

Kansas Department of Revenue
Policies and Procedures Manual
for the
Declared Disaster
Capital Investment Credit

September 2008
(revised 10/07/08)

The policies and procedures for the Declared Disaster Capital Investment Credit shall be in effect for the following cities in Kansas: Chanute, Coffeyville, Erie, Fredonia, Greensburg, Independence, Iola, Neodesha, and Osawatomie or within one mile of the city limits of these cities.

The Declared Disaster Capital Investment tax credit program has been established for the purpose of assisting businesses in specific declared disaster areas. This program shall provide an investment credit for any business that constructs, equips, reconstructs, maintains, repairs, enlarges, or furnishes a business facility located in the city of Chanute, Coffeyville, Erie, Fredonia, Greensburg, Independence, Iola, Neodesha, or Osawatomie Kansas, or within one mile of the city limits of any such cities as long as the business is located in Kansas.

INVESTMENT CREDIT QUALIFICATIONS

To the extent funding is available, the secretary of revenue may award an investment tax credit of up to 10% of the qualifying investment made to construct, equip, reconstruct, maintain, repair, enlarge and/or furnish a business facility.

- The business facility must be located in the city of Chanute, Coffeyville, Erie, Fredonia, Greensburg, Independence, Iola, Neodesha, or Osawatomie, Kansas or within one mile of the city limits of any such city.
- The facility must be located in Kansas.
- The investment must be made within three years of the date of the occurrence of the major disaster declaration DR 1699 or DR 1711.
- For qualifying businesses located in Chanute, Coffeyville, Erie, Fredonia, Independence, Iola, Neodesha, or Osawatomie, or within one mile of the city limits of these cities, investment must be made between June 26, 2007 and June 26, 2010.
- For qualifying businesses located in Greensburg, or within one mile of the city limits of this city, investment must be made between May 4, 2007 and May 4, 2010.

INVESTMENT CREDIT AMOUNT

The investment tax credit is up to 10% of the capital investment made in the business facility and is limited to \$100,000.

LIMITATION OF CREDIT

The credit is limited to the taxpayer's tax liability.

The amount of credit which exceeds the tax liability in any one taxable year may be carried forward in the next succeeding year or years until the total amount of credit has been deducted from the tax liability, except that no credit shall be carried forward for deduction after the 10th taxable year succeeding the taxable year in which the qualified investment was made.

Businesses that have received or will receive investment assistance through the Southeast Kansas Business Restoration Assistance Program or the Kiowa County Business Restoration Assistance Program may not qualify for a declared disaster capital investment credit on the same investment that the investment assistance is based on under the Southeast Kansas Business Restoration Assistance Program or the Kiowa County Business Restoration Assistance Program. Any questions regarding these assistance

programs or whether your business has previously qualified may be directed to Kathleen Smith through e-mail, kathleen_smith@kdor.state.ks.us or by phone (785) 296-3070.

A taxpayer claiming an investment credit under this program may not claim any other tax credit for the same investment.

The total amount of credits or refunds allowed under this program shall not exceed \$5,000,000 for any fiscal year.

REFUND ELECTION

A taxpayer may elect to receive a refundable tax credit in lieu of the nonrefundable tax credit. Should the taxpayer make the refund election, the taxpayer will receive 50% of the tax credit. The remaining portion of the tax credit shall be lost. The refund will first be allowed against the tax liability of the taxpayer in the taxable year in which the qualified investment was made. The amount of credit that exceeds the tax liability shall then be refunded to the taxpayer.

PROCEDURES TO APPLY FOR THE CREDIT

Qualifying businesses must apply for the investment tax credit by completing an application located at <https://www.kdor.org/taxcenter/secure/CreditsDefault.aspx>. An application must be submitted and approved prior to the taxpayer claiming the investment tax credit. The taxpayer will need to estimate the expenditures that are proposed to be made during each time period as provided for in the application.

Applications that are submitted to the Kansas Department of Revenue by November 30, 2008 will be considered for funding initially. It is very important that applications be received within this time frame as not more than \$5,000,000 can be expended in any one fiscal year. Applications received after November 30, 2008 and before December 31, 2008 will be considered for tax credits if funding is available. Additional dates may be posted based on funding availability.

Upon review of the application, the Department of Revenue will provide a proposed investment tax credit for which the applicant is eligible. (The Kansas Legislature has set aside \$5,000,000 per fiscal year for this tax credit program. Therefore, allocations based on this cap and the number of eligible businesses applying will be made.) A letter will be mailed to the applicant indicating the proposed investment tax credit.

Once the investment is made, the applicant will certify to the Department of Revenue and document the actual amount of investment by completing Schedule K-87 and filing the schedule with the applicable income tax return, privilege tax return, or insurance premiums tax return for the tax year in which the expenditures were incurred.

PROCEDURES TO CLAIM THE CREDIT

You may download [Schedule K-87](#) (available soon) to claim the declared disaster capital investment credit when it becomes available. This schedule must be completed and submitted with the income or privilege tax return. You may also call the Department of

Revenue voice mail system at (785) 296-4937 to request Schedule K-87. You will be asked to give your name, address, phone number and form(s) you desire. Please allow two weeks for delivery of your forms.

DEFINITIONS

Business facility means a permanent building or structure used in business or commercial operations located in one of the affected cities or within one mile of the city limits of any such cities. It shall include any building or complex of buildings, including the land on which the facility is located and all business machinery and equipment located at or within the facility used in connection with the operation of the facility.

Business machinery and equipment means the tangible personal property physically located at the business facility and used in the business operations. Trade fixtures, racks, shelving, office furnishings, and computers are some examples of business machinery and equipment. It does not include any items held for sale, such as business inventory.

Capital investment means a qualifying investment in the construction, equipment, reconstruction, maintenance, repair, enlargement, furnishing, or remodeling of real property, and the purchase, lease, or repair of tangible personal property. Capital investment shall not include inventory or property held for sale in the ordinary course of business.

Major disaster declaration DR 1699- The President of the United States declared a major disaster under the authority of the Robert T Stafford Disaster Relief Emergency Assistance Act, 42 U.S.C. 5121-5206 for specific counties in the state of Kansas. You may [download additional information regarding this disaster declaration](#).

Major disaster declaration DR 1711-The President of the United States declared a major disaster under the authority of the Robert T Stafford Disaster Relief Emergency Assistance Act, 42 U.S.C. 5121-5206 for specific counties in the state of Kansas. You may [download additional information regarding this disaster declaration](#).

Proposed investment tax credit means the amount of investment tax credit that the Department has proposed for a specific taxpayer through the application process. The amount of the actual investment tax credit claimed on the applicable tax return(s) may not exceed the amount that was previously approved.

Qualifying business means a business that will or is currently providing goods or services within the city of Chanute, Coffeyville, Erie, Fredonia, Greensburg, Independence, Iola, Neodesha, or Osawatomie Kansas, or within one mile of the city limits of any such cities.

Qualifying investment shall mean the value of real and tangible personal property physically located at the business facility, except inventory, or property held for sale to customers in the ordinary course of the taxpayer's business, which constitutes the business facility or which is used by the taxpayer in the operation of the qualifying

business facility. Nondurable goods, such as office supplies (paper, paper clips, folders, staples) and cleaning supplies shall not be considered as qualifying investment.

If the business facility is located in Greensburg or within one mile of that city, the value of such property shall be (1) its original cost if owned by the business and purchased after May 4, 2007 and prior to May 5, 2010; or (2) actual lease payments made after May 4, 2007 and prior to May 5, 2010, if leased by the business.

If the business facility is located in Chanute, Coffeyville, Erie, Fredonia, Independence, Iola, Neodesha, or Osawatomie or within one mile of any of these cities, the value of such property shall be (1) its original cost if owned by the business and purchased after June 26, 2007 and prior to June 27, 2010; or (2) actual lease payments made after June 26, 2007 and prior to June 27, 2010, if leased by the business.

Qualifying investment shall be determined by calculating the value of the investment that has been made at the taxpayer's business facility in Greensburg or within one mile of this city after May 4, 2007 and prior to May 5, 2010.

Qualifying investment shall be determined by calculating the value of the investment that has been made at the taxpayer's business facility in Chanute, Coffeyville, Erie, Fredonia, Independence, Iola, Neodesha, and Osawatomie or within one mile of any of these cities after June 26, 2007 and prior to June 27, 2010.

The investment tax credit shall be claimed in the tax year(s) in which the investment was made, except that qualifying investment made during the applicable portion of 2007 shall be claimed in tax year 2008.

For lessors or landlords that choose to construct, rebuild, or remodel a business facility which will then be leased to a qualifying business, a credit for investment made in the facility is available. For this program, the property shall be valued at its original cost in determining the investment credit to the lessor or landlord. The lease payments that are made by a lessee to rent the business facility will not be considered as qualifying investment.

Any business machinery and equipment purchased by an entity and in turn leased to a qualifying business will not be considered as qualifying investment by the entity that purchased the business machinery and equipment. Rather this purchase of business machinery and equipment and subsequent lease would be considered as inventory of the purchasing business. The leasing of the business machinery and equipment by the qualifying business shall be considered as qualifying investment for that qualifying business.

QUESTIONS AND ANSWERS

QUESTION: If a business is made up of several partners, how does the \$100,000 credit limit per taxpayer apply?

ANSWER: The \$100,000 credit limit will be applied at the pass through entity level, or in this case the partnership level (i.e., the partnership maximum credit is \$100,000).

QUESTION: Does the credit apply to housing?

ANSWER: The credit does not apply to the construction of single family housing, or owner-occupied housing. The investment must be capital investment made in a business. It can apply to the construction of multi-family rental housing, assuming the multi-family housing is not considered property held for sale in the ordinary course of business.

QUESTION: Does the investment tax credit apply to motor vehicles or equipment that does not stay at the business facility?

ANSWER: Yes. The motor vehicle must be registered to the qualifying business and the vehicle and/or equipment must be used in the day to day operations of the business.

QUESTION: My business will be hiring new employees as a result of the capital investment that is being made in one of the designated cities, can I qualify for some type of tax credit based on these new employees hired?

ANSWER: Yes, it is possible that your business could qualify for an employee credit under the business and job development tax credit program. The employee credit will depend on what type of business you are operating and whether your business will be hiring a certain number of employees as a result of the investment made. Please refer to the business and job development credit instructions, [Schedule K-34 instructions](#) for additional information.

QUESTION: When completing the application for the declared disaster capital investment credit, I selected that my credit be refunded. Will I be held to this refund election when completing Schedule K-87 and submitting my tax return?

ANSWER: No, you may change that election when filing your tax return, however, once you have filed your tax return claiming the declared disaster capital investment credit the election shall be final.

QUESTION: My business is a pass through entity. Is the refund election made at the business entity level or at the member, partner, or shareholder level?

ANSWER: The application will be completed at the business entity level, so the initial refund election will be made at the business entity level. The Department of Revenue will not hold the business to the refund election on the application. The final refund election will be made when the actual tax return is filed by the member, partner, or shareholder.

QUESTION: I understand that my business is limited to \$100,000 in credit for this program. What if my expenditures exceed \$1,000,000? Can I receive credit for those additional expenditures?

ANSWER: It is possible that your business could qualify for other tax credit programs regarding this additional investment. [Additional information regarding the business and job development credit program](#) and [high performance incentive program](#) can be found on our website.

QUESTION: What is the Kiowa County Business Restoration Assistance Program and the Southeast Kansas Business Restoration Assistance Program?

ANSWER: The Kiowa County Business Restoration Assistance Program was established through legislation during the 2007 legislative session. 2007 House Bill 2540 established the Kiowa County business restoration assistance program for the purpose of assisting businesses that were in operation in Kiowa County and damaged by the tornado and other severe weather in Kansas on May 4, 2007.

The Kiowa County business restoration assistance program includes:

- **INVESTMENT ASSISTANCE**
A grant of up to 10% of qualifying investment made to rebuild or replace a business facility in Kiowa County and the business machinery and equipment of a business that has been damaged or destroyed by the tornado or other severe weather that occurred on May 4, 2007.
- **JOB RESTORATION ASSISTANCE**
A grant of up to \$3,500 per qualifying job to a business damaged by the tornado and severe weather on May 4, 2007 that fills an employment position in Kiowa County, Kansas.

State Final Council Resolution No. 07-567 established the Southeast Kansas Business Restoration Assistance Program. This program was established for the purpose of assisting businesses with less than 50 employees that were in operation in one of the affected counties and damaged by the flooding and other severe weather in Kansas that began on June 26, 2007. The counties included in this SEK business restoration assistance program are: Allen, Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Cowley, Crawford, Edwards, Elk, Franklin, Greenwood, Harper, Labette, Linn, Miami, Montgomery, Neosho, Osage, Pawnee, Wilson, and Woodson

The business restoration assistance program includes:

- **INVESTMENT ASSISTANCE**
A grant of up to 10% of qualifying investment made to rebuild or replace a business facility within the same community in one of the affected counties and the business machinery and equipment of a business that has been damaged or destroyed by the flood or other severe weather that began on June 26, 2007.
- **JOB RESTORATION ASSISTANCE**
A grant of up to \$3,500 per qualifying job to a business damaged by the flood and other severe weather that began on June 26, 2007 that restores an employment position within the same community in one of the affected counties.

- **RENTAL ASSISTANCE**

An assistance grant for the rent paid by a qualified business to lease a temporary business facility within the same community while the permanent facility is being rebuilt. Rental assistance will be granted for a period of up to six months and may not exceed a total of \$1,500.

Applications for both the Kiowa County Business Restoration Assistance program and the Southeast Kansas Business Restoration Assistance program were due by June 30, 2008.

QUESTION: I have participated in the Business Restoration Assistance Program. May I qualify for the investment tax credit through the declared disaster capital investment program?

ANSWER: It depends. If you have qualified and received or will receive assistance on investment you have made through the Business Restoration Assistance Program, you cannot receive an investment credit through the declared disaster capital investment program on the same investment.