

SENATE BILL No. 65

AN ACT concerning economic development; relating to the high performance incentive fund; workforce training program participation requirements; transferability of tax credits; amending K.S.A. 74-50,133 and 79-32,160a and repealing the existing sections.

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

Section 1. K.S.A. 74-50,133 is hereby amended to read as follows: 74-50,133. There is hereby created within the department of commerce the "high performance incentive fund" to provide matching funds for business assistance and consulting services to qualified firms under the provisions of K.S.A. 74-50,131, and amendments thereto, *or* that are entitled to a workforce training tax credit under the provisions of K.S.A. 74-50,132, and amendments thereto, ~~or have received written approval for and are participating, at the time the funds are sought, in the Kansas industrial training, Kansas industrial retraining or state of Kansas investments in lifelong learning program,~~ subject to appropriation of funds and program criteria, as ~~hereinafter~~ provided *in this section*. The department of commerce may provide funds to qualified firms, on a matching basis, to pay up to 50% of such firm's costs of acquiring consulting services provided by the mid-America manufacturing technology center, or approved private consultants to assist in improving the firm's management, production processes or product or service quality. Qualified firms also shall receive priority consideration for any other business assistance programs administered by the department of commerce.

Sec. 2. K.S.A. 79-32,160a is hereby amended to read as follows: 79-32,160a. (a) For taxable years commencing after December 31, 1999, and before January 1, 2012, any taxpayer who shall invest in a qualified business facility, as defined in ~~subsection (b) of~~ K.S.A. 79-32,154**(b)**, and amendments thereto, and effective for tax years commencing after December 31, 2010, and before January 1, 2012, located in an area other than a metropolitan county as defined in either K.S.A.: 74-50,114 or 74-50,211, and amendments thereto, and also meets the definition of a business in ~~subsection (b) of~~ K.S.A. 74-50,114**(b)**, and amendments thereto, shall be allowed a credit for such investment, in an amount determined under subsection (b) or (c), as the case requires, against the tax imposed by the Kansas income tax act or where the qualified business facility is the principal place from which the trade or business of the taxpayer is directed or managed and the facility has facilitated the creation of at least 20 new full-time positions, against the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year during which commencement of commercial operations, as defined in ~~subsection (f) of~~ K.S.A. 79-32,154**(f)**, and amendments thereto, occurs at such qualified business facility. In the case of a taxpayer who meets the definition of a manufacturing business in ~~subsection (d) of~~ K.S.A. 74-50,114**(d)**, and amendments thereto, no credit shall be allowed under this section unless the number of qualified business facility employees, as determined under ~~subsection (d) of~~ K.S.A. 79-32,154**(d)**, and amendments thereto, engaged or maintained in employment at the qualified business facility as a direct result of the investment by the taxpayer for the taxable year for which the credit is claimed equals or exceeds two. In the case of a taxpayer who meets the definition of a nonmanufacturing business in ~~subsection (f) of~~ K.S.A. 74-50,114**(f)**, and amendments thereto, no credit shall be allowed under this section unless the number of qualified business facility employees, as determined under ~~subsection (d) of~~ K.S.A. 79-32,154**(d)**, and amendments thereto, engaged or maintained in employment at the qualified business facility as a direct result of the investment by the

taxpayer for the taxable year for which the credit is claimed equals or exceeds five. Where an employee performs services for the taxpayer outside the qualified business facility, the employee shall be considered engaged or maintained in employment at the qualified business facility if: (1) The employee's service performed outside the qualified business facility is incidental to the employee's service inside the qualified business facility; or (2) the base of operations or, the place from which the service is directed or controlled, is at the qualified business facility.

(b) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility—~~which~~ *that* is located in a designated nonmetropolitan region established under K.S.A. 74-50,116, and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year for which such credit is allowed, but in the case where the qualified business facility investment was made prior to January 1, 1996, not in excess of 50% of such tax. Such portion shall be an amount equal to the sum of the following:

(1) ~~Two thousand five hundred dollars~~ \$2,500 for each qualified business facility employee determined under K.S.A. 79-32,154, and amendments thereto; plus

(2) ~~one thousand dollars~~ \$1,000 for each \$100,000, or major fraction thereof, which shall be deemed to be 51% or more, in qualified business facility investment, as determined under K.S.A. 79-32,154, and amendments thereto.

(c) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility, ~~which~~ *that* is not located in a nonmetropolitan region established under K.S.A. 74-50,116, and amendments thereto, and effective for tax years commencing after December 31, 2010, and before January 1, 2012, located in an area other than a metropolitan county as defined in either K.S.A. 74-50,114 or 74-50,211, and amendments thereto, and ~~which~~ *that* also meets the definition of business in ~~subsection (b) of~~ K.S.A. 74-50,114(b), and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year for which such credit is allowed, but in the case where the qualified business facility investment was made prior to January 1, 1996, not in excess of 50% of such tax. Such portion shall be an amount equal to the sum of the following:

(1) ~~One thousand five hundred dollars~~ \$1,500 for each qualified business facility employee as determined under K.S.A. 79-32,154, and amendments thereto; and

(2) ~~one thousand dollars~~ \$1,000 for each \$100,000, or major fraction thereof, which shall be deemed to be 51% or more, in qualified business facility investment as determined under K.S.A. 79-32,154, and amendments thereto.

(d) The credit allowed by subsection (a) for each qualified business facility employee and for qualified business facility investment shall be a one-time credit. If the amount of the credit allowed under subsection (a) exceeds the tax imposed by the Kansas

income tax act on the taxpayer's Kansas taxable income, the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year, or in the case where the qualified business facility investment was made prior to January 1, 1996, 50% of such tax imposed upon the amount which exceeds such tax liability or such portion thereof may be carried over for credit in the same manner in the succeeding taxable years until the total amount of such credit is used. Except that, before the credit is allowed, a taxpayer, who meets the definition of a manufacturing business in ~~subsection (d) of~~ K.S.A. 74-50,114(d), and amendments thereto, shall recertify annually that the net increase of a minimum of two qualified business facility employees has continued to be maintained and a taxpayer, who meets the definition of a nonmanufacturing business in ~~subsection (f) of~~ K.S.A. 74-50,114(f), and amendments thereto, shall recertify annually that the net increase of a minimum of five qualified business employees has continued to be maintained.

(e) Notwithstanding the foregoing provisions of this section, and except as otherwise provided in this subsection, any taxpayer qualified and certified under the provisions of K.S.A. 74-50,131, and amendments thereto, ~~which, that~~ prior to making a commitment to invest in a qualified Kansas business, has filed a certificate of intent to invest in a qualified business facility in a form satisfactory to the secretary of commerce; ~~and that has received written approval from the secretary of commerce for participation and has participated, during the tax year for which the exemption is claimed, in the Kansas industrial training, Kansas industrial retraining or the state of Kansas investments in lifelong learning program or is eligible for the tax credit established in K.S.A. 74-50,132, and amendments thereto,~~ shall be entitled to a credit in an amount equal to 10% of that portion of the qualified business facility investment ~~which that~~ exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2) without regard to the number of qualified business facility employees engaged or maintained in employment at the qualified business facility. For tax years beginning on or after January 1, 2012, for a qualified business facility investment in Douglas, Johnson, Sedgwick, Shawnee or Wyandotte ~~counties county~~, such credit shall be in an amount equal to 10% of that portion of the qualified business facility investment ~~which that~~ exceeds \$1,000,000. Any taxpayer who has filed a certificate of intent to invest in a qualified business facility pursuant to this subsection in Douglas, Johnson, Sedgwick, Shawnee or Wyandotte county prior to December 31, 2011, and commences investments in a qualified business facility prior to December 31, 2013, may claim credits under K.S.A. 74-50,131, 74-50,132 and ~~subsection (e) of~~ 79-32,160a(e), and amendments thereto, in an amount equal to 10% of that portion of the qualified business facility investment ~~which that~~ exceeds \$50,000. Timing modifications may be authorized at the discretion of the secretary of commerce and the secretary of revenue during the transition period. The credit allowed by this subsection shall be a one-time credit. If the amount thereof exceeds the tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income or the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year, the amount thereof ~~which that~~ exceeds such tax liability may be carried forward for credit in the succeeding taxable year or years until

the total amount of the tax credit is used, except that no such tax credit shall be carried forward for deduction after the 16th taxable year succeeding the taxable year in which such credit initially was claimed, and no carryforward shall be allowed for deduction in any succeeding taxable year unless the taxpayer certifies under oath that the taxpayer continues to meet the requirements of K.S.A. 74-50,131, and amendments thereto, and this act. In no event shall any credit allowed under this section that expired during any taxable year prior to the taxable year commencing January 1, 2011, be revived under the provisions of this act.

(f) *For projects placed into service on and after January 1, 2021, a taxpayer may transfer up to 50% of the tax credit allowed under subsection (e), as provided in this subsection. The taxpayer may make a transfer to one or more transferees, but the total of all transfers shall not exceed 50% of the taxpayer's tax credit. The taxpayer shall make the transfer or transfers within a single tax year. The credit may be transferred to any individual or entity and shall be claimed in the year the credit was transferred against the transferee's tax liability for the income tax under the Kansas income tax act or the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The amount of the credit that exceeds the transferee's tax liability for such year may be carried forward for credit in the succeeding taxable year or years until the total amount of the tax credit is used, except that no such credit shall be carried forward for deduction after the 16th taxable year succeeding the taxable year in which such credit was initially claimed. The taxpayer or transferee shall provide such documentation of the tax credit transfer to the secretary of revenue as may be required by the secretary.*

(g) *In the event the tax credit earned by the taxpayer and transferred to a transferee is later disallowed in whole or in part by the secretary of revenue, the taxpayer that originally earned the tax credit shall be liable for repayment to the state in the amount disallowed.*

(h) For tax years commencing after December 31, 2005, any taxpayer claiming credits pursuant to this section, as a condition for claiming and qualifying for such credits, shall provide information pursuant to K.S.A. 79-32,243, and amendments thereto, as part of the tax return in which such credits are claimed. Such credits shall not be denied solely on the basis of the contents of the information provided by the taxpayer pursuant to K.S.A. 79-32,243, and amendments thereto.

~~(g)~~(i) This section and K.S.A. 79-32,160b, and amendments thereto, shall be a part of and supplemental to the job expansion and investment credit act of 1976, and amendments thereto.

Sec. 3. K.S.A. 74-50,133 and 79-32,160a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.