this section shall be limited to salary or compensation paid to such member for one year for each member employed by such employer.

(b) The credit allowed by this section shall not exceed the amount of tax imposed under the Kansas income tax act reduced by the sum of any other credits allowable pursuant to law. If the amount of the credit allowed by subsection (a) of this section exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount may be carried over for credit in the same manner in the succeeding taxable years until the total amount of such credit is used.

**History:** L. 2006, ch. 203, § 4; July 1.

**79-32,245. Renewable electric cogeneration facilities; credits for certain investments; definitions.** As used in K.S.A. 2011 Supp. 79-32,245 through 79-32,249, and amendments thereto:

(a) "New renewable electric cogeneration facility" means a renewable electric cogeneration facility which is located in this state and construction of which begins after December 31, 2006.

(b) "Pass-through entity" means any: (1) Corporation which is exempt from income tax under section 1363 of the federal internal revenue code and which complies with the requirements of K.S.A. 2011 Supp. 79-32,100e, and amendments thereto; (2) limited liability company; (3) partnership; or (4) limited liability partnership.

(c) "Qualified investment" means expenditures made in construction of a new renewable electric cogeneration facility, for real and tangible personal property incorporated in and used as part of such facility.

(d) "Renewable electric cogeneration facility" means a facility which generates electricity utilizing renewable energy resources or technologies, as defined in K.S.A. 79-201, and amendments

thereto, and which is owned and operated by the owner of an industrial, commercial or agricultural process to generate electricity for use in such process to displace current or provide for future electricity use.

**History:** L. 2007, ch. 113, § 10; July 1.

**Cross References to Related Sections:**

Financing of renewable electric cogeneration facilities, 74-8949c.

**79-32,246. Same; amount of credit; requirements.** (a) For taxable years commencing after December 31, 2006, and before January 1, 2012, any taxpayer who is awarded a tax credit under this act by the secretary of commerce and complies with the conditions set forth in this act and the agreement entered into by the secretary and the taxpayer under this act shall be allowed a credit against the taxpayer's tax liability under the Kansas income tax act as provided in subsection (b). Expenditures used to qualify for this credit shall not be used to qualify for any other type of Kansas income tax credit.

(b) The amount of the credit to which a taxpayer is entitled shall be equal to the sum of: (1) An amount equal to 10% of the taxpayer's qualified investment for the first \$50,000,000 invested and (2) an amount equal to 5% of the amount of the taxpayer's qualified investment that exceeds \$50,000,000. Such credit shall be taken in 10 equal, annual installments, beginning with the year in which the taxpayer places into service the new renewable electric cogeneration facility.

(c) If the amount of an annual installment of a tax credit allowed under this section exceeds the taxpayer's income tax liability for the taxable year in which the annual installment is allowed, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the annual installment of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the 14<sup>th</sup> taxable year succeeding the taxable year in which the first annual installment is allowed.

(d) (1) Before making a qualified investment, a taxpayer shall apply to the secretary of commerce to enter into an agreement for a tax credit under this act. The secretary shall prescribe the

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form of the application. After receipt of such application, the secretary may enter into an agreement with the applicant for a credit under this act if the secretary determines that the taxpayer's proposed investment satisfies the requirements of this act. The secretary shall enter into an agreement with an applicant which is awarded a credit under this act. The agreement shall include: (A) A detailed description of the renewable electric cogeneration facility project that is the subject of the agreement, (B) the first taxable year for which the credit may be claimed, (C) the maximum amount of tax credit that will be allowed for each taxable year and (D) a requirement that the taxpayer shall maintain operation of the new renewable electric cogeneration facility for at least 10 years during the term that the tax credit is available.

(2) A taxpayer must comply with the terms of the agreement described in subsection (d)(1) to receive an annual installment of the tax credit awarded under this act. The secretary of commerce, in accordance with rules and regulations of the secretary, shall annually determine whether the taxpayer is in compliance with the agreement. Such agreement shall include, but not be limited to, operation of the new renewable electric cogeneration facility during the tax years when any installments of tax credits are claimed by the taxpayer. If the secretary determines that the taxpayer is in compliance, the secretary shall issue a certificate of compliance to the taxpayer. If the secretary determines that the taxpayer is not in compliance with the agreement, the secretary shall notify the taxpayer and the secretary of revenue of such determination of noncompliance, and any tax credits claimed pursuant to this section for any tax year shall be forfeited.

(3) The secretary of commerce may adopt rules and regulations to administer the provisions of this subsection.

**History:** L. 2007, ch. 113, § 11; July 1.

**79-32,247. Same; pass-through entities.**

(a) If a qualified investment is made by or transferred to a pass-through entity and the credit allowed by this act for a taxable year is greater than the entity's tax liability against which the tax credit may be applied, a shareholder, partner or member of the entity is entitled to a tax credit

equal to the tax credit determined for the entity for the taxable year in excess of the entity's tax liability under the Kansas income tax act for the taxable year multiplied by the percentage of the entity's distributive income to which the shareholder, partner or member is entitled.

(b) If a new renewable electric cogeneration facility is co-owned by two or more taxpayers, the amount of the credit that may be allowed to a co-owner in a taxable year is equal to the tax credit determined under K.S.A. 2011 Supp. 79-32,246, and amendments thereto, with respect to the total qualified investment in such facility multiplied by the co-owner's percentage of ownership in such facility.

(c) Such credit shall be taken in 10 equal, annual installments, beginning with the year in which the entity places into service the new renewable electric cogeneration facility.

(d) If the amount of an annual installment of a tax credit allowed a shareholder, partner, member or co-owner under this section exceeds the taxpayer's income tax liability for the taxable year in which the annual installment is allowed, the amount thereof which exceeds such tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the 14<sup>th</sup> taxable year succeeding the taxable year in which the first annual installment is allowed.

**History:** L. 2007, ch. 113, § 12; July 1.

**79-32,248. Same; claim for credit.** To receive the credit awarded by this act, a taxpayer must claim the credit on the taxpayer's annual state income tax return or returns in the manner prescribed by the director of taxation. The taxpayer shall submit to the director a copy of the taxpayer's agreement for a tax credit entered into with the secretary of commerce pursuant to K.S.A. 2011 Supp. 79-32,246, and amendments thereto, and all information that the director determines necessary for the calculation of the credit provided by this act.

**History:** L. 2007, ch. 113, § 13; July 1.

**79-32,249. Same; accelerated depreci-**

**ation, deduction.** (a) In addition to the income tax credit allowable pursuant to K.S.A. 2011 Supp. 79-32,245 through 79-32,248, and amendments thereto, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income with respect to the amortization of the amortizable costs of a new renewable electric cogeneration facility based upon a period of 10 years. Such amortization deduction shall be an amount equal to 55% of the amortizable costs of such new renewable electric cogeneration facility for the first taxable year in which such new renewable electric cogeneration facility is in production and 5% of the amortizable costs of such new renewable electric cogeneration facility for each of the next nine taxable years.

(b) The election of the taxpayer to claim the deduction allowed by subsection (a) shall be made by filing a statement of such election with the secretary of revenue in the manner and form and within the time prescribed by rules and regulations adopted by the secretary.

(c) The provisions of this section shall apply to all taxable years commencing after December 31, 2006.

(d) The secretary of revenue shall adopt such rules and regulations as deemed necessary to carry out the provisions of this section.

**History:** L. 2007, ch. 113, § 14; July 1.

**79-32,250. Waste heat utilization system at electric generation facility; accelerated depreciation, deduction.** (a) A taxpayer shall be entitled to a deduction from Kansas adjusted gross income with respect to the amortization of the amortizable costs of a waste heat utilization system based upon a period of 10 years. Such amortization deduction shall be an amount equal to 55% of the amortizable costs of such system for the first taxable year in which such system is in operation and 5% of the amortizable costs of such system for each of the next nine taxable years.

(b) The election of the taxpayer to claim the deduction allowed by subsection (a) shall be made by filing a statement of such election with the secretary of revenue in the manner and form and within the time prescribed by rules and regulations adopted by the secretary.

(c) The provisions of this section shall apply to all taxable years commencing after December 31, 2006.

(d) The secretary of revenue shall adopt such rules and regulations as deemed necessary to carry out the provisions of this section.

(e) As used in this section, "waste heat utilization system" has the meaning provided by K.S.A. 2011 Supp. 74-8949d, and amendments thereto.

**History:** L. 2007, ch. 113, § 18; July 1.

**Cross References to Related Sections:**

Property tax exemption for waste utilization system property, 79-231.

Financing of waste utilization systems, 74-8949d.

**79-32,251. Biofuel storage and blending equipment; credits for certain investments; definitions.** As used in K.S.A. 2011 Supp. 79-32,251 through 79-32,255, and amendments thereto:

(a) "Biofuel" means fuel made from organic matter, including solid and liquid organic waste, but excluding fuel made from oil, natural gas, coal or lignite, or any product thereof.

(b) "Fuel terminal" means a fuel storage and distribution facility which is supplied by motor vehicle, pipeline or marine vessel and from which motor fuels may be removed at a rack. "Fuel terminal" does not include any facility at which motor fuel blend stocks and additives are used in the manufacture of products other than motor fuels and from which no motor fuels are removed.

(c) "Qualified investment" means expenditures made for purchase, construction or installation of storage and blending equipment.

(d) "Refinery" means an industrial process plant, located in this state, where crude oil is processed and refined into petroleum products.

(e) "Storage and blending equipment" means any equipment which is used for storing and blending petroleum-based fuel and biodiesel, ethanol or other biofuel and is installed at a fuel terminal, refinery or biofuel production plant. "Storage and blending equipment" does not include equipment used only for denaturing ethyl alcohol.

**History:** L. 2007, ch. 113, § 32; July 1.

**Cross References to Related Sections:**

Property tax exemption for biofuel storage and blending equipment, 79-232.

**79-32,252. Same; amount of credit; requirements.** (a) For taxable years commencing after December 31, 2006, and before January 1,

*Eleventh.* For all taxable years commencing after December 31, 1998, all property actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies. For purposes of this section, "renewable energy resources or technologies" shall include wind, solar, photovoltaic, biomass, hydropower, geothermal and landfill gas resources or technologies.

*Twelfth.* For all taxable years commencing after December 31, 2001, all personal property actually and regularly used predominantly to collect, refine or treat landfill gas or to transport landfill gas from a landfill to a transmission pipeline, and the landfill gas produced therefrom.

The provisions of this section, except as otherwise more specifically provided, shall apply to all taxable years commencing after December 31, 2009.

**History:** L. 1907, ch. 408, § 2; R.S. 1923, 79-201; L. 1929, ch. 283, § 1; L. 1963, ch. 456, § 1; L. 1965, ch. 509, § 1; L. 1967, ch. 486, § 1; L. 1969, ch. 429, § 1; L. 1974, ch. 427, § 1; L. 1975, ch. 495, § 1; L. 1980, ch. 306, § 1; L. 1984, ch. 349, § 1; L. 1985, ch. 311, § 1; L. 1986, ch. 368, § 1; L. 1986, ch. 369, § 1; L. 1988, ch. 372, § 1; L. 1988, ch. 373, § 1; L. 1989, ch. 288, § 1; L. 1992, ch. 84, § 1; L. 1997, ch. 122, § 2; L. 1999, ch. 154, § 3; L. 2000, ch. 139, § 3; L. 2005, ch. 98, § 1; L. 2007, ch. 4, § 3; L. 2009, ch. 69, § 1; July 1.

**Law Review and Bar Journal References:**

"Recall of Local Elected Officials in Kansas," Rich Smith and Theresa Nuckolls, 70 J.K.B.A. No. 8, 18 (2001).

"Turbines vs. Tallgrass: Law, Policy, and a New Solution to Conflict over Wind Farms in the Kansas Flint Hills," Brian Dietz, 54 K.L.R. 1131 (2006).

"Wind Energy Laws and Incentives: A Survey of Selected State Rules," Brent Stahl, Lisa Chavarria and Jeff D. Nydegger, 49 W.L.J. 99 (2009).

**CASE ANNOTATIONS**

80. The entire corporate organization of a continuing care retirement community, not its separate housing units, must be considered in determining eligibility for tax exemption. In re Cole, 268 K. 828, 999 P.2d 962 (2000).

81. Inventory held for purpose of rental and sale not exempt from personal property tax as merchant's inventory. Kansas Enterprises, Inc. v. Frantz 269 K. 436, 6 P.3d 857 (2000).

82. Clinic's personal property is not exempt from taxation under 79-201b First (hospital) but is exempt under 79-201 Ninth (humanitarian service). In re Tax Exemption Application of Via Christi Regional Med. Ctr., 27 K.A.2d 446, 6 P.3d 896 (2000).

83. Drug tax on marijuana is not an unconstitutional ad

valorem tax as it is based on weight, not value; mere possession is sufficient for conviction. State v. Engles, 270 K. 530, 17 P.3d 355 (2001).

84. School dormitory held to be used exclusively for educational purposes and entitled to exemption from taxation. In re Tax Exemption Application of Fire Baptized Holiness Church, 28 K.A.2d 598, 28 P.3d 598 (2001).

85. Tax exemption denied, 79-201 Fourth specifically applies, 79-201 Ninth not applicable to housing facilities. In re Tax Exempt Application of Johnson County Housing Coalition, Inc., 29 K.A.2d 322, 26 P.3d 1279 (2001).

86. Exemption granted; rehabilitation center's operation of fee-based health club is insubstantial and incidental to center's purpose. In re Tax Exempt Application of Mercy Health System of Kansas, Inc., 29 K.A.2d 375, 26 P.3d 78 (2001).

87. K.S.U. foundation purchased building which it leased to K.S.U., using payments from K.S.U. to pay for building; held: Foundation's use of building is as an investment and is subject to ad valorem taxation. In re Tax Exemption Application of K.S.U. Foundation, 34 K.A.2d 40, 114 P.3d 176 (2005).

88. Section discussed and applied; use that is minimal and insubstantial nonexempt use is forgiven. In re Tax Exempt Application of K.S.U. SE Ag. Research Center, 37 K.A.2d 718, 719, 720, 721, 722, 723, 724, 755, 157 P.3d 1 (2007).

89. Cited; statutes relating to property tax exemptions discussed and applied in low income housing exemption denial by BOTA. In re Tax Exemption Application of Inter-Faith Villa, 39 K.A.2d 810, 811, 814, 819 to 821, 824 to 827, 185 P.3d 295 (2008).

90. Picketing activities use of truck held not within exemption for exclusively religious purposes. In re Tax Exemption Application of Westboro Baptist Church, 40 K.A.2d 27, 29, 30, 33, 34, 37, 38, 47, 48, 55, 189 P.3d 535 (2008).

91. Sections 79-201b Third, 79-201 Second and 79-201 Ninth are discussed and applied in denying tax exemption. In re Tax Exemption Application of Gracious Promise Foundation, 42 K.A.2d 180, 205 P.3d 791 (2009).

92. No conflict between 79-201b Fourth and 79-201 Second or Ninth; residential property that does not qualify for exemption under 79-701b Fourth may qualify under either 79-201 Second or Ninth. In re Tax Exemption Application of Mental Health Ass'n of the Heartland, 289 K. 1209, 221 P.3d 580 (2009).

**79-201a. Property exempt from property and ad valorem taxes.** The following described property, to the extent herein specified, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

*First.* All property belonging exclusively to the United States, except property which congress has expressly declared to be subject to state and local taxation.

*Second.* All property used exclusively by the state or any municipality or political subdivision of the state. All property owned, being acquired pursuant to a lease-purchase agreement or operated by the state or any municipality or political subdivision of the state, including property which

An industrial process plant, located in Kansas, where crude oil is processed and refined into petroleum products.

**“STORAGE AND BLENDING EQUIPMENT”** - means any equipment which is used for storing and blending petroleum-based fuel and biodiesel, ethanol or other biofuel and is installed at a fuel terminal, refinery or biofuel production plant. “Storage and blending equipment” does not include equipment used only for denaturing ethyl alcohol.

No storage and blending equipment tax credits have been claimed.

**B. NEW RENEWABLE ELECTRIC COGENERATION FACILITY –K.S.A. 79-32,245 et seq.**

**INCOME TAXPAYER** - Effective for all taxable years commencing after December 31, 2006 and before January 1, 2012.

An income taxpayer that makes a qualified investment in a new renewable electric cogeneration facility shall be allowed a tax credit.

**QUALIFICATIONS**

Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for this tax credit. After receipt of the application the Secretary of Commerce may enter into an agreement with the applicant for a credit if it is determined that the taxpayer’s proposed investment satisfies the requirements.

**CREDIT AMOUNT**

The credit is 10% of the taxpayer’s qualified investment on the first \$50,000,000 invested, and 5% of the taxpayer’s qualified investment that exceeds \$50,000,000. The credit will be taken in ten equal, annual installments, beginning with the year in which the taxpayer placed into service the new renewable electric cogeneration facility.

**LIMITATION OF CREDIT**

If the amount of the credit exceeds the taxpayer’s tax liability in any one taxable year, the remaining portion of the credit may be carried forward until the total amount of the credit is used, except that no such tax credit shall be carried over for deduction after the 14th taxable year after the taxable year in which the first annual installment is allowed.

**NEW RENEWABLE ELECTRIC COGENERATION FACILITY CREDIT DEFINITIONS:**

**“NEW RENEWABLE ELECTRIC COGENERATION FACILITY”** - means a renewable electric cogeneration facility which is located in this state and construction of which begins after December 31, 2006.

**“QUALIFIED INVESTMENT”** - means expenditures made in construction of a new renewable electric cogeneration facility, for real and tangible personal property incorporated in and used as part of such facility.

**“RENEWABLE ELECTRIC COGENERATION FACILITY”** - means a facility which generates electricity utilizing renewable energy resources or technologies, as defined in K.S.A. 79-201, and amendments thereto, and which is owned and operated by the owner of an industrial, commercial or agricultural process to generate electricity for use in such process to displace current or provide for future electricity use.

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From Kansas Department of Revenue "Current Tax-Related Energy Incentives", June 2011

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Pat George, Secretary

Sam Brownback, Governor

**Testimony  
of  
Pat George  
Secretary, Kansas Department of Commerce**

**before the Joint Committee on Energy and Environmental Policy**  
9:00 a.m., Tuesday, November 20, 2012  
Room 152-S

We are pleased to provide information regarding the Renewable Energy Cogeneration Facility Tax Credit, which sunset on December 31, 2011. The program is designed for agricultural, industrial and commercial facilities, including home-based businesses that meet the parameters.

The program encourages businesses to utilize renewable energy applications to off-set electricity usage and has been in effect since 2007. It provides for a 10% tax credit on the amount of the total qualified investment taken in 10 equal annual installments and can be claimed over the course of 14 years.

K.S.A. 17-4652 defines "renewable" energy as wind, solar, photovoltaic, biomass, hydropower, geothermal, waste incineration and landfill gas resources or technologies.

Sixteen agreements were finalized by the end of 2011, reflecting a total investment of over three million dollars (\$3,000,000) in wind and solar installations across the state. Many of those projects were approved in the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2011 as taxpayers sought to take advantage of the tax credit prior to sunset.

Commerce would be happy to provide additional information at the Committee's request.

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