

Kansas Department of Revenue
Policies and Procedures Manual
for the
Higher Education Deferred Maintenance
Tax Credit Program

July 2008

The policies and procedures are provided for the purpose of implementing the
Higher Education Deferred Maintenance Tax Credit Program
and shall be in effect as of July 1, 2008.

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Summary of House Bill 2237 (tax credit portion only)

The 2007 Legislature enacted House Bill 2237 to address the deferred maintenance needs of designated colleges and universities. The legislation provides for a new tax credit based on a specified percentage of a taxpayer's contribution made on or after July 1, 2008 to a community college for capital improvements, a technical college for deferred maintenance or purchases of technology or equipment, or designated universities for deferred maintenance.

The credit is effective for tax years 2008 through 2012, and is applicable to corporate and individual income tax, insurance premiums tax, and bank privilege tax. The credit shall not exceed 50% of the total amount contributed during a taxable year for contributions made to a designated university in Kansas. The credit shall not exceed 60% of the total amount contributed during a taxable year for contributions made to a designated community college or technical college located in Kansas.

If the credit allowed exceeds the tax liability for a taxpayer that contributes to a community college or a technical college, such excess credit shall be refunded to the taxpayer. If the credit allowed exceeds the tax liability for a taxpayer that contributes to a designated university, 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 third taxable year succeeding the year in which the contribution was made.

For calendar year 2008 (beginning July 1, 2008), each community college and technical college is allotted \$78,125 in tax credits. For calendar year 2009, this amount increases to \$156,250, and for calendar years 2010 through 2012, further increases to \$208,233.33.

For designated universities, a total of \$5,625,000 million in tax credits will be divided between the 7 institutions for calendar year 2008 (beginning July 1, 2008). This total amount increases to \$11,250,000 for calendar year 2009, and further increases to \$15,000,000 for calendar years 2010 through 2012. The Board of Regents, in consultation with the Secretary of Revenue and university foundation or endowment association for each institution, will make the allotment of tax credits in advance of any credit issuance each year, with not more than 40% of the total credits being allotted to any one institution, unless all institutions are in agreement. (The allocation for calendar year 2008 can be found on page 16.)

For contributions made by a non-profit entity, credits can be sold or transferred one time, as long as the price is at least 50% of the full value of the credit. The transferee must claim the credit in the year of purchase. The transferor and transferee must file with the Secretary of Revenue a written agreement documenting the transfer within 30 days, subject to the Secretary of Revenue's approval or denial. Amounts received by the transferor shall be taxable as income and the excess of the value of the transferred credit over the amount paid will be taxable as income to the transferee.

Educational Institutions

The designated universities are:

Emporia State University
Fort Hays State University
Kansas State University
Pittsburg State University
University of Kansas
Washburn University
Wichita State University

The designated community colleges are:

Allen County Community College
Barton County Community College
Butler County Community College
Cloud County Community College
Coffeyville Community College and Area Technical School
Colby Community College
Cowley Community College
Dodge City Community College
Fort Scott Community College
Garden City Community College
Highland Community College
Hutchinson Community College
Independence Community College
Johnson County Community College
Kansas City Kansas Community College
Labette Community College
Neosho County Community College
Pratt Community College
Seward County Community College

The designated technical colleges are:

Flint Hills Technical College
Manhattan Area Technical College
North Central Kansas Technical College
Northwest Kansas Technical College
Wichita Area Technical College

Tax Credit Agreement

Each educational institution will enter into an annual tax credit agreement with the Secretary of Revenue. This agreement will provide the amount of tax credits that have been allocated to the specific institution as well as the time period in which donations may be accepted by the institution to distribute tax credits.

Contributions received by a community college that are made through this higher education deferred maintenance tax credit program shall be deposited into the capital outlay fund of the community college established as provided by K.S.A. 71-501a. K.S.A. 79-32,261(b)(1) provides that expenditures from that capital outlay fund shall be made for the purposes described in subsection (a) of K.S.A. 71-501, except that expenditures shall not be made from the fund for new construction or the acquisition of real property for use as building sites or for educational programs.

Upon receipt of any contributions to a technical college made through this higher education deferred maintenance tax credit program, such contributions shall be deposited to a deferred maintenance fund or a technology and equipment fund established by the technical college. K.S.A. 79-32,261(b)(2) provides that expenditures from such fund shall be made only for the purpose as provided in the legislation.

Contributions to a designated university made through this higher education deferred maintenance tax credit program shall be deposited to the appropriate deferred maintenance support fund of the designated university. K.S.A. 79-32,261(b)(3) provides that expenditures from this fund shall be made only for the purposes designated for such fund pursuant to law.

The tax credit agreement for calendar year 2008 will be given or mailed to each qualifying educational institution by June 1, 2008 for signature. This tax credit agreement will be effective for the period July 1, 2008 through December 31, 2008.

The tax credit agreement for calendar years 2009, 2010, 2011 and 2012 will be given or mailed to each qualifying educational institution by November 1 of the preceding calendar year. Each tax credit agreement will be effective for the respective calendar year beginning on January 1 and ending on December 31.

The signed tax credit agreement shall be returned to the Department of Revenue within 15 days of receipt. A copy of the executed tax credit agreement will be provided to each institution.

Tax Credit Application Process

A web database application for certification of tax credits has been implemented by the Department of Revenue. Each designated educational institution will have access to this web application. The database will allow the entering of contributions that have been made to the educational institution through this higher education deferred maintenance tax credit program. The review and approval of tax credit applications will be conducted by the Department of Revenue through the web database. Each educational institution will have access to approved, pending and/or denied applications.

Each educational institution will be asked to assign a manager for this program and secure email address. The Department will correspond with this manager regarding the processing of tax credit applications.

Process for tax credit application submittal:

Each designated educational institution shall identify the representative(s) from their respective institution that will be entering the contributor information into the web based application. Each identified representative that logs into the system will be required to register with the Department of Revenue and will enter a User ID and password. The representative must also enter an Account ID and PIN which is unique to that educational institution. The educational institution representative shall be required to enter the following information for each donor/contributor that is receiving a tax credit in return for a donation to the institution.

- Name of the donor/contributor (if the donor/contributor is a pass through entity, additional information shall be required of that entity, specifically, KDOR will need to know each shareholder, partner, or member's name, SSN, address and percentage of ownership in the pass through entity making the contribution.)
- Social security number (SSN) if the donor/contributor is an individual
- Employer identification number (EIN) if the donor/contributor is a business
- Street address, city, county, state and zip code of the donor/contributor
- E-mail address of the donor/contributor
- Type of contribution (cash, stocks/bonds, personal property, real property) (memo line of the check must designate that the contribution is for deferred maintenance)
- Amount of contribution
- Date of contribution (cash = date of check or credit card receipt, stocks/bonds = date of transfer, personal property = date educational institution takes possession of the property, real property = date title of property transfers to educational institution.)
- Fund name that the contribution will be deposited to
- Project to be funded by the contribution
- Required documentation (documentation will vary based on the type of contribution.)

Should one contributor make several types (i.e. cash and stocks) of contributions to an educational institution, a separate tax credit application will be required for each type of contribution.

Educational institutions will submit any tax credit applications to the Department of Revenue for approval within 10 days of receipt. Once received by the Department, KDOR will review for compliance. Each educational institution will be able to check back in with the web based application to determine those tax credit applications that have been approved, those that are pending, those that are requiring additional information and those that have been denied. Each educational institution shall have the ability to view and print an approved or denied tax credit application as well as the “tax credit certificate” or denial letter.

APPROVED APPLICATIONS

Each approved application will have an attached “Tax Credit Certificate” for that specific contributor. This “Tax Credit Certificate” will include a certificate identification number. This certificate identification number will be used in lieu of the contributor’s SSN or EIN. It will be the educational institution’s responsibility to print and get this “Tax Credit Certificate” back to the donor/contributor. (The donor/contributor will also have the ability to gather this “Tax Credit Certificate” through our Taxpayer Web Site.) This certificate will be used when the donor/contributor completes the tax return to claim the tax credit.

PENDING APPLICATIONS

Applications that are submitted to the Department of Revenue by the educational institution will be held pending until the Department has reviewed them.

APPLICATIONS REQUIRING ADDITIONAL INFORMATION

Should additional information be required to complete the review of the tax credit application, KDOR will communicate to the educational institution through the web based application that additional information is needed.

DENIED APPLICATIONS

Should the tax credit application be denied, the Department will communicate such denial through the web based application. A denial letter will be made available for the educational institution to print for the contributor/donor. It will be the educational institution’s responsibility to send this denial letter to the donor/contributor. (The donor/contributor will also have the ability to obtain this “denial” through our Taxpayer Web Site.)

Kansas Tax Credit Amount

Contributions that are made through the higher education deferred maintenance tax credit program to a designated community college or technical college may receive a Kansas tax credit that shall not exceed 60% of the total amount contributed during the taxable year.

Contributions that are made through the higher education deferred maintenance tax credit program to a designated university may receive a Kansas tax credit that shall not exceed 50% of the total amount contributed during the taxable year.

Documentation Requirements for Contributions Received

Documentation shall be required for all contributions that are made to an educational institution through this higher education deferred maintenance tax credit program.

KANSAS

Cash Donations: Proof of documentation must be a copy of a check, credit card receipt with signature of donor included, or receipt for cash with signature of donor included. Donations in the form of a check must be made payable to and endorsed by the educational institution and specifically noted for the approved fund. The date of the check will be considered the date of the donation and must be postmarked by December 31, 2008 to be considered as a 2008 contribution. Contributions charged on a credit card are considered paid on the date the transaction is conducted. If the contributor uses a pay-by-phone account to make a contribution, the date the contribution is made is the date the financial institution pays the amount. This date will be shown on the statement the financial institution sends to the contributor.

Stocks and Bonds: Proof of documentation is the transfer from the donor to the educational institution indicating the name of the stock/bond, the number of shares, the date of donation, and documentation of the sale of the stocks/bonds by the educational institution indicating the name of the stock/bond, the number of shares and the total value of the stocks/bonds sold. Stocks/bonds contributed shall be valued at the average stock/bond price ($\text{Hi trade price} + \text{Low trade price}/2$) on the date of transfer. For example: educational institution receives 100 shares of XYZ Corporation at \$30/share on 1/31/09 (High price of \$40 + low price of \$20/2). Total value contributed to the educational institution would be \$3,000 (100 shares x \$30/share). The gift of a properly endorsed stock certificate is completed on the date of mailing or other delivery to the educational institution. If the taxpayer delivers the certificate to a bank or broker acting as an agent, for transfer into the name of the organization, the date of the contribution is the date the stock is transferred on the books of the issuing entity.

Personal Property Items: Proof of documentation includes a copy of an invoice showing the cost to the donor or current fair market value, whichever is less. (Fair market value is the price that property would sell for on the open market.) Used equipment invoices must be submitted with an appraisal of the fair market value of donated item(s). Personal property items contributed and tax credits calculated shall be valued at the lesser of its fair market value or cost to the donor and may include costs incurred in making the contribution, but shall exclude sales tax and profit margin. An independent appraisal may be necessary to determine fair market value should the property donated be a gift or inheritance that is considered a rare and valuable antique or work of art.

Real Estate Donations: Proof of documentation must be a copy of title deed or policy, as well as a copy of at least two (2) appraisals. Contributions of real estate are allowable for tax credit only when title thereto is in fee simple absolute and is clear of any encumbrances or liens. The amount of contribution/tax credit allowable shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers.

FEDERAL

An educational institution shall be required to issue a letter of receipt to a donor/contributor that contributes over \$250. For contributions of stocks/bonds, personal property or real property, please refer to the IRS guidelines for receipt requirements.

Claiming the Kansas Tax Credit

KANSAS

Individual contributors and corporate contributors that have made a contribution to an educational institution will be required to file the appropriate tax return electronically. Individuals shall file an individual income tax return (Form K-40) and corporations shall file a corporate income tax return (Form K-120) electronically.

For donors/contributors that file a privilege tax return or a fiduciary tax return and that have made a contribution to a designated technical college or community college, the contributor shall enter the amount of credit that has been awarded directly on the applicable tax return. If the contributor is a privilege taxpayer, the amount of credit awarded will be entered directly on Form K-130. If the contributor is a fiduciary income taxpayer, the amount of credit awarded will be entered directly on Form K-41.

For donors/contributors that file a privilege tax return or a fiduciary tax return and that have made a contribution to a designated university, the contributor shall enter the amount of credit to be used directly on the applicable tax return, Form K-130, or Form K-41. Because this is a nonrefundable credit, the contributor will need to determine how much of the tax credit can be applied against the tax liability in any given year and how much credit must be carried forward. A worksheet will be available for those contributors making contributions to designated universities.

FEDERAL

While federal publications provide that taxpayers may deduct charitable contributions of money or property made to qualified organizations if they itemize deductions, the Department has received informal verbal advice from the Internal Revenue Service that a charitable donation that generates a state income tax credit should be reduced by the amount of the tax credit. Pursuant to Internal Revenue Code section 170 and accompanying regulations, a taxpayer making a charitable donation and receiving a “quid pro quo” for that donation must reduce the amount of the charitable contribution donation by the value of the quid pro quo, i.e., the state tax credit.

The IRS has provided that the amount of the tax credit would have to be subtracted from the amount of the contribution in the year the contribution is made on the federal return. Contributors should be directed to their tax advisor regarding federal tax questions.

Example:

A taxpayer makes a \$10,000 contribution to an educational institution and receives a state tax credit in the amount of \$6,000. The taxpayer may be eligible to deduct a maximum of \$4,000 as a charitable donation on the federal return. The taxpayer would receive a \$6,000 Kansas tax credit to be applied against their state tax liability.

Transfer of the Kansas Tax Credit

Only a not-for-profit organization that is not subject to Kansas income, privilege or premiums tax can sell the deferred maintenance tax credit that has been issued. To sell the tax credit, the not-for-profit organization must notify the Secretary of Revenue of such sale or transfer.

The sale price of a tax credit shall be at least 50% of the full value of the credit. The taxpayer acquiring the tax credit, hereinafter designated the transferee, may use the amount of the acquired credits to offset 100% of the taxpayer's income, privilege or premiums tax liability for the taxable year in which the acquisition was made. Tax credits may be sold or transferred only one time and, if sold or transferred, shall be transferred in the tax year such credit is earned or in the two successive tax years. A transferred credit shall be claimed in the tax year purchased.

The transferor, or not-for-profit organization shall enter into a written agreement with the transferee establishing the terms and conditions of the sale or transfer and shall perfect the transfer by notifying the secretary of revenue in writing within 30 calendar days following the effective date of the transfer. The secretary of revenue shall review the agreement and approve or deny the request. The amount received by the transferor of such tax credit shall be taxable as income of the transferor, and the excess of the value of such credit over the amount paid by the transferee for such credit shall be taxable as income of the transferee.

Quarterly Reports

Quarterly reports shall be submitted by the chief executive officer of an educational institution. This quarterly report shall identify the following information:

- The name and either the employer identification number or social security number of each contributor in that quarter
- The amount and form of each contribution received in that quarter;
- The total amount of qualified tax credits based on the contributions received in that quarter (contribution date);
- The total amount of credits that remain from the educational institution's annual allocation; and
- Any other relevant information that the secretary revenue requires.

Quarterly reports shall be due on or before the 10th day following the end of each calendar quarter and shall be initiated and submitted through the web based application by the educational institution.

Timeline

CY 2008 ALLOCATION

June 15, 2008-tax credit agreement filed with the secretary of revenue for CY 2008
July 1, 2008-begin accepting contributions through the higher education deferred maintenance tax credit program for CY 2008
October 10, 2008-1st quarterly report due for CY 2008
November 1, 2008-reallocation of any unused tax credit amounts to other designated universities
December 31, 2008-last day to accept contributions through the higher education deferred maintenance tax credit program for CY 2008
January 10, 2009-2nd and final quarterly report due for CY 2008

CY 2009 ALLOCATION

November 1, 2008-tax credit agreement filed with the secretary of revenue for CY 2009
January 1, 2009-begin accepting contributions through the higher education deferred maintenance tax credit program for CY 2009
April 10, 2009-1st quarterly report due for CY 2009
July 10, 2009-2nd quarterly report due for CY 2009
October 10, 2009-3rd quarterly report due for CY 2009
November 1, 2009-reallocation of any unused tax credit amounts to other designated universities
December 31, 2009-last day to accept contributions through the higher education deferred maintenance tax credit program for CY 2009
January 10, 2010-4th and final quarterly report due for CY 2009

CY 2010 ALLOCATION

November 1, 2009-tax credit agreement filed with the secretary of revenue for CY 2010
January 1, 2010-begin accepting contributions through the higher education deferred maintenance tax credit program for CY 2010
April 10, 2010-1st quarterly report due for CY 2010
July 10, 2010-2nd quarterly report due for CY 2010
October 10, 2010-3rd quarterly report due for CY 2010
November 1, 2010-reallocation of any unused tax credit amounts to other designated universities
December 31, 2010-last day to accept contributions through the higher education deferred maintenance tax credit program for CY 2010
January 10, 2011-4th and final quarterly report due for CY 2010

CY 2011 ALLOCATION

November 1, 2010-tax credit agreement filed with the secretary of revenue for CY 2011
January 1, 2011-begin accepting contributions through the higher education deferred maintenance tax credit program for CY 2011
April 10, 2011-1st quarterly report due for CY 2011
July 10, 2011-2nd quarterly report due for CY 2011
October 10, 2011-3rd quarterly report due for CY 2011
November 1, 2011-reallocation of any unused tax credit amounts to other designated universities
December 31, 2011-last day to accept contributions through the higher education deferred maintenance tax credit program for CY 2011
January 10, 2012-4th and final quarterly report due for CY 2011

CY 2012 ALLOCATION

November 1, 2011-tax credit agreement filed with the secretary of revenue for CY 2012
January 1, 2012-begin accepting contributions through the higher education deferred maintenance tax credit program for CY 2012
April 10, 2012-1st quarterly report due for CY 2012
July 10, 2012-2nd quarterly report due for CY 2012
October 10, 2012-3rd quarterly report due for CY 2012
November 1, 2012-reallocation of any unused tax credit amounts to other designated universities
December 31, 2012-last day to accept contributions through the higher education deferred maintenance tax credit program for CY 2012
January 10, 2013-4th and final quarterly report due for CY 2012

Allocation for CY 2008-Educational Institutions

The following allocations have been made for calendar year 2008 (July 1, 2008 through December 31, 2008). Kansas statute provides the actual allocation for designated community colleges and technical colleges. By statute, the allocation of the tax credits for each individual designated university is determined by the state board of regents in consultation with the secretary of revenue and the university foundation or endowment association of each designated university. Not more than 40% of the total of credits allowed shall be allocated to any one designated university unless all the designated universities approve. Based upon the language and intent of the statute, the allocation is based on adjusted square footage. Adjusted square footage takes into consideration the square footage, age and complexity of the buildings and infrastructure at each educational institution.

Educational Institution	2008 Allocation
Designated Universities	
Emporia State University	\$324,481
Fort Hays State University	\$371,220
Kansas State University	\$1,624,381
Pittsburg State University	\$370,910
University of Kansas	\$1,540,566
University of Kansas-Medical Center	\$588,471
Washburn University	\$251,092
Wichita State University	\$553,879
Community Colleges	
Allen County Community College	\$78,125
Barton County Community College	\$78,125
Butler County Community College	\$78,125
Cloud County Community College	\$78,125
Coffeyville Community College and Area Technical School	\$78,125
Colby Community College	\$78,125
Cowley Community College	\$78,125
Dodge City Community College	\$78,125
Fort Scott Community College	\$78,125
Garden City Community College	\$78,125
Highland Community College	\$78,125
Hutchinson Community College	\$78,125
Independence Community College	\$78,125
Johnson County Community College	\$78,125
Kansas City Kansas Community College	\$78,125
Labette Community College	\$78,125
Neosho County Community College	\$78,125
Pratt Community College	\$78,125
Seward County Community College	\$78,125
Technical Colleges	
Flint Hills Technical College	\$78,125
Manhattan Area Technical College	\$78,125
North Central Kansas Technical College	\$78,125
Northwest Kansas Technical College	\$78,125
Wichita Area Technical College	\$78,125

Higher Education Deferred Maintenance Tax Credit Program Questions and Answers

Q: If an individual or entity makes a contribution to a school, will that individual or entity receive a tax credit?

A: Only those contributions that are made to a Kansas community college, Kansas technical college or a Kansas designated university as defined in HB 2237 will qualify for a tax credit.

Q: Which community colleges may accept contributions and in turn issue tax credits to those contributors?

A: A Kansas community college has been defined as a community college established under the provisions of the community college act. Those community colleges that will be eligible to issue tax credits in return for contributions made to the capital outlay fund of such community college include:

Allen County Community College
Barton County Community College
Butler County Community College
Cloud County Community College
Coffeyville Community College and Area Technical School
Colby Community College
Cowley Community College
Dodge City Community College
Fort Scott Community College
Garden City Community College
Highland Community College
Hutchinson Community College
Independence Community College
Johnson County Community College
Kansas City Kansas Community College
Labette Community College
Neosho County Community College
Pratt Community College
Seward County Community College

Q: Which of the technical colleges may accept contributions and in turn issue tax credits to those contributors?

A: Technical college means a technical college as designated pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475 and 72-4477. Those technical colleges that will be eligible to issue tax credits in return for contributions made to the deferred maintenance fund or technology and equipment fund of such technical college include:

Flint Hills Technical College-K.S.A. 72-4473
Manhattan Area Technical College-K.S.A. 72-4475
North Central Kansas Technical College-K.S.A. 72-4474
Northwest Kansas Technical College-K.S.A. 72-4477
Wichita Area Technical College-K.S.A. 72-4472

Q: Which universities may accept contributions and in turn issue tax credits to those contributors?

A: The designated universities include:

Emporia State University
Fort Hays State University
Kansas State University
Pittsburg State University
University of Kansas
Washburn University
Wichita State University

Q: Who can make a contribution to a designated university, community college, or technical college and qualify for a tax credit?

A: Any individual, business entity or not for profit organization may make a contribution and qualify for a tax credit.

Q: How much are the tax credits?

A: For contributions made to a designated university, the credit shall not exceed 50% of the total amount contributed during the taxable year. For contributions made to a community college or a technical college, the credit shall not exceed 60% of the total amount contributed during the taxable year.

Q: Is this a refundable tax credit?

A: The tax credit for contributions made to a designated community college or a technical college is a refundable tax credit. A tax credit that is refundable will be applied against the contributor's tax liability in the tax year the contribution is made. Any tax credit remaining following the application against the tax liability shall be refunded to the contributor.

The tax credit for contributions made to a designated university is a nonrefundable tax credit. A tax credit that is nonrefundable will be applied against the contributor's tax liability in the tax year the contribution is made. Any tax credit remaining following the application against the tax liability shall be carried over for deduction in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from the tax liability, except that no such tax credit shall be carried over for deduction after the third taxable year succeeding the taxable year in which the contribution is made.

Q: How does a contributor claim the education tax credit?

A: The tax credit will be claimed directly on the contributor's Kansas individual income tax return, corporate income tax return, privilege tax return, fiduciary tax return or insurance premiums tax return. Kansas individual income tax returns and Kansas corporate income tax returns claiming the education tax credit must be filed electronically.

Q: When does the contributor claim the education tax credit?

A: The contributor shall claim the education tax credit in the tax year in which the contribution is made to the designated university, community college or technical college.

Q: What if a designated university, community college or technical college is not able to issue all of the tax credits that have been allocated to the school?

A: If a community college or technical college is not able to issue all of the tax credits for a specific calendar year, the remaining allocation for that calendar year will be lost.

If a designated university is not able to issue all of the tax credits, the Board of Regents in consultation with the Secretary of Revenue may reallocate those unused tax credits to another designated university. A process will be developed for this reallocation.

Q: May an organization sell the tax credit that has been issued to them?

A: Only a not-for-profit organization that is not subject to Kansas income, privilege or premiums tax can sell the tax credit that has been issued. To sell the tax credit, the not-for-profit organization must notify the Secretary of Revenue of such sale or transfer. The transferor, or not-for-profit organization shall enter into a written agreement with the transferee establishing the term and conditions of the sale or transfer and shall perfect the transfer by notifying the secretary of revenue in writing within 30 calendar days following the effective date of the transfer. The secretary of revenue shall review the agreement and approve or deny the request.

Kansas Law

K.S.A. 79-32,261. (a) On and after July 1, 2008, any taxpayer who contributes in the manner prescribed by this section to a community college located in Kansas for capital improvements, to a technical college for deferred maintenance or the purchase of technology or equipment or to a postsecondary educational institution located in Kansas for deferred maintenance, shall be allowed a credit against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated. The tax credit allowed by this section is applicable for the tax year 2008 for any contributions made on and after July 1, 2008, and for the tax years 2009, 2010, 2011 and 2012 for any contributions made during the entire tax year. The amount of the credit allowed by this section shall not exceed 60% of the total amount contributed during the taxable year by the taxpayer to a community college or a technical college located in Kansas for such purposes. The amount of the credit allowed by this section shall not exceed 50% of the total amount contributed during the taxable year by the taxpayer to a postsecondary educational institution for such purposes. If the amount of the credit allowed by this section for a taxpayer who contributes to a community college or a technical college exceeds the taxpayer's income tax liability imposed by the Kansas income tax act, such excess amount shall be refunded to the taxpayer. If the amount of the tax credit for a taxpayer who contributes to a postsecondary educational institution exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the 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 third taxable year succeeding the taxable year in which the contribution is made. Prior to the issuance of any tax credits pursuant to this section, the structure of the process in which contributions received by a community college, a technical college or a postsecondary educational institution qualify as tax credits allowed and issued pursuant to this section shall be developed by a community college, a technical college and a postsecondary educational institution in consultation with the secretary of revenue and the foundation or endowment association of any such community college, technical college or postsecondary educational institution in a manner that complies with requirements specified in the federal internal revenue code of 1986, as amended, so that contributions qualify as charitable contributions allowable as deductions from federal adjusted gross income.

(b) (1) Upon receipt of any such contributions to a community college made pursuant to the provisions of this section, the treasurer of the community college shall deposit such contributions to the credit of the capital outlay fund of such community college established as provided by K.S.A. 71-501a, and amendments thereto. Expenditures from such fund shall be made for the purposes described in subsection (a) of K.S.A. 71-501, and amendments thereto, except that expenditures shall not be made from such fund for new construction or the acquisition of real property for use as building sites or for educational programs.

(2) Upon receipt of any such contributions to a technical college made pursuant to the provisions of this section, such contributions shall be deposited to the credit of a deferred maintenance fund or a technology and equipment fund established by the

technical college which received the contribution. Expenditures from such fund shall be made only for the purpose as provided in this subsection.

(3) Upon receipt of any such contributions to a postsecondary educational institution made pursuant to the provisions of this section, such contributions shall be deposited to the credit of the appropriate deferred maintenance support fund of the postsecondary educational institution which received the contribution. Expenditures from such fund shall be made only for the purposes designated for such fund pursuant to law.

(c) (1) In no event shall the total amount of credits allowed under this section for taxpayers who contribute to any one such community college or technical college exceed the following amounts: For the tax year 2008, an amount not to exceed \$78,125; for the tax year 2009, an amount not to exceed \$156,250; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$208,233.33.

(2) In no event shall the total of credits allowed under this section for taxpayers who contribute to designated universities exceed the following amounts: For the tax year 2008, an amount not to exceed \$5,625,000; for the tax year 2009, an amount not to exceed \$11,250,000; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$15,000,000. Except as otherwise provided, the allocation of such tax credits for each individual state educational institution shall be determined by the state board of regents in consultation with the secretary of revenue and the university foundation or endowment association of each postsecondary educational institution, and such determination shall be completed prior to the issuance of any tax credits pursuant to this section. Not more than 40% of the total of credits allowed under this section shall be allocated to any one postsecondary educational institution unless all such designated universities approve an allocation to any one such postsecondary educational institution which exceeds 40% of the total of such credits allowed under this section.

(d) As used in this section: (1) “Community college” means a community college established under the provisions of the community college act;

(2) “deferred maintenance” means the maintenance, repair, reconstruction or rehabilitation of a building located at a technical college or a postsecondary educational institution which has been deferred, any utility systems relating to such building, any life-safety upgrades to such building and any improvements necessary to be made to such building in order to comply with the requirements of the Americans with disabilities act or other federal or state law;

(3) “postsecondary educational institution” means the university of Kansas, Kansas state university of agriculture and applied science, Wichita state university, Emporia state university, Pittsburg state university, Fort Hays state university and Washburn university of Topeka; and

(4) “technical college” means a technical college as designated pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475 and 72-4477, and amendments thereto.

(e) Any taxpayer not subject to Kansas income, privilege or premiums tax who contributes to a community college, technical college or postsecondary educational institution, hereinafter designated the transferor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to this section. The sale price of a tax credit shall be at least 50% of the full value of the credit. Such credit shall be deemed to be allowed and earned by any such taxpayer which is only disqualified therefrom by reason of not being subject to such Kansas taxes. The taxpayer acquiring earned credits, hereinafter designated the transferee, may use the amount of the acquired credits to offset up to 100% of the taxpayer’s income, privilege or premiums tax liability for the taxable year in which such acquisition was made. Such credits may be sold or transferred only

one time and, if sold or transferred, shall be transferred in the tax year such credit is earned or the two successive tax years. A transferred credit shall be claimed in the year purchased. The transferor shall enter into a written agreement with the transferee establishing the terms and conditions of the sale or transfer and shall perfect such transfer by notifying the secretary of revenue in writing within 30 calendar days following the effective date of the transfer, subject to the review and approval or denial of such transfer by the secretary of revenue. The transferor and transferee shall provide any information pertaining to the sale or transfer as may be required by the secretary of revenue to administer and carry out the provisions of this section. The amount received by the transferor of such tax credit shall be taxable as income of the transferor, and the excess of the value of such credit over the amount paid by the transferee for such credit shall be taxable as income of the transferee.

(f) The secretary of revenue shall submit an annual report to the legislature to assist the legislature in the evaluation of the utilization of any credits claimed pursuant to this act, including information specific as to each community college, technical college or postsecondary educational institution. Such report shall be due on or before the first day of the legislative session following the tax year in which the credits were claimed.

(g) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this section.

Kansas Administrative Regulations

The Kansas administrative regulations for this program have been published in the Kansas Register and are effective June 20, 2008.

(New Regulation)

92-12-140. Definitions. (a) “Contribution” shall include the donation of cash, stocks and bonds, personal property, or real estate.

(1) Stocks and bonds shall be valued at the stock market price on the date of the transfer.

(2) Personal property shall be valued at the lesser of its fair market value or cost to the donor. The value may be inclusive of costs incurred in making the contribution but shall not include sales tax. If the donor received the personal property as a gift or inheritance and the item is considered a rare and valuable antique or work of art, an independent appraisal may be necessary in determining fair market value.

(3) Contributions of real estate shall be allowable for credit if title to the real estate is in fee simple absolute and is clear of any encumbrances. The amount of credit allowable for contributions of real estate shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers.

(4) Contributions of stocks and bonds shall be converted into cash and deposited within 14 days of receipt of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(5) Contributions of personal property shall be converted into cash and deposited within six months of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(6) Contributions of real property shall be converted into cash and deposited within 18 months of the donation into the capital outlay fund of a community college, the deferred maintenance fund or a technology and equipment fund of a technical college, or the deferred maintenance support fund of a postsecondary educational institution.

(b) "Contributor" shall mean an individual, business entity, or not-for-profit entity that makes a contribution to an educational institution or the educational institution's endowment association or foundation.

(c) "Educational institution" shall mean any of the following:

(1) A community college as defined in K.S.A. 79-32,261(d)(1) and amendments thereto;

(2) a technical college as defined in K.S.A. 79-32,261(d)(4) and amendments thereto;

(3) a state educational institution as defined in K.S.A. 76-711 and amendments thereto; or

(4) Washburn university of Topeka.

(d) “Endowment association” and “foundation” shall mean either of the following:

(1) An entity designated as the investing agent for a state educational institution pursuant to K.S.A. 76-156a and amendments thereto; or

(2) an entity dedicated to securing financial support for Washburn university of Topeka, any community college as defined in K.S.A. 79-32,261(d)(1) and amendments thereto, or any technical college as defined in K.S.A. 79-32,261(d)(4) and amendments thereto.

(e) “Secretary” shall mean the secretary of revenue or the secretary’s designee. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective P-_____.)

(New Regulation)

92-12-141. Tax credit agreement. (a) The chief executive officer of each educational institution for which an allocation of tax credits has been authorized pursuant to K.S.A. 79-32,261, and amendments thereto, shall enter into an annual tax credit agreement with the secretary for the educational institution's allocation of tax credits. The tax credit agreement shall provide the following information:

(1) The name of the educational institution and, if applicable, the name of the educational institution's endowment association or foundation;

(2) the amount of tax credits to be allocated to the institution in the calendar year;

(3) the time period during which donations may be accepted by the educational institution to qualify for tax credits; and

(4) any other relevant information that the secretary requires.

(b) A new tax credit agreement shall be entered into by the secretary with each educational institution for which an allocation of tax credits has been authorized pursuant to K.S.A. 79-32,261, and amendments thereto, at least two months before the beginning of each calendar year for which the tax credits are available. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective P-_____.)

(New Regulation)

92-12-142. Tax credit application. (a) Each contributor making a contribution to an educational institution, or to an endowment association or foundation on behalf of the educational institution, shall complete a tax credit application with the educational institution, endowment association, or foundation on a form furnished by the secretary. The application may be filed by electronic means in a manner approved by the secretary. Each application shall include the following information:

(1) The name, address, and either the employer identification number or the social security number of the contributor;

(2) if the contributor is an S-corporation, a partnership, or a limited liability company, the following information:

(A) The name of each shareholder, partner, or member;

(B) the employer identification number or social security number of each shareholder, partner, or member; and

(C) each shareholder's, partner's, or member's proportionate share of the income or loss of the corporation, partnership, or limited liability company;

(3) the name of the educational institution or the endowment association or foundation to which the contribution is being made and the fund in which the contribution will be deposited;

(4) the amount and form of the contribution;

(5) the date of the contribution; and

(6) any other relevant information that the secretary requires.

(b) The chief executive officer of the educational institution, endowment association, or foundation shall submit the completed tax credit application and supporting documentation to the secretary for review. The educational institution, endowment association, or foundation shall receive written notification from the secretary when the application is approved or denied. The chief executive officer of the educational institution, endowment association, or foundation shall provide a copy of this approval or denial to the contributor that has made the contribution. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective P-
_____.)

(New Regulation)

92-12-143. Quarterly reports. The chief executive officer of each educational institution shall submit or cause to be submitted a quarterly report indicating the amount of contributions qualifying for tax credits. This report shall be submitted to the secretary on a form furnished by the secretary. Any quarterly report may be filed by electronic means in a manner approved by the secretary. A quarterly report shall be submitted on or before the tenth day following the end of each calendar quarter even if no qualifying contributions are received in that quarter. Each quarterly report shall include the following information:

(a) The name and either the employer identification number or the social security number of each contributor in that quarter;

(b) the amount and form of each contribution received in that quarter;

(c) the total amount of qualified tax credits based on the contributions received in that quarter;

(d) the total amount of credits that remain from the educational institution's annual allocation; and

(e) any other relevant information that the secretary requires. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective P-

_____.)

(New Regulation)

92-12-144. Reallocation of credits. (a) If a community college or technical college does not receive contributions sufficient to generate qualifying tax credits for the full amount of the annual allocation in the tax credit agreement, those remaining tax credits shall not be reallocated to another community college or technical college. All tax credits remaining in the allocation for which contributions have not been received by the college shall be considered void at the end of the applicable calendar year.

(b) (1) At the end of the third calendar quarter, the tax credits of a state educational institution and Washburn university of Topeka may be reclaimed by the secretary if the secretary determines that there are no anticipated contributors for the institution's remaining tax credits. The chief executive officer of the state educational institution or Washburn university of Topeka shall send a written notice to the secretary with the quarterly report due for the third calendar quarter, indicating the amount of unclaimed tax credits and an anticipated contribution schedule. The anticipated contribution schedule shall indicate the following information:

- (A) The name of each anticipated contributor;
- (B) the amount of each anticipated contribution; and
- (C) the anticipated date on which each contribution is to be made.

(2) Within 30 calendar days after the deadline for response of the state educational institution or Washburn university of Topeka, the tax credits still remaining within an allocation may be reclaimed from the institution by the secretary. These credits may be reallocated to Washburn university of Topeka or another state educational institution by the secretary of revenue and the board of regents.

(c) Each state educational institution or Washburn university of Topeka that receives reallocated tax credits shall be required to receive qualifying contributions for the reallocated tax credits within that same calendar year. All reallocated tax credits for which qualifying contributions were not received by the institution shall be considered void at the end of the applicable calendar year. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective P- _____.)

(New Regulation)

92-12-145. Transfer of tax credits. (a) Any tax credits earned by a contributor not subject to Kansas income, privilege, or premiums tax may be transferred to any taxpayer that is subject to Kansas income, privilege, or premiums tax. These tax credits shall be transferred only one time. The transferee shall claim the tax credit against the transferee's tax liability in the tax year of the transfer.

(b) The transferor and transferee shall execute a written transfer agreement to transfer the tax credit. The agreement shall include the following information:

(1) The name and either the employer identification number or the social security number of the transferor;

(2) the name and either the employer identification number or the social security number of the transferee;

(3) the date of the transfer;

(4) the date the contribution was made by the transferor;

(5) the amount of tax credit transferred;

(6) the amount that will be received by the transferor for the tax credit transferred; and

(7) any other relevant information that the secretary requires.

(c) Each transfer agreement shall be reviewed by the secretary. If the transfer agreement is approved, a certificate of transfer shall be issued to the

transferor and transferee indicating approval of the transfer. If the transfer agreement is denied, written notification of the denial shall be issued to the transferor and transferee. (Authorized by and implementing K.S.A. 2007 Supp. 79-32,261; effective P-_____.)