

# Kansas

## AVIATION TAX CREDITS



### FREQUENTLY ASKED QUESTIONS

This information is not to be construed as tax or legal advice. Consultation with your tax or legal advisor is recommended. The Kansas Department of Revenue will issue further guidance through rules and regulations.

#### **Can you define what a "qualified employee" is for each of these credits?**

"Qualified employee" is defined in the statute as follows:

*"Qualified employee" means any person newly employed on a full-time basis by or first contracting with a qualified employer on a full-time basis on or after January 1, 2022, who has been awarded an undergraduate or graduate degree, or a technical degree or certificate from a qualified program by an institution."*

Likewise, the statute defines a "qualified program" as follows:

"Qualified program" means: (1) A program that has been accredited by the engineering accreditation commission of the accreditation board for engineering and technology (ABET), the federal aviation administration or a regional accrediting body and that awards an undergraduate or graduate degree; or (2) a program within the meaning of an associate of applied science degree program or career technical education program, within the meaning of those programs as defined in K.S.A. 74-32,407, and amendments thereto, whether a state or out-of-state program that results in the awarding of a degree or certificate that prepares the graduate for gainful employment with a qualified employer.

Notably, the tuition reimbursement tax credit also requires the qualified employee to have been awarded an undergraduate or graduate degree, or technical degree or certificate from a qualified program within one year prior to or following the commencement of employment with a qualified employer.

To view regional accrediting commissions as posted on the Council for Higher Education Accreditation's website, visit <https://www.chea.org/regional-accrediting-organizations-accreditor-type> and select one of the six regions to view an alphabetical listing of programs that have been accredited.

#### **What classification of employees qualify (W-2, 1099, etc.)? Are 1099 employees eligible under this bill?**

The statute states, "Any person newly employed on a full-time basis by or first contracting with a qualified employer on a full-time basis." 1099/contract employees appear to be eligible under the "qualified employee" definition language in this legislation, presuming they meet the other qualifications.

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## **What are the requirements to be considered a qualified employer for the credit?**

According to the statute:

*“Qualified employer” means a sole proprietorship, general partnership, limited partnership, limited liability company, corporation, other legally recognized business entity or public entity whose principal business activity involves the aviation sector.*

*“Aviation sector” means a private or public organization engaged in the manufacture of aviation or aerospace hardware or software, aviation or aerospace maintenance, aviation or aerospace repair and overhaul, supply of parts to the aviation or aerospace industry, provision of services and support relating to the aviation or aerospace industry, research and development of aviation or aerospace technology and systems, and the education and training of aviation or aerospace personnel.*

## **What if the person works for another company, will they qualify for the credit for changing jobs?**

According to the statute:

*“Qualified employee” means any person newly employed on a full-time basis by or first contracting with a qualified employer on a full-time basis on or after January 1, 2022, who has been awarded an undergraduate or graduate degree, or a technical degree or certificate from a qualified program by an institution.*

The Kansas Department of Revenue will be issuing more specific regulations in the future. However, the intent of the legislation is to fill the aviation talent pipeline in the State of Kansas, not to create an incentive for job hopping between current Kansas aviation employers. We would expect qualifying employees who move to the state of Kansas for a job with a qualifying Kansas aviation employer to be eligible for the credit, including those who had previously worked for an out-of-state aviation company. It is not clear whether a current employee of a Kansas aviation employer who is hired by a different Kansas aviation employer would qualify. Further guidance is needed from the Kansas Dept. of Revenue through rules and regulations to address this issue.

## **Does the employee claim the recruitment incentive on his/her personal tax return at the end of the year?**

Yes. The recruitment incentive is a tax credit that will be claimed on the employee’s personal tax return during tax filing season.

## **With more and more companies allowing associates to telework or offering remote working, are the qualified associates limited to working in Kansas or are they allowed to work outside Kansas?**

As long as the employee is qualified and the employer is qualified according to the bill language, they should be eligible. Generally speaking, employees file taxes in the state where they live. This is a Kansas income tax credit, so a qualified employee would need to be a tax filer in the State of Kansas. Consultation with a tax advisor is recommended.

## **Are there recorded guidelines for these employees? Do we code them a certain way? How do we determine what actually qualifies them for this credit?**

Each employee is ultimately responsible for filing their own state income taxes. Eligible employees will need to individually claim the state income tax credit when they file their state taxes.

See above for definitions related to qualifying employees.

## **Does the 15% of compensation apply to all compensation, including bonus, overtime, etc.?**

It would include bonus and overtime pay (wages subject to withholding tax), but not other benefits.

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According to the statute:

"Compensation" means payments in the form of contract labor for which the payor is required to provide a federal tax form 1099 to the person paid, wages subject to withholding tax paid to a part-time employee or full-time employee, or salary or other remuneration. "Compensation" does not include employer-provided retirement, medical or healthcare benefits, reimbursement for travel, meals, lodging or any other expense.

## **Is there a listing of qualified High school programs available or a definition of that term?**

In general, if the high school career technical education program awards a degree or certification, you can reasonably presume that it satisfies the definition of "qualified program." However, this may be further defined in the Kansas Department of Revenue's forthcoming regulatory guidance.

In the meantime, refer directly to the statute:

*"Qualified program" means: (1) A program that has been accredited by the engineering accreditation commission of the accreditation board for engineering and technology (ABET), the federal aviation administration or a regional accrediting body and that awards an undergraduate or graduate degree; or (2) a program within the meaning of an associate of applied science degree program or career technical education program, within the meaning of those programs as defined in K.S.A. 74-32,407, and amendments thereto, whether a state or out-of-state program that results in the awarding of a degree or certificate that prepares the graduate for gainful employment with a qualified employer.*

As referenced, K.S.A. 74-32,407 states:

*"Career technical education" means organized educational programs offering a sequence of courses which are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. The term "career technical education" also includes technology education and career and technical education as referenced in the Carl D. Perkins career and technical education act of 2006.*

The Carl D. Perkins career and technical education act of 2006 at the end of page 3 and beginning on page 4 defines qualifying institutions/schools as follows:

Sec. 3. (3) AREA CAREER AND TECHNICAL EDUCATION SCHOOL. —The term "area career and technical education school" means—

- (A) a specialized public secondary school used exclusively or principally for the provision of career and technical education to individuals who are available for study in preparation for entering the labor market;
- (B) the department of a public secondary school exclusively or principally used for providing career and technical education in not fewer than 3 different fields that are available to all students, especially in high-skill, high-wage, or in-demand industry sectors or occupations;
- (C) a public or nonprofit technical institution or career and technical education school used exclusively or principally for the provision of career and technical education to individuals who have completed or left secondary school and who are available for study in preparation for entering the labor market, if the institution or school admits, as regular students, individuals who

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have completed secondary school and individuals who have left secondary school; or (D) the department or division of an institution of higher education, that operates under the policies of the eligible agency and that provides career and technical education in not fewer than 3 different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if the department or division admits, as regular students, both individuals who have completed secondary school and individuals who have left secondary school.

## **Will the compensation credit apply to interns?**

If the intern meets the definition of qualified employee: “any person newly employed on a full-time basis by or first contracting with a qualified employer on a full-time basis on or after January 1, 2022, who has been awarded an undergraduate or graduate degree, or a technical degree or certificate from a qualified program by an institution.”

## **How does termination within or subsequent to the year of hire impact the employee and employer credits?**

If they meet all other qualifications, the qualified employee and qualified employer would still be eligible for their respective tax credits even if the employee is terminated within or after the year of hire.

However, this may be further defined in the Kansas Department of Revenue’s forthcoming regulatory guidance.

## **Was there any consideration for credits to help companies retain current employees? These credits seem to encourage employees to switch jobs, rather than stay with their current employers.**

There’s always consideration for other tax credits, but these considerations are often limited (politically and fiscally) by their fiscal note (or financial impact to the state).

The Kansas Department of Revenue will be issuing more specific regulations in the future. However, the intent of the legislation is to fill the aviation talent pipeline in the State of Kansas.

## **Does the degree or certification need to be received one year prior to the hire or received within one year after hire? If a new employee hired received degree a couple years prior, they will not be eligible?**

For the employee and employer tax credits, the degree or certification does not need to be received within one year of the hire date. If a new employee received their degree in a prior year and meets all of the other qualifications, they will be eligible for the credit.

Notably, the tuition reimbursement tax credit is the only credit that requires the qualified employee to have been awarded an undergraduate or graduate degree, or technical degree or certificate from a qualified program within one year prior to or following the commencement of employment with a qualified employer. The other credits don’t require the degree or certificate to be earned within a year.

## **If the employee comes with a certificate they received 6 months ago, we are able to reimburse tuition incurred before they became an employee?**

Correct, as long as the certificate is earned within one year prior to or following the hire date. The tuition reimbursement tax credit requires the qualified employee to have been awarded an undergraduate or graduate degree, or technical degree or certificate from a qualified program within one year prior to or following the commencement of employment with a qualified employer.

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## **Does the tuition reimbursement credit only apply to new employees? If an existing employee gets a certification, we could reimburse their tuition, but it doesn't qualify for the tax credit?**

Correct. The tuition reimbursement credit applies to qualified newly hired employees, with the additional caveat that the degree or certificate must be earned within one year prior to or following the hire date.

## **Are these pass-through credits for S corps, LLC's and partnerships?**

The definition of "qualified employer" encompasses pass-through entities as defined in the statute:

*(g) "Qualified employer" means a sole proprietorship, general partnership, limited partnership, limited liability company, corporation, other legally recognized business entity or public entity whose principal business activity involves the aviation sector.*

## **Would this tax credit be available to a person taking a full time position in 2022 as a corporate pilot for a company based in Wichita, assuming they have a college degree? This seems obviously in the "Aviation sector" to me, but the full bill does not clearly include an aircraft operator as being included in the "Aviation sector." The closest reference was the phrase "...provisions of services and support relating to the aviation... industry."**

The short answer is that it depends more on what the company does than on the specific type of job the employee has within the company. If the company is a qualified employer ("a sole proprietorship, general partnership, limited partnership, limited liability company, corporation, other legally recognized business entity or public entity whose principal business activity involves the aviation sector") and the pilot is a qualified employee ("any person newly employed on a full-time basis by or first contracting with a qualified employer on a full-time basis on or after January 1, 2022, who has been awarded an undergraduate or graduate degree, or a technical degree or certificate from a qualified program by an institution"), then the corporate pilot should be eligible.

To reiterate, the legislation requires the employer to be a company whose principal business activity involves the aviation sector. If, hypothetically speaking, the corporate pilot works for an oil & gas company in Wichita, this employee would not be eligible for the employee tax credit. Please note that "aviation sector," as defined in the bill, is only used in the definition of qualified employer (not in the definition of qualified employee).

## **We currently employ a few interns. We are hoping to hire them as full-time employees after they receive their degrees (Dec 2022). Will they qualify as new employees since there is a status change from intern to full time qualified employee?**

Per the bill, "(f) "Qualified employee" means any person newly employed on a full-time basis by or first contracting with a qualified employer on a full-time basis on or after January 1, 2022, who has been awarded an undergraduate or graduate degree, or a technical degree or certificate from a qualified program by an institution." Without knowing all the details of your intern employment, the key portion of the text is "newly employed on a full-time basis."

The Kansas Department of Revenue may need to issue guidance on this question to further clarify at what point an intern is considered "newly employed on a full-time basis."

## **What is the definition of full time? 30+ hours, the requirement for benefits?**

This is likely as good a guess as any, without seeing the Kansas Department of Revenue regulations. Unfortunately (or perhaps fortunately), the legislation doesn't define it and the USDOL / Fair Labor Standards Act of course does not define it either.

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