

NOTICE 23-09

RESEARCH AND DEVELOPMENT TAX CREDIT

(SEPTEMBER 6, 2023)

During the 2022 Legislative Session House Bill 2239 was passed and signed into law. Section 41 of the Bill amended K.S.A. 79-32,182b to increase and make transferable the credit for research and development activities.

K.S.A. 79-32,182b provides a credit against Kansas income tax for expenditures in research and development activities conducted in Kansas. The phrase “expenditures in research and development activities” is defined in subsection (c) of the statute to mean expenses allowable for deduction under the Internal Revenue Code. In accordance with subsection (a), for tax years prior to 2023 the credit is equal to 6.5% of, “the amount by which the amount expended for such activities in the taxable year of the taxpayer exceeds the taxpayer’s average of the actual expenditures for such purposes made in such taxable year and the next preceding two taxable years”.

K.S.A. 79-32,182b(a) was amended to increase the research and development credit from 6.5% to 10% for tax year 2023 and all years thereafter.

K.S.A. 79-32,182b(d) was amended to remove a limitation that allowed only C corporations to claim the credit. For tax year 2023 and all years thereafter, any Kansas income taxpayer, including individuals, partnerships, S corporations, limited liability companies, other pass-through entities, and C corporations may claim the credit.

Unlike prior years, taxpayers wishing to claim the credit must complete and submit an application form prior to claiming the credit. This is because, as explained below, the credit is now transferable, and the transfer may occur prior to the taxpayer claiming the credit. To apply for the credit, complete form K-204 Research and Development Credit Application, which is available from the Department’s website at: www.ksrevenue.gov.

New language added to K.S.A 79-32,182b(d) provides, effective for tax year 2023, and all tax years thereafter, new credits may be transferred by a taxpayer without a current tax liability to any person and be claimed by the transferee as a credit against the transferee’s Kansas income tax liability in the tax year when it was transferred. The credit claimed by the transferee may be carried forward by the transferee until the credit is entirely used.

However, that carry forward credit shall be subject to limitations and requirements in place at the time the credit was earned.

A transferred credit is not refundable. Only the full credit received by the transferor may be transferred to a transferee, and the credit may only be transferred one time. Documentation of any credit acquired by transfer must be provided by the taxpayer or transferee in the manner established by the Department of Revenue. Complete form K-260, Kansas Tax Credit Transfer Notification Form which is available from the Department's website at: www.ksrevenue.gov/pdf/k-260.pdf.

TAXPAYER ASSISTANCE

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