



## States' Biofuels Statutes

### STATE OF KANSAS

*This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#). These statutes are placed in reverse chronological order using the date of the most recent amendment to the statute. Many biofuels laws were enacted as amendments to previously passed laws.*

*Current through the 2013 Legislative Session of the Kansas General Assembly.*

#### **79-32,233. Biomass-to-energy plants; credits for certain investments; definitions**

As used in K.S.A. 79-32,233 through 79-32,236, and amendments thereto:

- (a) "Biomass" means any organic matter available on a renewable or recurring basis, including solid and liquid organic waste, but excluding: (1) Petroleum oil, natural gas, coal and lignite, and any products thereof; and (2) corn or grain sorghum suitable for human consumption.
- (b) "Biomass-to-energy plant" means an industrial process plant, located in this state, where biomass is processed to produce annually any of the following, and coproducts: (1) Not less than 500,000 gallons of cellulosic alcohol; (2) liquid or gaseous fuel or energy in a quantity having BTU value equal to or greater than 500,000 gallons of cellulosic alcohol; or (3) oil produced for direct conversion into fuel in a quantity having BTU value equal to or greater than 500,000 gallons of cellulosic alcohol.
- (c) "Expansion of an existing biomass-to-energy plant" means expansion which begins after December 31, 2005, of the capacity of an existing biomass-to-energy plant by at least 10% of such capacity.
- (d) "New biomass-to-energy plant" means a biomass-to-energy plant, construction of which begins after December 31, 2005.
- (e) "Pass-through entity" means any: (1) Corporation which is exempt from income tax under section 1363 of the federal internal revenue code and which complies with the requirements of K.S.A. 79-32,100e, and amendments thereto; (2) limited liability company; (3) partnership; or (4) limited liability partnership.
- (f) "Qualified investment" means expenditures made in construction of a new biomass-to-energy plant or in expansion of the capacity of an existing biomass-to-energy plant, for real and tangible personal property incorporated in and used as part of such plant.

**Credits:** Laws 2006, ch. 209, § 17; Laws 2007, ch. 113, § 27, eff. July 1, 2007.

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**79-32,234. Same; amount of credit; requirements**

(a) For taxable years commencing after December 31, 2005, and before January 1, 2011, any taxpayer who is awarded a tax credit under this act by the secretary of commerce and complies with the conditions set forth in this act and the agreement entered into by the secretary and the taxpayer under this act shall be allowed a credit against the taxpayer's tax liability under the Kansas income tax act as provided in subsection (b). Expenditures used to qualify for this credit shall not be used to qualify for any other type of Kansas income tax credit.

(b) The amount of the credit to which a taxpayer is entitled shall be equal to the sum of: (1) An amount equal to 10% of the taxpayer's qualified investment for the first \$250,000,000 invested and (2) an amount equal to 5% of the amount of the taxpayer's qualified investment that exceeds \$250,000,000. Such credit shall be taken in 10 equal, annual installments, beginning with the year in which the taxpayer places into service the new biomass-to-energy plant or the expansion of an existing biomass-to-energy plant.

(c) If the amount of an annual installment of a tax credit allowed under this section exceeds the taxpayer's income tax liability for the taxable year in which the annual installment is allowed, 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 annual installment of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the 14th taxable year succeeding the taxable year in which the first annual installment is allowed.

(d)(1) Before making a qualified investment, a taxpayer shall apply to the secretary of commerce to enter into an agreement for a tax credit under this act. The secretary shall prescribe the form of the application. After receipt of such application, the secretary may enter into an agreement with the applicant for a credit under this act if the secretary determines that the taxpayer's proposed investment satisfies the requirements of this act. The secretary shall enter into an agreement with an applicant which is awarded a credit under this act. The agreement shall include: (A) A detailed description of the biomass-to-energy plant project that is the subject of the agreement, (B) the first taxable year for which the credit may be claimed, (C) the maximum amount of tax credit that will be allowed for each taxable year and (D) a requirement that the taxpayer shall maintain operation of the new or expanded biomass-to-energy plant for at least 10 years during the term that the tax credit is available.

(2) A taxpayer must comply with the terms of the agreement described in subsection (d)(1) to receive an annual installment of the tax credit awarded under this act. The secretary of commerce, in accordance with rules and regulations of the secretary, shall annually determine whether the taxpayer is in compliance with the agreement. Such determination of compliance shall include, but not be limited to, operation of the new or expanded biomass-to-energy plant during the tax years when any installments of tax credits are claimed by the taxpayer. If the secretary determines that the taxpayer is in compliance, the secretary shall issue a certificate of compliance to the taxpayer. If the secretary

determines that the taxpayer is not in compliance with the agreement, the secretary shall notify the taxpayer and the secretary of revenue of such determination of noncompliance, and any tax credits claimed pursuant to this section for any tax year shall be forfeited.

(3) The secretary of commerce may adopt rules and regulations to administer this subsection.

**Credits:** Laws 2006, ch. 209, § 18; Laws 2007, ch. 113, § 28, eff. July 1, 2007.

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**79-32,235. Same; pass-through entities**

(a) If a qualified investment is made by or transferred to a pass-through entity and the credit allowed by this act for a taxable year is greater than the entity's tax liability against which the tax credit may be applied, a shareholder, partner or member of the entity is entitled to a tax credit equal to the tax credit determined for the entity for the taxable year in excess of the entity's tax liability under the Kansas income tax act for the taxable year multiplied by the percentage of the entity's distributive income to which the shareholder, partner or member is entitled.

(b) If a biomass-to-energy plant is co-owned by two or more taxpayers, the amount of the credit that may be allowed to a co-owner in a taxable year is equal to the tax credit determined under K.S.A. 79-32,234, and amendments thereto, with respect to the total qualified investment in such plant multiplied by the co-owner's percentage of ownership in such plant.

(c) Such credit shall be taken in 10 equal, annual installments, beginning with the year in which the entity places into service the new biomass-to-energy plant or the expansion of an existing biomass-to-energy plant.

(d) If the amount of an annual installment of a tax credit allowed a shareholder, partner, member or co-owner under this section exceeds the taxpayer's income tax liability for the taxable year in which the annual installment is allowed, 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, except that no such tax credit shall be carried over for deduction after the 14th taxable year succeeding the taxable year in which the first annual installment is allowed.

**Credits:** Laws 2006, ch. 209, § 19; Laws 2007, ch. 113, § 29, eff. July 1, 2007.

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**79-32,236. Same; claim for credit**

To receive the credit awarded by this act, a taxpayer must claim the credit on the taxpayer's annual state income tax return or returns in the manner prescribed by the director of taxation. The taxpayer shall submit to the director a copy of the taxpayer's agreement for a tax credit entered into with the secretary of commerce pursuant to K.S.A. 79-32,234, and amendments thereto, and all information that the director determines necessary for the calculation of the credit provided by this act.

**Credits:** Laws 2006, ch. 209, § 20.

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**79-32,237. Same; accelerated depreciation, deduction**

(a) In addition to the income tax credit allowable pursuant to K.S.A. 79-32,233 through 79-32,236, and amendments thereto, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income with respect to the amortization of the amortizable costs of a new biomass-to-energy plant or an expansion of an existing biomass-to-energy plant based upon a period of 10 years. Such amortization deduction shall be an amount equal to 55% of the amortizable costs of such new plant or expansion of an existing plant for the first taxable year in which such new plant or expansion of an existing plant is in production and 5% of the amortizable costs of such new plant or expansion of an existing plant for each of the next nine taxable years.

(b) The election of the taxpayer to claim the deduction allowed by subsection (a) shall be made by filing a statement of such election with the secretary of revenue in the manner and form and within the time prescribed by rules and regulations adopted by the secretary.

(c) The provisions of this section shall apply to all taxable years commencing after December 31, 2005.

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

(e) As used in this section, terms have the meanings provided by K.S.A. 79-32,233, and amendments thereto.

**Credits:** Laws 2006, ch. 209, § 21; Laws 2007, ch. 113, § 30, eff. July 1, 2007.