

CHAPTER 104
HOUSE BILL No. 2222
(Amended by Chapter 186)

AN ACT enacting the individual development account program act; prescribing certain duties and responsibilities on the department of commerce; amending K.S.A. 74-5005 and K.S.A. 2004 Supp. 79-32,117 and repealing the existing sections; also repealing K.S.A. 79-32,117h and K.S.A. 2004 Supp. 79-32,117j and 79-32,117k.

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

New Section 1. The provisions of sections 1 through 8, and amendments thereto, shall be known and may be cited as the individual development account program act.

New Sec. 2. As used in this act:

(a) "Account holder" means a legal resident who is the owner of an individual development account.

(b) "Community-based organization" means any religious or charitable association or tribal entity that is approved by the department to implement the individual development account reserve fund.

(c) "Department" means the department of commerce.

(d) "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.

(e) "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 secretary to create and maintain the necessary financial instruments setting up individual development accounts for eligible families or individuals to implement this program.

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

(g) "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.

(h) "Matching funds" mean 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 ratio.

(i) "Postsecondary education expenses" mean tuition and fees required for enrollment or attendance, and fees, books, supplies and equipment required for courses of instruction at an educational institution.

(j) "Program" means the Kansas individual development account program established in sections 1 through 8, and amendments thereto.

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

(l) "Qualified acquisition costs" mean the costs of acquiring, constructing or reconstructing a residence. The term includes any usual or reasonable settlement, financing or other closing costs.

(m) "Qualified business" means any business that does not contravene any law or public policy, as determined by the secretary.

(n) "Qualified business capitalization expenses" mean qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(o) "Qualified expenditures" mean expenditures included in a qualified plan, including capital, plant, equipment, working capital and inventory expenses.

(p) "Qualified first-time homebuyer" means a taxpayer, and, if married, the taxpayer's spouse, who has no present ownership interest in a principal residence during the three-year period ending on the date on which a binding contract to acquire, construct or reconstruct the principal residence to which this subsection applies is entered into.

(q) "Qualified plan" means a business plan which:

(1) Is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;

(2) includes a description of services or goods to be sold, a marketing plan and projected financial statements; and

(3) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(r) "Qualified principal residence" means a principal residence, the qualified acquisition costs of which do not exceed 100% of the average area purchase price applicable to such residence.

(s) "Secretary" means the secretary of commerce.

New Sec. 3. (a) There is hereby established within the department 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 the purposes enumerated by section 4, and amendments thereto.

(b) The secretary shall adopt rules and regulations and policies to implement and administer the provisions of sections 1 through 8, and amendments thereto.

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

(d) The department 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 requirement that the individual account holder or the family of the account holder attend economic education seminars;

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

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

(7) a requirement that the community-based organization obtain an annual independent audit of the organization's administration of the provisions of sections 1 through 8, and amendments thereto.

(e) A notice of the request for proposals shall be published once in the Kansas register at least 10 days before any action thereon.

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

(1) The not-for-profit status or tribal status of such community-based 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 an individual development reserve fund account which shall receive all contributions from program contributors;

(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; and

(6) the percentage of funds in the reserve fund account that shall be used for administrative costs of the 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.

New Sec. 4. A family or individual whose household income is less than or equal to 200% of the federal poverty level at the time of application to an individual development account program 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 any of the following expenditures:

(a) Postsecondary educational costs for any family member paid from the account directly to an eligible educational institution as determined

by the secretary;

(b) job training costs for any family member 18 years of age or older, at an accredited or licensed training program;

(c) qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer paid directly to the persons to whom the amounts are due;

(d) major repairs or improvements to a primary residence; or

(e) qualified business capitalization expenses paid directly to a business capitalization account which is established in a federally insured financial institution which is restricted for such expenses.

New Sec. 5. (a) Financial institutions seeking to open and maintain individual development accounts approved by the secretary for account holders shall be permitted to establish individual development accounts pursuant to sections 1 through 8, and amendments thereto.

(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 three-to-one match ratio;

(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 any of the purposes listed in subsections (a) through (e) of 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 30% of an account holder's annual personal income not to exceed \$4,000, except when necessary to comply with the emergency withdrawal provisions contained in section 6, and amendments thereto. The total balance in an individual development account at any time shall not exceed \$50,000.

New Sec. 6. (a) Except as otherwise provided, account holders who withdraw moneys from an individual development account not in accordance with subsections (a) through (e) of section 4, and amendments thereto, shall forfeit all matching moneys in the account. Account holders who withdraw moneys from an individual development account not in accordance with subsections (a) through (e) of section 4, and amendments thereto, due to an emergency related to the illness or death of a family member of the account holder, illness of the account holder or loss of employment of the account holder, shall remain an account holder and shall not forfeit all matching moneys in the account as provided by this section as long as the balance in the individual development account reaches the amount in such account prior to such withdrawal within 12 months of the date of such withdrawal or within the number of months the account holder has been depositing funds in the individual development account, whichever occurs later.

(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 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 individual development account reserve fund of the contributing community-based organization.

New Sec. 7. (a) Earnings by any financial institution attributable to its individual development accounts shall be exempt from privilege taxation imposed by article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

(b) Any funds in an individual development account, including accrued interest, shall be disregarded when determining eligibility to receive, or the amount of, any public assistance or benefits.

New Sec. 8. (a) A program contributor shall be allowed a credit against state income tax imposed under the Kansas income tax act in an amount not to exceed 50% of the contribution amount. If the amount of

the credit allowed by this section exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount shall be refunded to the taxpayer. No credit pursuant to this section shall be allowed for any contribution made by a program contributor which also qualified for a community services tax credit pursuant to the provisions of K.S.A. 79-32,195, *et seq.*, and amendments thereto.

(b) 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 secretary of revenue shall determine the date by which such information shall be submitted to the department of revenue by the local administrator.

(c) The total tax credits authorized pursuant to this section shall not exceed \$500,000 in any fiscal year.

(d) The provisions of this section shall be applicable to all taxable years commencing after December 31, 2004.

Sec. 9. K.S.A. 74-5005 is hereby amended to read as follows: 74-5005. The department shall be the lead agency of the state for economic development of commerce through the promotion of business, industry, trade and tourism within the state. In general, but not by way of limitation, the department shall have, exercise and perform the following powers and duties:

(a) To assume central responsibility for implementing all facets of a comprehensive, long-term, economic development strategy and for coordinating the efforts of both state agencies and local economic development groups as they relate to that objective;

(b) to coordinate the implementation of the strategy with all other state and local agencies and offices and state educational institutions which do research work, develop materials and programs, gather statistics, or which perform functions related to economic development; and such state and local agencies and offices and state educational institutions shall advise and cooperate with the department in the planning and accomplishment of the purposes of this act;

(c) to advise and cooperate with all federal departments, research institutions, educational institutions and agencies, quasi-public professional societies, private business and agricultural organizations and associations, and any other party, public or private, and to call upon such parties for consultation, and assistance in their respective fields of interest, to the end that all up to date available technical advice, information and assistance be gathered for the use of the department, the governor, the legislature, and the people of this state;

(d) to enter into agreements necessary to carry out the purposes of this act;

(e) to conduct an effective business information service, keeping up to date information on such things as manufacturing industries, labor supply and economic trends in employment, income, savings and purchasing power within the state, utilizing the services and information available from the division of the budget of the department of administration;

(f) to support a coordinated program of scientific and industrial research with the objective of developing additional uses of the state's natural resources, agriculture, agricultural products, new and better industrial products and processes, and the best possible utilization of the raw materials in the state; and to coordinate this responsibility with the state educational institutions, with all state and federal agencies, and all public and private institutions within or outside the state, all in an effort to assist and encourage new industries or expansion of existing industries through basic research, applied research and new development;

(g) to maintain and keep current all available information regarding the industrial opportunities and possibilities of the state, including raw materials and by-products; power and water resources; transportation facilities; available markets and the marketing limitations of the state; labor supply; banking and financing facilities; availability of industrial sites; and the advantages the state and its particular sections have as industrial locations; and such information shall be used for the encouragement of new industries in the state and the expansion of existing industries within the state;

(h) to publicize information and the economic advantages of the state

which make it a desirable place for commercial and industrial operations and as a good place in which to live;

(i) to establish a clearinghouse for the collection and dissemination of information concerning the number and location of public and private postsecondary vocational and technical education programs in areas critical to economic development;

(j) to acquaint the people of this state with the industries within the state and encourage closer cooperation between the farming, commercial and industrial enterprises and the people of the state;

(k) to encourage and promote the traveling public to visit this state by publicizing information as to the recreational, historic and natural advantages of the state and its facilities for transient travel and to contract with organizations for the purpose of promoting tourism within the state; and the department may request other state agencies such as, but not limited to, the Kansas water office, the Kansas department of wildlife and parks and the department of transportation, for assistance and all such agencies shall coordinate information and their respective efforts with the department to most efficiently and economically carry out the purpose and intent of this subsection;

(l) to participate in economic development and planning assistance programs of the federal government to political subdivisions;

(m) to assist counties and cities in industrial development through the establishment of industrial development corporations, including site surveys, small business administration situations, and render such other similar assistance as may be required; and in those instances where it is deemed appropriate, to contract with and make a service charge to the county or city involved for such services rendered;

(n) to render assistance to private enterprise on planning problems and site surveys upon request and shall make a reasonable service charge for such services rendered; and any moneys received for services rendered, as provided in this subsection, shall be deposited in the fund and expended therefrom, as provided in subsection (o);

(o) to make agreements with other states and with the United States government, or its agencies, and to accept funds from the federal government, or its agencies, or any other source for research studies, investigation, planning and other purposes related to the duties of the department; and any funds so received shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a special revenue fund which is hereby created and shall be known as the "economic development fund" or used in accordance with or direction of the contributing federal agencies; and expenditures from such fund may be made for any purpose in keeping with the responsibilities, functions and authority of the department; and warrants on such fund shall be drawn in the same manner as required of other state agencies upon vouchers signed by the secretary;

(p) to do other and further acts as shall be necessary and proper in fostering and promoting the industrial development and economic welfare of the state;

(q) to organize, or cause to be organized, an advisory board or boards representing interested groups, including industry, labor, agriculture, scientific research, the press, the professions, industrial associations, civic groups, etc.; and such board or boards shall advise with the department as to its work and the department shall, as far as practicable, cooperate with such board or boards, and secure the active aid thereof in the accomplishment of the aims and objectives of the department;

(r) to perform the duties imposed under the *Kansas* venture capital ~~tax credit~~ *company* act;

(s) to serve as the central agency and clearinghouse to collect and disseminate ideas and information bearing on local planning problems; and, in so doing, the department, upon request of the board of county commissioners of any county or the governing body of any city in the state, may make a study and report upon any planning problem of such county or city submitted to it; ~~and~~

(t) to disseminate to the public information concerning economic development programs available in the state, regardless of whether such programs are administered by the department or some other agency and the department shall make available audio-visual and written materials

describing the economic development programs to local chambers of commerce, economic development organizations, banks and public libraries and shall take other measures as may be necessary to effectuate the purpose of this subsection; and

(u) to perform the duties imposed under the individual development account program act, sections 1 through 8, and amendments thereto.

Sec. 10. K.S.A. 2004 Supp. 79-32,117 is hereby amended to read as follows: 79-32,117. (a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments to such sections.

(vii) The amount of any charitable contribution made to the extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2004 Supp. 79-32,204 and amendments thereto.

(ix) The amount of any ad valorem taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203 and amendments thereto.

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2004 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such

amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

(xi) *The amount of any contribution made to the same extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 2004 Supp. 74-50,154, and amendments thereto.*

(xii) *For taxable years commencing after December 31, 2004, amounts received as withdrawals not in accordance with the provisions of section 4, and amendments thereto, if, at the time of contribution to an individual development account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xiii) of subsection (c), or if such amounts are not already included in the federal adjusted gross income.*

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. 228b (a) and 228c (a)(1) *et seq.*

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249

and amendments thereto.

(xiii) For taxable years beginning after December 31, ~~1993~~ 2004, amounts contributed to and the amount of income earned on contributions deposited to an individual development account under ~~K.S.A. 79-32,117h~~ section 1, *et seq.*, and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation.

(xv) For all taxable years beginning after December 31, 1999, amounts not exceeding \$2,000, or \$4,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. *For all taxable years beginning after December 31, 2004, amounts not exceeding \$3,000, or \$6,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education.* The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of K.S.A. 2004 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

(xvi) For the tax year beginning after December 31, 2004, an amount not exceeding \$500; for the tax year beginning after December 31, 2005, an amount not exceeding \$600; for the tax year beginning after December 31, 2006, an amount not exceeding \$700; for the tax year beginning after December 31, 2007, an amount not exceeding \$800; for the tax year beginning December 31, 2008, an amount not exceeding \$900; and for all taxable years commencing after December 31, 2009, an amount not exceeding \$1,000 of the premium costs for qualified long-term care insurance contracts, as defined by subsection (b) of section 7702B of public law 104-191.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

Sec. 11. K.S.A. 74-5005 and 79-32,117h and K.S.A. 2004 Supp. 79-32,117, 79-32,117j and 79-32,117k are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 8, 2005.

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