SENATE BILL No. 45

AN ACT relating to income taxation; amending K.S.A. 2000 Supp. 79-3230, 79-32,195, 79-32,197, 79-32,197a, 79-32,201 and 79-32,207 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. The provisions of sections 1 through 7 of this act shall be known and may be cited as the individual development account program for assistive technology.

New Sec. 2. As used in this act:

(a) ''Account holder'' means a person who is the owner of an individual development account.

(b) ''Assistive technology'' means any item, piece of equipment or product system, whether acquired commercially, off the shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of individuals with disabilities.

(c) ''Community-based organization'' means any nonprofit or charitable association that is approved by the institute to implement the individual development account reserve fund.

(d) ''Institute'' means the Schiefelbusch institute for life span studies of the university of Kansas.

(e) ''Federal poverty level'' means the most recent poverty income guidelines published in the calendar year by the United States department of health and human services.

(f) ''Financial institution'' means any bank, trust company, savings bank, credit union or savings and loan association or any other financial institution regulated by the state of Kansas, any agency of the United States or other state with an office in Kansas which is approved by the institute to create and manage the necessary financial instruments setting up individual development accounts for eligible families or individuals to implement this program.

(g) ''Individual development account'' means a financial instrument established in section 3, and amendments thereto.

(h) ''Individual development account reserve fund'' means the fund created by an approved community-based organization for the purposes of funding the costs incurred in the administration of the program by the financial institutions and the community-based organizations and for providing matching funds for moneys in individual development accounts. Such fund may include federal grant moneys.

(i) ''Matching funds'' means the moneys designated for contribution from an individual development account reserve fund to an individual development account by a community-based organization at a one-to-one ratio up to a three-to-one match.

(j) ''Program'' means the Kansas individual development account program established in sections 1 through 7, and amendments thereto.

(k) ''Program contributor'' means a person or entity who makes a contribution to an individual development account reserve fund.

New Sec. 3. (a) There is hereby established within the institute a program to be known as the individual development account program. The program shall provide eligible families and individuals with an opportunity to establish special savings accounts for moneys which may be used by such families and individuals for assistive technology.

(b) The institute shall adopt rules and regulations and policies to implement and administer the provisions of sections 1 through 7, and amendments thereto.

(c) The institute shall enter into contracts as deemed appropriate to carry out the provisions of this act.

(d) The institute shall prepare a request for proposals from community-based organizations seeking to administer an individual development account reserve fund on a not-for-profit basis. The community-based organization proposals shall include:

(1) A requirement that the community-based organization make matching contributions to the development account of an individual account holder's or family's contributions to the individual development account;

(2) a process for including account holders in decision making regarding the investment of funds in the accounts;

(3) specifications of the population or populations targeted for priority participation in the program;

(4) a process for including economic education seminars in the individual development account program; and

(5) a process for regular evaluation and review of individual development accounts to ensure program compliance by account holders.

(e) A notice of the request for proposals shall be published once a week for two consecutive weeks in a newspaper having general circulation in the community at least 30 days before any action thereon. The request for proposals shall also be posted on readily accessible bulletin boards in all offices of the institute and sent elsewhere as the institute deems best.

(f) In reviewing the proposals of community-based organizations, the institute shall consider the following factors:

(1) The not-for-profit status of such organization;

(2) the fiscal accountability of the community-based organization;

(3) the ability of the community-based organization to provide or raise moneys for matching contributions;

(4) the ability of the community-based organization to establish and administer a reserve fund account which shall receive all contributions from program contributors; and

(5) the significance and quality of proposed auxiliary services, including economic education seminars and their relationship to the goals of the individual development account program.

(g) No more than 20% of all funds in the reserve fund account may be used for administrative costs of the program in the first and second years of the program, and no more than 15% of such funds may be used for administrative costs in any subsequent year. Funds deposited by account holders shall not be used for administrative costs.

(h) No provision of this act shall be deemed to require the institute to be obligated to provide matching funds or to incur any expense in the administration of an individual development account reserve fund.

New Sec. 4. A family or individual whose household income is less than or equal to 300% of the federal poverty level may open an individual development account for the purpose of accumulating and withdrawing moneys for specified expenditures. The account holder may withdraw moneys from the account on the approval of the community-based organization, without penalty, for expenditures for assistive technology.

New Sec. 5. (a) Financial institutions seeking to administer individual development accounts approved by the institute shall be permitted to establish individual development accounts pursuant to sections 1 through 7, and amendments thereto. The financial institution shall certify to the institute, on forms prescribed by the institute and accompanied by any documentation required by the institute, that such accounts have been established pursuant to this act and that deposits have been made on behalf of the account holder.

(b) A financial institution establishing an individual development account shall:

(1) Keep the account in the name of the account holder;

(2) permit deposits to be made in the account by the following, subject to the indicated conditions:

(A) The account holder; or

(B) a community-based organization on behalf of the account holder. Such a deposit may include moneys to match the account holder's deposits, up to a five to one match rate;

(3) require the account to earn at least the market rate of interest; and

(4) permit the account holder to withdraw moneys upon approval of a community-based organization from the account for the purpose as provided in section 4, and amendments thereto.

(c) The total of all deposits by the account holder into an individual development account in a calendar year shall not exceed $5,000. The total balance in an individual development account at any time shall not exceed $50,000.

New Sec. 6. (a) Account holders who withdraw moneys from an individual development account not in accordance with the provisions of section 4, and amendments thereto, shall forfeit all matching moneys in the account.

(b) All moneys forfeited by an account holder pursuant to subsection (a) shall be returned to the individual development account reserve fund of the contributing community-based organization.

(c) In the event of an account holder's death, the account, minus the match funds, may be transferred to the ownership of a contingent beneficiary. An account holder shall name contingent beneficiaries at the time the account is established and may change such beneficiaries at any time. If the named beneficiary is deceased or otherwise cannot accept the transfer, the moneys shall be transferred to the estate of the deceased beneficiary.

New Sec. 7. (a) Appropriate state agencies are hereby directed to amend their state plans to protect the benefits of those receiving such benefits by adding language consistent with the following: Any funds in an individual development account, including accrued interest, shall be disregarded when determining eligibility to receive the amount of any public assistance or benefits.

(b) A program contributor shall be allowed a credit against state income tax imposed under the Kansas income tax act in an amount equal to 25% of the contribution amount.

(c) The institute shall verify all tax credit claims by contributors. The administration of the community-based organization, with the cooperation of the participating financial institutions, shall submit the names of contributors and the total amount each contributor contributes to the individual development account reserve fund for the calendar year. The institute shall determine the date by which such information shall be submitted to the institute by the local administrator. The institute shall submit verification of qualified tax credits pursuant to sections 1 through 7 and amendments thereto to the department of revenue.

(d) The total tax credits authorized pursuant to this section shall not exceed $6,250 in any fiscal year.

(e) The provisions of this section shall be applicable to all taxable years commencing after December 31, 2002.

Sec. 8. K.S.A. 2000 Supp. 79-3230 is hereby amended to read as follows: 79-3230. (a) The amount of income taxes imposed by this act shall be assessed within three years after the *original* return was filed ~~or~~, the tax as shown to be due on the return was paid *or within one year after an amended return is filed*, whichever is the later date, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period. For purposes of this act any return filed before the 15th day of the fourth month following the close of the taxable year shall be considered as being filed on the 15th day of the fourth month following the close of the taxable year, and any tax shown to be due on the return and paid before the 15th day of the fourth month following the close of the taxable year shall be deemed to have been paid on the 15th day of the fourth month following the close of the taxable year.

(b) In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun at any time.

(c) ~~No refund or credit shall be allowed by the director of taxation after three years from the date prescribed by law for filing the return, provided it was filed before the due date, unless before the expiration of such period a claim therefor is filed by the taxpayer. If the return was filed after the due date, a refund claim must be filed not later than three years from the time the return was actually filed, or two years from the date the tax was paid, whichever of such periods expires later.~~ *No claim shall be allowed for credit or refund of overpayment of any tax imposed by this act unless filed by the taxpayer within three years from the date the original return was filed or two years from the date the tax claimed to be refunded or against which the credit is claimed was paid, whichever of such periods expires later, or if no return was filed by the taxpayer, within two years from the date the tax claimed to be refunded or against which the credit is claimed was paid.* Where the assessment of any income tax imposed by this act has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun within one year after the period of limitation as defined in this act.

(d) In case a taxpayer has made claim for a refund, the taxpayer shall have the right to commence a suit for the recovery of the refund at the expiration of six months after the filing of the claim for refund, if no action has been taken by the director of taxation.

(e) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for a refund, the director of taxation is authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations as defined in this act for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. A copy of all such agreements and extensions thereof shall be filed with the director of taxation within 30 days after their execution.

(f) Any taxpayer whose income has been adjusted by the federal internal revenue service or by the income tax collection agency of another state is required to report such adjustments to the Kansas department of revenue by mail within 180 days of the date the federal or other state adjustments are paid, agreed to or become final, whichever is earlier. Such adjustments shall be reported by filing an amended return for the applicable taxable year and a copy of the federal or state revenue agent's report detailing such adjustments. In the event such taxpayer is a corporation, such report shall be by certified or registered mail.

Notwithstanding the provisions of subsection (a) or (c) of this section, additional income taxes may be assessed and proceedings in court for collection of such taxes may be commenced and any refund or credit may be allowed by the director of taxation within 180 days following receipt of any such report of adjustments by the Kansas department of revenue, *or within two years from the date the tax claimed to be refunded or, against which the credit is claimed was paid, whichever period expires later*. No assessment shall be made nor any refund or credit shall be allowable under the provisions of this paragraph except to the extent the same is attributable to changes in the taxpayer's income due to adjustments indicated by such report.

(g) In the event of failure to comply with the provisions of this section, the statute of limitations shall be tolled.

Sec. 9. K.S.A. 2000 Supp. 79-32,207 is hereby amended to read as follows: 79-32,207. (a) As used in this section, ''abandoned oil or gas well'' means an abandoned well, as defined by K.S.A. 2000 Supp. 55-191 and amendments thereto:

(1) The drilling of which was commenced before January 1, 1970; and

(2) which is located on land owned by the taxpayer claiming the tax credit allowed by this section.

(b) For any taxable year commencing after December 31, ~~1997, and before January 1, 2001~~ *2000*, a credit shall be allowed against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer for expenditures made for the purpose of plugging any abandoned oil or gas well in accordance with rules and regulations of the state corporation commission applicable thereto, in an amount equal to 50% of such expenditures made in the taxable year.

(c) If the amount of the tax credit allowed by this section exceeds the taxpayer's income tax liability for such taxable year, 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.

(d) The total amount of credits allowed taxpayers pursuant to this section, including the amount of credits carried over under subsection (c), shall not exceed $250,000 for any one fiscal year.

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

Sec. 10. K.S.A. 2000 Supp. 79-32,195 is hereby amended to read as follows: 79-32,195. As used in this act, the following words and phrases shall have the meanings ascribed to them herein: (a) ''Business firm'' means any business entity authorized to do business in the state of Kansas which is subject to the state income tax imposed by the provisions of the

Kansas income tax act, *any individual subject to the state income tax imposed by the provisions of the Kansas income tax act*, any national banking association, state bank, trust company or savings and loan association paying an annual tax on its net income pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, or any insurance company paying the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto;

(b) ''community services'' means:

(1) The conduct of activities which meet a demonstrated community need and which are designed to achieve improved educational and social services for Kansas children and their families, and which are coordinated with communities including, but not limited to, social and human services organizations that address the causes of poverty through programs and services that assist low income persons in the areas of employment, food, housing, emergency assistance and health care;

(2) crime prevention; and

(3) health care services.

(c) ''crime prevention'' means any nongovernmental activity which aids in the prevention of crime.

(d) ''community service organization'' means any organization performing community services in Kansas and which:

(1) Has obtained a ruling from the internal revenue service of the United States department of the treasury that such organization is exempt from income taxation under the provisions of section 501(c)(3) of the federal internal revenue code; or

(2) is incorporated in the state of Kansas or another state as a nonstock, nonprofit corporation; or

(3) has been designated as a community development corporation by the United States government under the provisions of title VII of the economic opportunity act of 1964; or

(4) is chartered by the United States congress.

(e) ''contributions'' shall mean and include the donation of cash, services or property other than used clothing *in an amount or value of $250 or more*. Stocks and bonds contributed shall be valued at the stock market price on the date of transfer. Services contributed shall be valued at the standard billing rate for not-for-profit clients. Personal property items contributed shall be valued at the lesser of its fair market value or cost to the donor and may be inclusive of costs incurred in making the contribution, but shall not include sales tax. Contributions of real estate are allowable for credit only when title thereto is in fee simple absolute and is clear of any encumbrances. The amount of credit allowable shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers.

(f) ''health care services'' shall include, but not be limited to, the following: Services provided by local health departments, city, county or district hospitals, city or county nursing homes, or other residential institutions, preventive health care services offered by a community service organization including immunizations, prenatal care, the postponement of entry into nursing homes by home health care services, and community based services for persons with a disability, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, services provided by rural health clinics, integration of health care services, home health services and services provided by rural health networks.

(g) ''rural community'' means any city having a population of fewer than 15,000 located in a county that is not part of a standard metropolitan statistical area as defined by the United States department of commerce or its successor agency. However, any such city located in a county defined as a standard metropolitan statistical area shall be deemed a rural community if a substantial number of persons in such county derive their income from agriculture and, in any county where there is only one city within the county which has a population of more than 15,000 and which classifies as a standard metropolitan statistical area, all other cities in that county having a population of less than 15,000 shall be deemed a rural community.

Sec. 11. K.S.A. 2000 Supp. 79-32,197 is hereby amended to read as follows: 79-32,197. The amount of credit allowed pursuant to K.S.A. 79-

32,196, and amendments thereto, shall not exceed 50% of the total amount contributed during the taxable year by the business firm to a community service organization or governmental entity for programs approved pursuant to K.S.A. 79-32,198, and amendments thereto. The amount of credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto, shall not exceed 70% of the total amount contributed during the taxable year by the business firm in a rural community to a community service organization or governmental entity located therein for programs approved pursuant to K.S.A. 79-32,198, and amendments thereto. If the amount of the credit allowed by K.S.A. 79-32,196, and amendments thereto, exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount shall be refunded to the taxpayer. In no event shall the total amount of credits allowed under this section exceed ~~$5,000,000~~ *$4,130,000* for any one fiscal year.

Sec. 12. K.S.A. 2000 Supp. 79-32,197a is hereby amended to read as follows: 79-32,197a. Any business firm or business entity not subject to Kansas income, privilege or premiums tax, hereinafter designated the assignor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to K.S.A. 79-32,196, and amendments thereto, *for an amount not less than 50% of the value of any such credit*. Such credits shall be deemed to be allowed and earned by any such business entity which is only disqualified therefrom by reason of not being subject to such Kansas taxes. The business firm acquiring earned credits, hereinafter designated the assignee, may use the amount of the acquired credits to offset up to 100% of its income, privilege or premiums tax liability for the taxable year in which such acquisition was made. Only the full credit amount for any one contribution may be transferred and such credit may be transferred one time. Unused credit amounts claimed by the assignee may be carried forward for up to five years, except that all such amounts shall be claimed within 10 years following the tax year in which the contribution was made. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the director of community development of the department of commerce and housing in writing within 30 calendar days following the effective date of the transfer and shall provide any information as may be required by the director of community development of the department of commerce and housing to administer and carry out the provisions of this section. The amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the excess of the value of such credit over the amount paid by the assignee for such credit shall be taxable as income of the assignee.

New Sec. 13. The provisions of sections 10 through 12 shall be applicable to all taxable years commencing after December 31, 2000.

Sec. 14. K.S.A. 2000 Supp. 79-32,201 is hereby amended to read as follows: 79-32,201. (a) Any taxpayer who makes expenditures for a qualified alternative-fueled motor vehicle or alternative-fuel fueling station shall be allowed a credit against the income tax imposed by article 32 of chapter 79 of the Kansas Statutes Annotated, as follows:

(1) For any qualified alternative-fueled motor vehicle placed in service on or after January 1, 1996, and before January 1, 2005, an amount equal to 50% of the incremental cost or conversion cost for each qualified alternative-fueled motor vehicle but not to exceed $3,000 for each such motor vehicle with a gross vehicle weight of less than 10,000 lbs.; $5,000 for a heavy duty motor vehicle with a gross vehicle weight of greater than 10,000 lbs. but less than 26,000 lbs.; and $50,000 for motor vehicles having a gross vehicle weight of greater than 26,000 lbs.;

(2) for any qualified alternative-fueled motor vehicle placed in service on or after January 1, 2005, an amount equal to 40% of the incremental cost or conversion cost for each qualified alternative-fueled motor vehicle, but not to exceed $2,400 for each such motor vehicle with a gross vehicle weight of less than 10,000 lbs.; $4,000 for a heavy duty motor vehicle with a gross vehicle weight of greater than 10,000 lbs. but less than 26,000 lbs.; and $40,000 for motor vehicles having a gross vehicle weight of greater than 26,000 lbs.;

(3) for any qualified alternative-fuel fueling station placed in service on or after January 1, 1996, and before January 1, 2005, an amount equal

to 50% of the total amount expended for each qualified alternative-fuel fueling station but not to exceed $200,000 for each fueling station;

(4) for any qualified alternative-fuel fueling station placed in service on or after January 1, 2005, an amount equal to 40% of the total amount expended for each qualified alternative-fuel fueling station, but not to exceed $160,000 for each fueling station.

(b) If no credit has been claimed pursuant to subsection (a), a credit in an amount not exceeding the lesser of 5% of the cost of the vehicle or $750 shall be allowed to a taxpayer who purchases a motor vehicle equipped by the vehicle manufacturer with an alternative fuel system and who is unable or elects not to determine the exact basis attributable to such property. The credit under this subsection shall be allowed only to the first individual to take title to such motor vehicle, other than for resale. *The credit under this subsection for motor vehicles which are capable of operating on a blend of 85% ethanol and 15% gasoline shall be allowed for taxable years commencing after December 31, 1999, only if the individual claiming the credit furnishes evidence of the purchase, during the period of time beginning with the date of purchase of such vehicle and ending on December 31 of the next succeeding calendar year, of 500 gallons of such ethanol and gasoline blend as may be required or is satisfactory to the secretary of revenue.*

(c) The tax credit under subsection (a) or (b) shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of the tax credit 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 expenditures are made.

(d) As used in this section:

(1) ''Alternative fuel'' has the meaning provided by 42 U.S.C. 13211.

(2) ''Qualified alternative-fueled motor vehicle'' means a motor vehicle that operates on an alternative fuel, meets or exceeds the clean fuel vehicle standards in the federal clean air act amendments of 1990, Title II and meets one of the following categories:

(A) Bi-fuel motor vehicle: A motor vehicle with two separate fuel systems designed to run on either an alternative fuel or conventional fuel, using only one fuel at a time;

(B) dedicated motor vehicle: A motor vehicle with an engine designed to operate on a single alternative fuel only; or

(C) flexible fuel motor vehicle: A motor vehicle that may operate on a blend of an alternative fuel with a conventional fuel, such as E-85 (85% ethanol and 15% gasoline) or M-85 (85% methanol and 15% gasoline), as long as such motor vehicle is capable of operating on at least an 85% alternative fuel blend.

(3) ''Qualified alternative-fuel fueling station'' means the property which is directly related to the delivery of alternative fuel into the fuel tank of a motor vehicle propelled by such fuel, including the compression equipment, storage vessels and dispensers for such fuel at the point where such fuel is delivered but only if such property is primarily used to deliver such fuel for use in a qualified alternative-fueled motor vehicle.

(4) ''Incremental cost'' means the cost that results from subtracting the manufacturer's list price of the motor vehicle operating on conventional gasoline or diesel fuel from the manufacturer's list price of the same model motor vehicle designed to operate on an alternative fuel.

(5) ''Conversion cost'' means the cost that results from modifying a motor vehicle which is propelled by gasoline or diesel to be propelled by an alternative fuel.

(6) ''Taxpayer'' means any person who owns and operates a qualified alternative-fueled vehicle licensed in the state of Kansas or who makes an expenditure for a qualified alternative-fuel fueling station.

(7) ''Person'' means every natural person, association, partnership, limited liability company, limited partnership or corporation.

(e) *Except as otherwise more specifically provided,* the provisions of this section shall apply to all taxable years commencing after December 31, 1995.

New Sec. 15. (a) For all tax years commencing after December 31, 2001, each Kansas state individual income tax return form shall contain a designation as follows:

Senior Citizen Meals on Wheels Contribution Program. Check if you wish to donate, in addition to your tax liability, or designate from your refund, _____$1, _____$5, _____ $10, or $_____.

(b) The director of taxation of the department of revenue shall determine annually the total amount designated for contribution to the senior citizen meals on wheels contribution program pursuant to subsection (a) and shall report such amount to the state treasurer who shall credit the entire amount thereof to the senior citizen nutrition check-off fund to be administered by the department of aging to provide financial assistance under the senior nutritional program. In the case where donations are made pursuant to subsection (a), the director shall remit the entire amount thereof to the state treasurer who shall credit the same to such fund. All expenditures from such fund shall be made in accordance with appropriation acts.

Sec. 16. K.S.A. 2000 Supp. 79-3230, 79-32,195, 79-32,197, 79-32,197a, 79-32,201 and 79-32,207 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

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SENATE adopted
Conference Committee Report _____

_____
President of the Senate.

_____
Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

APPROVED _____

_____
Governor.