

HOUSE BILL No. 2220

By Committee on Taxation

2-8

1 AN ACT concerning the promoting employment across Kansas act;
2 pertaining to qualifications for benefits under the act; amending
3 K.S.A. 2010 Supp. 74-50,210, 74-50,211, 74-50,212 and 74-50,213
4 and repealing the existing sections.
5

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

7 New Section 1. (a) For taxable years commencing after December
8 31, 2010, there shall be allowed as a credit against the tax liability of a
9 resident individual taxpayer an amount equal to the resident individual's
10 income tax liability under the provisions of the Kansas income tax act
11 when the taxpayer owns a qualified company which qualified for benefits
12 under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and
13 amendments thereto. A taxpayer may claim the credit authorized by this
14 section during any tax year in which the qualified company owned by the
15 taxpayer qualifies for benefits under provisions of K.S.A. 74-50,212, and
16 amendments thereto.

17 (b) The maximum amount of any refund under this section shall be
18 equal to the amount withheld from the individual's wages or payments
19 other than wages pursuant to K.S.A. 79-3294 et seq., and amendments
20 thereto, or paid by the individual as estimated taxes pursuant to K.S.A.
21 79-32,101, and amendments thereto.

22 (c) The secretary of revenue shall adopt rules and regulations
23 regarding the filing of documents that support the qualifications of the
24 taxpayer for the credit claimed pursuant to this section.

25 Sec. 2. K.S.A. 2010 Supp. 74-50,210 is hereby amended to read as
26 follows: 74-50,210. (a) The provisions of K.S.A. 2010 Supp. 74-50,210
27 through ~~74-50,216~~74-50,219, and amendments thereto, shall be known
28 and may be cited as the promoting employment across Kansas act.

29 (b) It shall be the intent of this act to foster economic development
30 and the creation of new jobs and opportunities for the citizens of Kansas
31 and to incentivize the location of business facilities, other operations and
32 jobs in Kansas. The primary objective of this legislation is economic
33 development for Kansas.

34 Sec. 3. K.S.A. 2010 Supp. 74-50,211 is hereby amended to read as
35 follows: 74-50,211. As used in this act, unless the context otherwise
36 requires:

1 (a) "Act" means the provisions of K.S.A. 2010 Supp. 74-50,210
2 through ~~74-50,216~~74-50,219, and amendments thereto.

3 (b) "County median wage" means the median wage paid to
4 employees located in the county where the qualified company intends to
5 employ new employees as reported by the department of labor in its
6 annual report for the previous year.

7 (c) "Department" means the department of commerce.

8 (d) "Expanding business" means the expansion of an existing
9 business facility, office, department or other operation located in the state
10 of Kansas and locating in Kansas the jobs directly related to such
11 business facility, office, department or other operation.

12 (e) "High-impact project" means a business development project for
13 which the qualified company shall meet the requirements of subsection
14 (c) of K.S.A. 2010 Supp. 74-50,212, and amendments thereto.

15 (f) "Metropolitan county" means the county of Douglas, Johnson,
16 Leavenworth, Sedgwick, Shawnee or Wyandotte.

17 (g) "NAICS" means the North American industry classification
18 system.

19 (h) "NAICS code industry average wage" means the average wage
20 paid to employees of companies classified in the same NAICS code as
21 the qualified company for the region in which the qualified company
22 intends to employ new employees as reported by the department of labor
23 in its annual report for the previous year.

24 (i) "New business" means a facility, plant, division, office,
25 department, production line, production shift or other business operations
26 of a company that was not doing business in Kansas prior to the
27 submission of an application for benefits under this act and that provides
28 documentation of such to the satisfaction of the secretary.

29 (j) "New employee" means a person newly employed by the
30 qualified company in the qualified company's business operating in
31 Kansas during the taxable year for which benefits are sought under
32 K.S.A. 2010 Supp. 74-50,212, and amendments thereto. A person shall be
33 deemed to be so engaged if such person performs duties in Kansas in
34 connection with the operation of the Kansas business on: (1) A regular,
35 full-time basis; or (2) a part-time basis, provided such person is
36 customarily performing such duties at least 20 hours per week throughout
37 the taxable year. Employees performing functions directly related to a
38 relocating, expanding, or new business facility, office, department or
39 other operation shall be considered new employees.

40 (k) "Nonmetropolitan county" means any county that is not a
41 metropolitan county.

42 (l) (1) (A) "Qualified company" means any for-profit corporation,
43 partnership or other entity making available to its full-time employees

1 adequate health insurance coverage and paying at least 50% of the
2 premium for such health insurance, which meets the requirements of
3 K.S.A. 2010 Supp. 74-50,212, and amendments thereto, and submits an
4 application for benefits meeting requirements established by the
5 secretary.

6 (B) *"Qualified company" also includes:*

7 (i) *Any not-for-profit corporation which locates within the state of*
8 *Kansas a regional, national or international headquarters and which*
9 *meets the requirements of subparagraph (A);*

10 (ii) *any out-of-state company which creates at least 10 jobs in an*
11 *urban area and which meets the requirements of subparagraph (A); and*

12 (iii) *any out-of-state company which creates at least 5 jobs in a*
13 *rural area and which meets the requirements of subparagraph (A).*

14 (2) "Qualified company" shall not include any corporation,
15 partnership or other entity: (A) Which is identified by any of the
16 following NAICS code groups, sectors or subsectors:

17 (i) Industry group 7132 or 8131;

18 (ii) sectors 44, 45, 61, 92 or 221 (including water and sewer
19 services); or

20 (iii) subsector 722;

21 (B) which is a bioscience company, as defined in K.S.A. 2010
22 Supp. 74-99b33, and amendments thereto;

23 (C) which is delinquent in the payment of any nonprotested taxes or
24 any other amounts due to the federal government, the state of Kansas or
25 any other political taxing subdivision; or

26 (D) which has filed for or has publicly announced its intention to file
27 for bankruptcy protection.

28 (3) Notwithstanding any provision of this subsection, except for
29 paragraphs (2)(B), (C) and (D), a company may be deemed a qualified
30 company if such company's headquarters or administrative offices located
31 in this state serve an international or multi-state territory and such
32 company meets the requirements of K.S.A. 2010 Supp. 74-50,212, and
33 amendments thereto.

34 (m) *"Retained job" means an existing job which will be lost without*
35 *participation by the employer under the provisions of the promoting*
36 *employment across Kansas act.*

37 ~~(n)~~ (n) "Secretary" means the secretary of the department of
38 commerce.

39 Sec. 4. K.S.A. 2010 Supp. 74-50,212 is hereby amended to read as
40 follows: 74-50,212. (a) In order to qualify for benefits under this act a
41 qualified company shall:

42 (1) Relocate to Kansas an existing business facility, office,
43 department or other operation doing business outside the state of Kansas

1 and locate the jobs directly related to such relocated business facility,
2 office, department or other operation in Kansas; or

3 (2) locate a new business facility, office, department or other
4 operation in Kansas and locate the jobs directly related to such business
5 facility, office, department or other operation in Kansas; or

6 (3) expand ~~aan~~ *existing* business facility, office, department or other
7 operation located in the state of Kansas and locate the jobs directly
8 related to such business facility, office, department or other operation in
9 Kansas, ~~except that no payroll withholding taxes shall be retained prior to~~
10 ~~January 1, 2012.~~

11 A qualified company may *utilize or* contract with ~~an unrelated third-~~
12 ~~party~~ *a third-party employer* to perform services whereby the ~~third-~~
13 ~~party~~ *third-party employer* serves as the legal employer of the new
14 employees providing services to the qualified company and such services
15 are performed in Kansas and the ~~third-party~~ *third-party employer* and the
16 new employees are subject to *the* Kansas ~~state~~ withholding *and*
17 *declaration of estimated tax act.*

18 (b) Any qualified company, approved by the secretary for benefits
19 pursuant to paragraph (a), that locates its business operation in a
20 metropolitan county and will hire at least 10 new employees within two
21 years from the date the qualified company enters into an agreement with
22 the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments
23 thereto, or any qualified company, approved by the secretary for benefits
24 pursuant to paragraph (a), that locates its business operation in a
25 nonmetropolitan county and will hire at least five new employees within
26 two years from the date the qualified company enters into an agreement
27 with the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and
28 amendments thereto, shall: (1) Be eligible to retain 95% of the qualified
29 company's Kansas payroll withholding taxes for ~~such~~ *all* new employees
30 ~~being paid the county median wage or higher~~ for a period of ~~up to~~ *up to*:

31 (A) Five years if the median *or average* wage paid to the new
32 employees is equal to at least 100% of the county median wage;

33 (B) six years if the median *or average* wage paid to the new
34 employees is equal to at least 110% of the county median wage;

35 (C) seven years if the median *or average* wage paid to the new
36 employees is equal to at least 120% of the county median wage; or

37 (2) be eligible to retain 95% of the qualified company's Kansas
38 payroll withholding taxes for ~~such~~ *all* new employees ~~being paid the~~
39 ~~county median wage or higher~~ for a period of ~~up to~~ *up to* five years if the
40 median *or average* wage paid to the new employees is equal to at least
41 100% of the NAICS code industry average wage.

42 (c) Any qualified company, approved by the secretary for benefits
43 pursuant to paragraph (a), that engages in a high-impact project whereby

1 the qualified company will hire at least 100 new employees within two
2 years from the date the qualified company enters into an agreement with
3 the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments
4 thereto, shall be eligible to retain 95% of the qualified company's Kansas
5 payroll withholding taxes for ~~such~~ all new employees ~~being paid the~~
6 ~~county median wage or higher~~ for a period of up to:

7 (1) Seven years if the median *or average* wage paid to the new
8 employees is equal to at least 100% of the county median wage;

9 (2) eight years if the median *or average* wage paid to the new
10 employees is equal to at least 110% of the county median wage;

11 (3) nine years if the median *or average* wage paid to the new
12 employees is equal to at least 120% of the county median wage; or

13 (4) ten years if the median *or average* wage paid to the new
14 employees is equal to at least 140% of the county median wage.

15 (d) In the event that a qualified company contracts with a third party
16 as described in subsection (a), the third party shall remit payments equal
17 to the amount of Kansas payroll withholding taxes the qualified company
18 is eligible to retain under this section to the qualified company, and report
19 such amount to the department of revenue as required pursuant to
20 subsection (a) of K.S.A. 2010 Supp. 74-50,214, and amendments thereto.

21 (e) *Any qualified company, qualifying for benefits pursuant to*
22 *subsection (a)(3), that retains the employees of an existing business unit*
23 *located in Kansas for a period of two years from the date the qualified*
24 *company enters into an agreement with the secretary pursuant to K.S.A.*
25 *2010 Supp. 74-50,213, and amendments thereto, shall be eligible to*
26 *retain 95% of the qualified company's Kansas payroll withholding taxes*
27 *for such employees for a period of five years.*

28 (f) (1) *The secretary of commerce may, in the secretary's sole*
29 *determination, provide the benefits of the promoting employment across*
30 *Kansas act for situations where it is deemed necessary by the secretary*
31 *that the state of Kansas provide incentives for a company or its*
32 *operations currently located in Kansas to remain in Kansas so as to keep*
33 *its retained jobs. The secretary shall establish and verify that a*
34 *prospective company has competitive alternatives that it is seriously*
35 *considering and that a company's relocation may be imminent.*
36 *Furthermore, the secretary shall assess:*

37 (A) *Whether the retention of the company or its operations is*
38 *important to the economic vitality of the state;*

39 (B) *the area where such company or operations is located; or*

40 (C) *whether the retention of the company or its operations is*
41 *important to a particular industry in the state due to any number of*
42 *factors including, but not limited to, the quantity, quality or pay of the*
43 *retained jobs involved.*

1 (2) *The secretary may use the promoting employment across Kansas*
2 *act in conjunction with other economic development programs to develop*
3 *a retention package.*

4 Sec. 5. K.S.A. 2010 Supp. 74-50,213 is hereby amended to read as
5 follows: 74-50,213. (a) Any qualified company meeting the requirements
6 of K.S.A. 2010 Supp. 74-50,212, and amendments thereto, may apply to
7 the secretary for benefits under this act. The application shall be
8 submitted on a form and in a manner prescribed by the secretary, and
9 shall include: (1) Evidence that the applicant is a qualified company; and
10 (2) evidence that the applicant meets the requirements of K.S.A. 2010
11 Supp. 74-50,212, and amendments thereto.

12 (b) The secretary may either approve or disapprove the application.
13 Any qualified company whose application is approved shall be eligible to
14 receive benefits under this act as of the date such qualified company
15 enters into an agreement with the secretary in accordance with this
16 section.

17 (c) Upon approval of an application for benefits under this act, the
18 secretary may enter into an agreement with the qualified company for
19 benefits under this act. If necessary, the secretary may also enter into an
20 agreement with any third party described in subsection (a) of K.S.A. 2010
21 Supp. 74-50,212, and amendments thereto, or such third party may be a
22 party to the agreement between the qualified company and the secretary.
23 The agreement shall commit the secretary to certify to the secretary of
24 revenue: (1) That the qualified company is eligible to receive benefits
25 under this act; (2) the number of new employees hired by the qualified
26 company; and (3) the amount of gross wages being paid to each new
27 employee.

28 (d) The agreement between the qualified company and the secretary
29 shall be entered into before any benefits may be provided under this act,
30 and shall specify that should the qualified company fail to comply with
31 the terms and conditions set forth in the agreement, or fails to comply
32 with the provisions set forth in this act, the secretary may terminate the
33 agreement, and the qualified company shall not be entitled to any further
34 benefits provided under this act and shall be required to remit to the state
35 an amount equal to the aggregate Kansas payroll withholding taxes
36 retained by the qualified company, or remitted to the qualified company
37 by a third party, pursuant to this act as of the date the agreement is
38 terminated.

39 (e) A qualified company that is already receiving benefits pursuant
40 to this act may apply to the secretary for additional benefits if the
41 qualified company meets the requirements of K.S.A. 2010 Supp. 74-
42 50,212, and amendments thereto.

43 (f) A qualified company seeking benefits shall be allowed to

1 participate in the IMPACT program pursuant to K.S.A. 74-50,102 et seq.,
2 and amendments thereto, but shall not be allowed to participate in any
3 other program in which any portion of such qualified company's Kansas
4 payroll withholding taxes have been pledged to finance indebtedness or
5 transferred to or for the benefit of such company. A qualified company
6 shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-
7 32,160a or 79-32,182b, and amendments thereto, if such credits would
8 otherwise be earned for the hiring of new employees and the qualified
9 company has retained any Kansas payroll withholding taxes from wages
10 of such employees. A qualified company shall not be eligible to receive
11 benefits under K.S.A. 2010 Supp. 74-50,212, and amendments thereto,
12 and under K.S.A. 74-50,102 et seq., and amendments thereto, for the
13 same new employees.

14 ~~(g) Under no circumstances shall the total amount of benefits~~
15 ~~authorized or granted to the aggregate of all expanding businesses, as~~
16 ~~such term is defined in K.S.A. 2010 Supp. 74-50,211, and amendments~~
17 ~~thereto, under this act exceed \$4,800,000 in any fiscal year commencing~~
18 ~~on or after July 1, 2011.~~

19 ~~(h)~~ (g) The secretary shall adopt rules and regulations necessary to
20 implement and administer the provisions of this act.

21 Sec. 6. K.S.A. 2010 Supp. 74-50,210, 74-50,211, 74-50,212 and 74-
22 50,213 are hereby repealed.

23 Sec. 7. This act shall take effect and be in force from and after its
24 publication in the statute book.

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