

HOUSE BILL No. 2006

By Representative Williams

1-4

1 AN ACT concerning the department of commerce; relating to the
2 disclosure of economic development incentive program data, tax credit
3 programs and certain property tax exemptions; required database;
4 amending K.S.A. 2018 Supp. 75-5133 and 79-3234 and repealing the
5 existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) As used in this section:

9 (1) "Administering agency" means the state agency or department
10 charged with administering a particular income tax credit program, as set
11 forth by the program's enacting statute or, where no department or agency
12 is set forth, the department of revenue.

13 (2) "Economic development incentive program" means:

14 (A) Any economic development incentive program administered
15 wholly or in part by the secretary of commerce;

16 (B) any tax credit program, except for social and domestic tax credits,
17 regardless of the administering agency;

18 (C) property that has been exempted from ad valorem taxation under
19 the provisions of section 13 of article 11 of the constitution of the state of
20 Kansas; and

21 (D) property that has been purchased, acquired, constructed,
22 reconstructed, improved, equipped, furnished, repaired, enlarged or
23 remodeled with all or any part of the proceeds of revenue bonds issued
24 under the authority of K.S.A. 12-1740 through 12-1749a, and amendments
25 thereto, that is exempt from ad valorem taxation under K.S.A. 79-201a
26 *Second*, and amendments thereto.

27 (3) "Enterprise" means a corporation, limited liability company, S
28 corporation, partnership, registered limited liability partnership,
29 foundation, association, nonprofit entity, sole proprietorship, business trust
30 or other entity engaged in business.

31 (4) "Recipient" means the enterprise that is the original applicant for
32 and that receives proceeds from an economic development incentive
33 program directly from the administering agency.

34 (5) "Social and domestic tax credits" means the adoption credit
35 created pursuant to K.S.A. 79-202a, and amendments thereto, the earned
36 income tax credit created pursuant to K.S.A. 2018 Supp. 79-32,205, and

1 amendments thereto, the food sales tax credit created pursuant to K.S.A.
2 2018 Supp. 79-32,271, and amendments thereto, the child and dependent
3 care tax credit created pursuant to K.S.A. 2018 Supp. 79-32,111c, and
4 amendments thereto, and the homestead property tax refund created
5 pursuant to K.S.A. 79-4501 et seq., and amendments thereto.

6 (6) "Tax credit program" means any credit allowed against the tax
7 imposed by the Kansas income tax act, the premium or privilege fees
8 imposed pursuant to K.S.A. 40-252, and amendments thereto, or the
9 privilege tax as measured by net income of financial institutions imposed
10 pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and
11 amendments thereto.

12 (b) The department of commerce shall collect incentive data from
13 economic development incentive programs that provide more than \$50,000
14 of annual incentives from administering agencies as required by this
15 section. Such data shall be collected from administering agencies and be
16 stored in a database that is available to the public in a digital format. The
17 database shall contain information from multiple years and must be
18 searchable, printable and available to access over the internet either on the
19 department of commerce's website or via a conspicuous link on the front
20 page of the department's website. Information included in the database
21 shall be updated by the department of commerce on an annual basis and
22 such update shall be completed prior to the end of the following fiscal year
23 in which such incentive was earned or distributed.

24 (c) The database required to be created by subsection (b) shall contain
25 the following information or shall contain a link by which the user can
26 access such information:

27 (1) User information for each economic development incentive
28 program, including the:

29 (A) Names and addresses, including county, of recipients receiving
30 benefits from the program and, for sales tax and revenue bonds issued
31 under the STAR bond financing act, K.S.A. 2018 Supp. 12-17,162 et seq.,
32 and amendments thereto, the names of principals and officers for each
33 project developer;

34 (B) annual amount of incentives claimed and distributed to each
35 recipient;

36 (C) qualification criteria for the economic development incentive
37 program, including, if available, qualification criteria specific to the
38 recipient;

39 (D) required benchmarks for continued participation in the economic
40 development incentive program; and

41 (E) years for which the recipient has received benefits under the
42 economic development incentive program;

43 (2) descriptive information for each economic development program,

1 which shall include:

2 (A) A description and history of the program, including its inception
3 date;

4 (B) the purpose or goals of the program and the criteria for
5 qualification;

6 (C) applications for the program, if any, and relevant resources or
7 contacts;

8 (D) the program cost and return on investment, including
9 assumptions used to calculate the return on investment;

10 (E) the program compliance rate;

11 (F) annual reports, if required by statute; and

12 (G) evaluations of the program, if any; and

13 (3) annual data, which shall be organized by recipient, county and
14 program and shall include the:

15 (A) Total amount of annual incentives from a program claimed by a
16 recipient;

17 (B) total amount of incentives received by recipients in each county;
18 and

19 (C) total amount of incentives distributed by each program.

20 (d) Data collected pursuant to this section must be aggregated and
21 provided by program, recipient and county.

22 (e) Information required to be included in the database under
23 subsection (c) shall not be disclosed if such disclosure would violate any
24 federal law or confidentiality provisions of any agreement executed before
25 July 1, 2019, or if, in the discretion of the secretary of commerce, such
26 disclosure would be detrimental to the development of a STAR bond
27 project.

28 Sec. 2. K.S.A. 2018 Supp. 75-5133 is hereby amended to read as
29 follows: 75-5133. (a) Except as otherwise more specifically provided by
30 law, all information received by the secretary of revenue, the director of
31 taxation or the director of alcoholic beverage control from returns, reports,
32 license applications or registration documents made or filed under the
33 provisions of any law imposing any sales, use or other excise tax
34 administered by the secretary of revenue, the director of taxation, or the
35 director of alcoholic beverage control, or from any investigation conducted
36 under such provisions, shall be confidential, and it shall be unlawful for
37 any officer or employee of the department of revenue to divulge any such
38 information except in accordance with other provisions of law respecting
39 the enforcement and collection of such tax, in accordance with proper
40 judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

41 (b) The secretary of revenue or the secretary's designee may:

42 (1) Publish statistics, so classified as to prevent identification of
43 particular reports or returns and the items thereof;

1 (2) allow the inspection of returns by the attorney general or the
2 attorney general's designee;

3 (3) provide the post auditor access to all such excise tax reports or
4 returns in accordance with and subject to the provisions of K.S.A. 46-
5 1106(g), and amendments thereto;

6 (4) disclose taxpayer information from excise tax returns to persons
7 or entities contracting with the secretary of revenue where the secretary
8 has determined disclosure of such information is essential for completion
9 of the contract and has taken appropriate steps to preserve confidentiality;

10 (5) provide information from returns and reports filed under article 42
11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto,
12 to county appraisers as is necessary to ensure proper valuations of
13 property. Information from such returns and reports may also be
14 exchanged with any other state agency administering and collecting
15 conservation or other taxes and fees imposed on or measured by mineral
16 production;

17 (6) provide, upon request by a city or county clerk or treasurer or
18 finance officer of any city or county receiving distributions from a local
19 excise tax, monthly reports identifying each retailer doing business in such
20 city or county or making taxable sales sourced to such city or county,
21 setting forth the tax liability and the amount of such tax remitted by each
22 retailer during the preceding month, and identifying each business location
23 maintained by the retailer and such retailer's sales or use tax registration or
24 account number;

25 (7) provide information from returns and applications for registration
26 filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-
27 3601, and amendments thereto, to a city or county treasurer or clerk or
28 finance officer to explain the basis of statistics contained in reports
29 provided by subsection (b)(6);

30 (8) disclose the following oil and gas production statistics received by
31 the department of revenue in accordance with K.S.A. 79-4216 et seq., and
32 amendments thereto: Volumes of production by well name, well number,
33 operator's name and identification number assigned by the state
34 corporation commission, lease name, leasehold property description,
35 county of production or zone of production, name of purchaser and
36 purchaser's tax identification number assigned by the department of
37 revenue, name of transporter, field code number or lease code, tax period,
38 exempt production volumes by well name or lease, or any combination of
39 this information;

40 (9) release or publish liquor brand registration information provided
41 by suppliers, farm wineries, microdistilleries and microbreweries in
42 accordance with the liquor control act. The information to be released is
43 limited to: Item number, universal numeric code, type status, product

1 description, alcohol percentage, selling units, unit size, unit of
2 measurement, supplier number, supplier name, distributor number and
3 distributor name;

4 (10) release or publish liquor license information provided by liquor
5 licensees, distributors, suppliers, farm wineries, microdistilleries and
6 microbreweries in accordance with the liquor control act. The information
7 to be released is limited to: County name, owner, business name, address,
8 license type, license number, license expiration date and the process agent
9 contact information;

10 (11) release or publish cigarette and tobacco license information
11 obtained from cigarette and tobacco licensees in accordance with the
12 Kansas cigarette and tobacco products act. The information to be released
13 is limited to: County name, owner, business name, address, license type
14 and license number;

15 (12) provide environmental surcharge or solvent fee, or both,
16 information from returns and applications for registration filed pursuant to
17 K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary
18 of health and environment or the secretary's designee for the sole purpose
19 of ensuring that retailers collect the environmental surcharge tax or solvent
20 fee, or both;

21 (13) provide water protection fee information from returns and
22 applications for registration filed pursuant to K.S.A. 82a-954, and
23 amendments thereto, to the secretary of the state board of agriculture or the
24 secretary's designee and the secretary of the Kansas water office or the
25 secretary's designee for the sole purpose of verifying revenues deposited to
26 the state water plan fund;

27 (14) provide to the secretary of commerce copies of applications for
28 project exemption certificates sought by any taxpayer under the enterprise
29 zone sales tax exemption pursuant to K.S.A. 79-3606(cc), and
30 amendments thereto;

31 (15) disclose information received pursuant to the Kansas cigarette
32 and tobacco act and subject to the confidentiality provisions of this act to
33 any criminal justice agency, as defined in K.S.A. 22-4701(c), and
34 amendments thereto, or to any law enforcement officer, as defined in
35 K.S.A. 2018 Supp. 21-5111, and amendments thereto, on behalf of a
36 criminal justice agency, when requested in writing in conjunction with a
37 pending investigation;

38 (16) provide to retailers tax exemption information for the sole
39 purpose of verifying the authenticity of tax exemption numbers issued by
40 the department;

41 (17) provide information concerning remittance by sellers, as defined
42 in K.S.A. 2018 Supp. 12-5363, and amendments thereto, of prepaid
43 wireless 911 fees from returns to the local collection point administrator,

1 as defined in K.S.A. 2018 Supp. 12-5363, and amendments thereto, for
 2 purposes of verifying seller compliance with collection and remittance of
 3 such fees;

4 (18) release or publish charitable gaming information obtained in
 5 charitable gaming licensee and registration applications and renewals in
 6 accordance with the Kansas charitable gaming act, K.S.A. 2018 Supp. 75-
 7 5171 et seq., and amendments thereto. The information to be released is
 8 limited to: The name, address, phone number, license registration number
 9 and email address of the organization, distributor or of premises; ~~and~~

10 (19) provide to the attorney general confidential information for
 11 purposes of determining compliance with or enforcing K.S.A. 50-6a01 et
 12 seq., and amendments thereto, the master settlement agreement referred to
 13 therein and all agreements regarding disputes under the master settlement
 14 agreement. The secretary and the attorney general may share the
 15 information specified under this subsection with any of the following:

16 (A) Federal, state or local agencies for the purposes of enforcement
 17 of corresponding laws of other states; and

18 (B) a court, arbitrator, data clearinghouse or similar entity for the
 19 purpose of assessing compliance with or making calculations required by
 20 the master settlement agreement or agreements regarding disputes under
 21 the master settlement agreement, and with counsel for the parties or expert
 22 witnesses in any such proceeding, if the information otherwise remains
 23 confidential; *and*

24 (20) *disclose taxpayer information that is received from income tax*
 25 *returns to the department of commerce for the purpose of including such*
 26 *information in the database required by section 1, and amendments*
 27 *thereto.*

28 (c) Any person receiving any information under the provisions of
 29 subsection (b) shall be subject to the confidentiality provisions of
 30 subsection (a) and to the penalty provisions of subsection (d).

31 (d) Any violation of this section shall be a class A, nonperson
 32 misdemeanor, and if the offender is an officer or employee of this state,
 33 such officer or employee shall be dismissed from office. Reports of
 34 violations of this paragraph shall be investigated by the attorney general.
 35 The district attorney or county attorney and the attorney general shall have
 36 authority to prosecute any violation of this section if the offender is a city
 37 or county clerk or treasurer or finance officer of a city or county.

38 Sec. 3. K.S.A. 2018 Supp. 79-3234 is hereby amended to read as
 39 follows: 79-3234. (a) All reports and returns required by this act shall be
 40 preserved for three years and thereafter until the director orders them to be
 41 destroyed.

42 (b) Except in accordance with proper judicial order, or as provided in
 43 subsection (c) or in K.S.A. 17-7511, ~~subsection (g) of~~ K.S.A. 46-1106(g),

1 K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be
2 unlawful for the secretary, the director, any deputy, agent, clerk or other
3 officer, employee or former employee of the department of revenue or any
4 other state officer or employee or former state officer or employee to
5 divulge, or to make known in any way, the amount of income or any
6 particulars set forth or disclosed in any report, return, federal return or
7 federal return information required under this act; and it shall be unlawful
8 for the secretary, the director, any deputy, agent, clerk or other officer or
9 employee engaged in the administration of this act to engage in the
10 business or profession of tax accounting or to accept employment, with or
11 without consideration, from any person, firm or corporation for the
12 purpose, directly or indirectly, of preparing tax returns or reports required
13 by the laws of the state of Kansas, by any other state or by the United
14 States government, or to accept any employment for the purpose of
15 advising, preparing material or data, or the auditing of books or records to
16 be used in an effort to defeat or cancel any tax or part thereof that has been
17 assessed by the state of Kansas, any other state or by the United States
18 government.

19 (c) The secretary or the secretary's designee may: (1) Publish
20 statistics, so classified as to prevent the identification of particular reports
21 or returns and the items thereof;

22 (2) allow the inspection of returns by the attorney general or other
23 legal representatives of the state;

24 (3) provide the post auditor access to all income tax reports or returns
25 in accordance with and subject to the provisions of ~~subsection (g) of~~
26 K.S.A. 46-1106(g) or K.S.A. 46-1114, and amendments thereto;

27 (4) disclose taxpayer information from income tax returns to persons
28 or entities contracting with the secretary of revenue where the secretary
29 has determined disclosure of such information is essential for completion
30 of the contract and has taken appropriate steps to preserve confidentiality;

31 (5) disclose to the secretary of commerce the following: (A) Specific
32 taxpayer information related to financial information previously submitted
33 by the taxpayer to the secretary of commerce concerning or relevant to any
34 income tax credits, for purposes of verification of such information or
35 evaluating the effectiveness of any tax credit or economic incentive
36 program administered by the secretary of commerce; (B) the amount of
37 payroll withholding taxes an employer is retaining pursuant to K.S.A. 74-
38 50,212, and amendments thereto; (C) information received from
39 businesses completing the form required by K.S.A. 74-50,217, and
40 amendments thereto; and (D) findings related to a compliance audit
41 conducted by the department of revenue upon the request of the secretary
42 of commerce pursuant to K.S.A. 74-50,215, and amendments thereto;

43 (6) disclose income tax returns to the state gaming agency to be used

1 solely for the purpose of determining qualifications of licensees of and
2 applicants for licensure in tribal gaming. Any information received by the
3 state gaming agency shall be confidential and shall not be disclosed except
4 to the executive director, employees of the state gaming agency and
5 members and employees of the tribal gaming commission;

6 (7) disclose the taxpayer's name, last known address and residency
7 status to the Kansas department of wildlife, parks and tourism to be used
8 solely in its license fraud investigations;

9 (8) disclose the name, residence address, employer or Kansas
10 adjusted gross income of a taxpayer who may have a duty of support in a
11 title IV-D case to the secretary of the Kansas department for children and
12 families for use solely in administrative or judicial proceedings to
13 establish, modify or enforce such support obligation in a title IV-D case. In
14 addition to any other limits on use, such use shall be allowed only where
15 subject to a protective order which prohibits disclosure outside of the title
16 IV-D proceeding. As used in this section, "title IV-D case" means a case
17 being administered pursuant to part D of title IV of the federal social
18 security act, 42 U.S.C. § 651 et seq., and amendments thereto. Any person
19 receiving any information under the provisions of this subsection shall be
20 subject to the confidentiality provisions of subsection (b) and to the
21 penalty provisions of subsection (e);

22 (9) permit the commissioner of internal revenue of the United States,
23 or the proper official of any state imposing an income tax, or the
24 authorized representative of either, to inspect the income tax returns made
25 under this act and the secretary of revenue may make available or furnish
26 to the taxing officials of any other state or the commissioner of internal
27 revenue of the United States or other taxing officials of the federal
28 government, or their authorized representatives, information contained in
29 income tax reports or returns or any audit thereof or the report of any
30 investigation made with respect thereto, filed pursuant to the income tax
31 laws, as the secretary may consider proper, but such information shall not
32 be used for any other purpose than that of the administration of tax laws of
33 such state, the state of Kansas or of the United States;

34 (10) communicate to the executive director of the Kansas lottery
35 information as to whether a person, partnership or corporation is current in
36 the filing of all applicable tax returns and in the payment of all taxes,
37 interest and penalties to the state of Kansas, excluding items under formal
38 appeal, for the purpose of determining whether such person, partnership or
39 corporation is eligible to be selected as a lottery retailer;

40 (11) communicate to the executive director of the Kansas racing
41 commission as to whether a person, partnership or corporation has failed
42 to meet any tax obligation to the state of Kansas for the purpose of
43 determining whether such person, partnership or corporation is eligible for

1 a facility owner license or facility manager license pursuant to the Kansas
 2 parimutuel racing act;

3 (12) provide such information to the executive director of the Kansas
 4 public employees retirement system for the purpose of determining that
 5 certain individuals' reported compensation is in compliance with the
 6 Kansas public employees retirement act, K.S.A. 74-4901 et seq., and
 7 amendments thereto;

8 (13) ~~(i)~~(A) provide taxpayer information of persons suspected of
 9 violating K.S.A. 2018 Supp. 44-766, and amendments thereto, to the
 10 secretary of labor or such secretary's designee for the purpose of
 11 determining compliance by any person with the provisions of ~~subsection~~
 12 ~~(i)(3)(D)~~ of K.S.A. 44-703(i)(3)(D) and K.S.A. 2018 Supp. 44-766, and
 13 amendments thereto. The information to be provided shall include all
 14 relevant information in the possession of the department of revenue
 15 necessary for the secretary of labor to make a proper determination of
 16 compliance with the provisions of ~~subsection (i)(3)(D)~~ of K.S.A. 44-703(i)
 17 (3)(D) and K.S.A. 2018 Supp. 44-766, and amendments thereto, and to
 18 calculate any unemployment contribution taxes due. Such information to
 19 be provided by the department of revenue shall include, but not be limited
 20 to, withholding tax and payroll information, the identity of any person that
 21 has been or is currently being audited or investigated in connection with
 22 the administration and enforcement of the withholding and declaration of
 23 estimated tax act, K.S.A. 79-3294 et seq., and amendments thereto, and the
 24 results or status of such audit or investigation;

25 ~~(ii)~~(B) any person receiving tax information under the provisions of
 26 this paragraph shall be subject to the same duty of confidentiality imposed
 27 by law upon the personnel of the department of revenue and shall be
 28 subject to any civil or criminal penalties imposed by law for violations of
 29 such duty of confidentiality; and

30 ~~(iii)~~(C) each of the secretary of labor and the secretary of revenue
 31 may adopt rules and regulations necessary to effect the provisions of this
 32 paragraph;

33 (14) provide such information to the state treasurer for the sole
 34 purpose of carrying out the provisions of K.S.A. 58-3934, and
 35 amendments thereto. Such information shall be limited to current and prior
 36 addresses of taxpayers or associated persons who may have knowledge as
 37 to the location of an owner of unclaimed property. For the purposes of this
 38 paragraph, "associated persons" includes spouses or dependents listed on
 39 income tax returns; ~~and~~

40 (15) after receipt of information pursuant to subsection (f), forward
 41 such information and provide the following reported Kansas individual
 42 income tax information for each listed defendant, if available, to the state
 43 board of indigents' defense services in an electronic format and in the

1 manner determined by the secretary: (A) The defendant's name; (B) social
2 security number; (C) Kansas adjusted gross income; (D) number of
3 exemptions claimed; and (E) the relevant tax year of such records. Any
4 social security number provided to the secretary and the state board of
5 indigents' defense services pursuant to this section shall remain
6 confidential; *and*

7 *(16) disclose taxpayer information that is received from income tax*
8 *returns to the department of commerce for the purpose of including such*
9 *information in the database required by section 1, and amendments*
10 *thereto.*

11 (d) Any person receiving information under the provisions of
12 subsection (c) shall be subject to the confidentiality provisions of
13 subsection (b) and to the penalty provisions of subsection (e).

14 (e) Any violation of subsection (b) or (c) is a class A nonperson
15 misdemeanor and, if the offender is an officer or employee of the state,
16 such officer or employee shall be dismissed from office.

17 (f) For the purpose of determining whether a defendant is financially
18 able to employ legal counsel under the provisions of K.S.A. 22-4504, and
19 amendments thereto, in all felony cases with appointed counsel where the
20 defendant's social security number is accessible from the records of the
21 district court, the court shall electronically provide the defendant's name,
22 social security number, district court case number and county to the
23 secretary of revenue in the manner and format agreed to by the office of
24 judicial administration and the secretary.

25 (g) Nothing in this section shall be construed to allow disclosure of
26 the amount of income or any particulars set forth or disclosed in any
27 report, return, federal return or federal return information, where such
28 disclosure is prohibited by the federal internal revenue code as in effect on
29 September 1, 1996, and amendments thereto, related federal internal
30 revenue rules or regulations, or other federal law.

31 Sec. 4. K.S.A. 2018 Supp. 75-5133 and 79-3234 are hereby repealed.

32 Sec. 5. This act shall take effect and be in force from and after its
33 publication in the statute book.