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July 2, 2024

ATTORNEY GENERAL OPINION NO. 2024-4

Stacia G. Boden, General Counsel
Wichita State University
1845 Fairmount St.
Wichita, KS 67260

Re: Taxation—Income Tax—Tax credit for graduates of aerospace and aviation-related educational programs and employers of program graduates; definitions

Synopsis: To be a “qualified employer” for purposes of the Kansas Aviation/Aerospace Tax Credit, an entity’s “principal business activity” must “involve[] the aviation sector.” This means that an entity’s primary or predominant business activities must be closely related to the aviation sector. The fact that Wichita State University has some connections to the aviation sector does not make it a “qualified employer” when those ties do not predominate over its other business activities. Cited herein: K.S.A. 79-32,290; 79-32,293

* * *

Dear Ms. Boden:

As General Counsel for Wichita State University (WSU), you ask whether WSU meets the definition of a “qualified employer” under K.S.A. 79-32,290(g) such that its employees may avail themselves of the Aviation/Aerospace Tax Credit¹ under

¹ This is also referred to as a K-26 tax credit based on the relevant tax form.

K.S.A. 79-32,293 if they otherwise qualify for the credit. The Kansas Department of Revenue (KDOR) has concluded that the answer is no.² We agree.

K.S.A. 79-32,290 through 79-32,293, which were first enacted in 2022,³ provide tax credits for certain aviation and aerospace employers and employees. The tax credit at issue in your question is established by K.S.A. 79-32,293, which provides an annual \$5,000 income-tax credit to “qualified employee[s]” for up to five tax years. “[Q]ualified employee[s]” are full-time employees, with certain qualifications, hired by “qualified employer[s]” “on or after January 1, 2022.”⁴ A “qualified employer” is “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.”⁵

WSU is a public entity, so whether it constitutes a “qualified employer” under the statute turns on whether its “principal business activity involves the aviation sector.”⁶

Because the term “principal business activity” is not defined in the statute, we give these words their “ordinary, contemporary, common meaning.”⁷ “Principal” is commonly defined as the “most important, consequential, or influential: chief.”⁸ In other words, “principal” refers to an entity’s primary or predominant business activity.

As you note, WSU’s principal business activity is providing education as a public research university. But you suggest this activity “involves” the aviation sector because one of WSU’s departments, the National Institution for Aviation Research (NIAR), engages in aviation and aerospace research and development.⁹ WSU also helps educate and train aviation and aerospace personnel, for instance by partnering with WSU Tech to offer the GET TO WERX program. That program assists students in earning degrees and certifications necessary to become Aviation

² Letter from Ted E. Smith, Chief Counsel, Dep’t of Revenue, to Dwight Carswell, Deputy Solicitor General, Mar. 19, 2024 (on file with the Attorney General).

³ L. 2022, ch. 63, §§ 10-13.

⁴ K.S.A. 79-32,290(f).

⁵ K.S.A. 79-32,290(g).

⁶ The statute defines “aviation sector” as “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.” K.S.A. 79-32,290(c).

⁷ *Midwest Crane & Rigging, LLC v. Kan. Corp. Comm’n*, 306 Kan. 845, 851, 397 P.3d 1205 (2017).

⁸ *Principal*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2009).

⁹ Your letter states that the employees in question are employees of WSU and asks whether WSU is a qualified employer. Thus, we do not address whether NIAR itself might be a qualified employer.

Maintenance Technicians, while working in NIAR’s maintenance, repair, and overhaul division.

The fact that these aviation-related programs are part of WSU’s overall educational activities does not mean that WSU’s principal business activity involves the aviation sector. While “involve” can mean “to have within or as part of itself,” it is also defined as “to relate closely: connect.”¹⁰ We believe this second definition is more apt here given the statutory context.¹¹ K.S.A. 79-32,290(g) references an entity’s “principal” business activity, which, as discussed above, means the entity’s primary or predominant activity. Interpreting “involves” to mean merely having as a part thereof (however minor) or having some tangential relationship to would be inconsistent with the statute’s focus on an entity’s “principal” business activity.

Our interpretation is also consistent with the broader statutory scheme. The relevant statutory provisions are plainly designed to provide a tax credit for certain employees and employers in the aviation sector. This is reflected in the bill’s title (“providing tax credits for graduates of aerospace and aviation-related educational programs and employers of program graduates”¹²), which is appropriate to consider when construing the statute *in pari materia*.¹³ Given this broader context, we believe K.S.A. 79-32,290(g)’s use of the word “involves” means that an entity’s principal business activity must be closely related to the aviation sector.

Indeed, any other interpretation would lead to absurd results. The definition of “qualified employer” is the only statutory provision that specifically ties the tax credits to the aviation sector.¹⁴ And so if WSU is a “qualified employer,” the Aviation/Aerospace Tax Credit would be available to a broad range of WSU employees, even those with no connection to the aviation sector—for instance, employees of WSU’s music department. Similarly, as KDOR notes, if “involves” refers to any business activity tangentially related to the aviation sector, then

¹⁰ *Involve*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2009).

¹¹ See generally *State v. Strong*, 317 Kan. 197, 203, 527 P.3d 548 (2023) (stating that, in interpreting statutory language, one must look to “the specific context in which that language is used, and the broader context of the statute as a whole” (quotation omitted)).

¹² 2022 H.B. 2239.

¹³ *Arredondo v. Duckwall Stores, Inc.*, 227 Kan. 842, 846, 610 P.2d 1107 (1980) (“Though the heading or title given an act of the legislature forms no part of the statute itself, the language of the title cannot be ignored as an aid in determining legislative intent.” (internal citation omitted)); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 221–24 (2012) (explaining that a statute’s title is a permissible indicator of the statute’s meaning). Consideration of the title is particularly appropriate when dealing with our state’s statutes, given the Kansas Constitution’s requirement that “[t]he subject of each bill shall be expressed in its title,” Kan. Const. art. II, § 16.

¹⁴ “Qualified employee[s]” must also have graduated from a “qualified program,” but the definition of “qualified program” is broadly defined to include, among other things, a program accredited by “a regional accrediting body and that awards an undergraduate or graduate degree” as well as associate of applied science degree programs and career technical education programs. See K.S.A. 79-32,290(h). There is nothing in that definition tying it to aerospace.

employees of an all-purpose hardware store that occasionally supplies goods to the aviation sector could qualify for the tax credit. That would be inconsistent with the purpose of the statute.

Based on the facts you have provided, WSU's principal business activity is not closely related to the aviation sector. While WSU does offer aviation-related programs, those programs do not predominate over its other educational activities. We therefore conclude that WSU is not a "qualified employer" for purposes of K.S.A. 79-32,290(g).

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Dwight R. Carswell

Dwight R. Carswell
Deputy Solicitor General