

SENATE BILL No. 91

By Committee on Commerce

1-28

1 AN ACT concerning economic development; relating to the high
2 performance incentive fund; providing for the transferability of tax
3 credits; amending K.S.A. 79-32,160a and repealing the existing section.
4

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

6 Section 1. K.S.A. 79-32,160a is hereby amended to read as follows:
7 79-32,160a. (a) For taxable years commencing after December 31, 1999,
8 and before January 1, 2012, any taxpayer who shall invest in a qualified
9 business facility, as defined in ~~subsection (b) of K.S.A. 79-32,154(b)~~, and
10 amendments thereto, and effective for tax years commencing after
11 December 31, 2010, and before January 1, 2012, located in an area other
12 than a metropolitan county as defined in either K.S.A. 74-50,114 or 74-
13 50,211, and amendments thereto, and also meets the definition of a
14 business in ~~subsection (b) of K.S.A. 74-50,114(b)~~, and amendments
15 thereto, shall be allowed a credit for such investment, in an amount
16 determined under subsection (b) or (c), as the case requires, against the tax
17 imposed by the Kansas income tax act or where the qualified business
18 facility is the principal place from which the trade or business of the
19 taxpayer is directed or managed and the facility has facilitated the creation
20 of at least 20 new full-time positions, against the premium tax or privilege
21 fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or as
22 measured by the net income of financial institutions imposed pursuant to
23 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
24 thereto, for the taxable year during which commencement of commercial
25 operations, as defined in ~~subsection (f) of K.S.A. 79-32,154(f)~~, and
26 amendments thereto, occurs at such qualified business facility. In the case
27 of a taxpayer who meets the definition of a manufacturing business in
28 ~~subsection (d) of K.S.A. 74-50,114(d)~~, and amendments thereto, no credit
29 shall be allowed under this section unless the number of qualified business
30 facility employees, as determined under ~~subsection (d) of K.S.A. 79-
31 32,154(d)~~, and amendments thereto, engaged or maintained in employment
32 at the qualified business facility as a direct result of the investment by the
33 taxpayer for the taxable year for which the credit is claimed equals or
34 exceeds two. In the case of a taxpayer who meets the definition of a
35 nonmanufacturing business in ~~subsection (f) of K.S.A. 74-50,114(f)~~, and
36 amendments thereto, no credit shall be allowed under this section unless

1 the number of qualified business facility employees, as determined under
2 ~~subsection (d)~~ of K.S.A. 79-32,154(d), and amendments thereto, engaged
3 or maintained in employment at the qualified business facility as a direct
4 result of the investment by the taxpayer for the taxable year for which the
5 credit is claimed equals or exceeds five. Where an employee performs
6 services for the taxpayer outside the qualified business facility, the
7 employee shall be considered engaged or maintained in employment at the
8 qualified business facility if: (1) The employee's service performed outside
9 the qualified business facility is incidental to the employee's service inside
10 the qualified business facility; or (2) the base of operations or, the place
11 from which the service is directed or controlled, is at the qualified business
12 facility.

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

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

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

34 (c) The credit allowed by subsection (a) for any taxpayer who invests
35 in a qualified business facility,—~~which~~ *that* is not located in a
36 nonmetropolitan region established under K.S.A. 74-50,116, and
37 amendments thereto, and effective for tax years commencing after
38 December 31, 2010, and before January 1, 2012, located in an area other
39 than a metropolitan county as defined in either K.S.A. 74-50,114 or 74-
40 50,211, and amendments thereto, and—~~which~~ *that* also meets the definition
41 of business in—~~subsection (b)~~ of K.S.A. 74-50,114(b), and amendments
42 thereto, on or after the effective date of this act, shall be a portion of the
43 income tax imposed by the Kansas income tax act on the taxpayer's

1 Kansas taxable income, the premium tax or privilege fees imposed
2 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as
3 measured by the net income of financial institutions imposed pursuant to
4 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
5 thereto, for the taxable year for which such credit is allowed, but in the
6 case where the qualified business facility investment was made prior to
7 January 1, 1996, not in excess of 50% of such tax. Such portion shall be an
8 amount equal to the sum of the following:

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

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

16 (d) The credit allowed by subsection (a) for each qualified business
17 facility employee and for qualified business facility investment shall be a
18 one-time credit. If the amount of the credit allowed under subsection (a)
19 exceeds the tax imposed by the Kansas income tax act on the taxpayer's
20 Kansas taxable income, the premium tax and privilege fees imposed
21 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as
22 measured by the net income of financial institutions imposed pursuant to
23 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
24 thereto, for the taxable year, or in the case where the qualified business
25 facility investment was made prior to January 1, 1996, 50% of such tax
26 imposed upon the amount which exceeds such tax liability or such portion
27 thereof may be carried over for credit in the same manner in the
28 succeeding taxable years until the total amount of such credit is used.
29 Except that, before the credit is allowed, a taxpayer, who meets the
30 definition of a manufacturing business in ~~subsection (d) of~~ K.S.A. 74-
31 50,114(d), and amendments thereto, shall recertify annually that the net
32 increase of a minimum of two qualified business facility employees has
33 continued to be maintained and a taxpayer, who meets the definition of a
34 nonmanufacturing business in ~~subsection (f) of~~ K.S.A. 74-50,114(f), and
35 amendments thereto, shall recertify annually that the net increase of a
36 minimum of five qualified business employees has continued to be
37 maintained.

38 (e) Notwithstanding the foregoing provisions of this section, and
39 except as otherwise provided in this subsection, any taxpayer qualified and
40 certified under the provisions of K.S.A. 74-50,131, and amendments
41 thereto; ~~which,~~ that prior to making a commitment to invest in a qualified
42 Kansas business, has filed a certificate of intent to invest in a qualified
43 business facility in a form satisfactory to the secretary of commerce; and

1 that has received written approval from the secretary of commerce for
2 participation and has participated, during the tax year for which the
3 exemption is claimed, in the Kansas industrial training, Kansas industrial
4 retraining or the state of Kansas investments in lifelong learning program
5 or is eligible for the tax credit established in K.S.A. 74-50,132, and
6 amendments thereto, shall be entitled to a credit in an amount equal to
7 10% of that portion of the qualified business facility investment ~~which~~
8 *that* exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or
9 (c)(2) without regard to the number of qualified business facility
10 employees engaged or maintained in employment at the qualified business
11 facility. For tax years beginning on or after January 1, 2012, for a qualified
12 business facility investment in Douglas, Johnson, Sedgwick, Shawnee or
13 Wyandotte ~~counties~~ *county*, such credit shall be in an amount equal to 10%
14 of that portion of the qualified business facility investment ~~which~~ *that*
15 exceeds \$1,000,000. Any taxpayer who has filed a certificate of intent to
16 invest in a qualified business facility pursuant to this subsection in
17 Douglas, Johnson, Sedgwick, Shawnee or Wyandotte county prior to
18 December 31, 2011, and commences investments in a qualified business
19 facility prior to December 31, 2013, may claim credits under K.S.A. 74-
20 50,131, 74-50,132 and ~~subsection (e) of 79-32,160a(e)~~, and amendments
21 thereto, in an amount equal to 10% of that portion of the qualified business
22 facility investment ~~which~~ *that* exceeds \$50,000. Timing modifications may
23 be authorized at the discretion of the secretary of commerce and the
24 secretary of revenue during the transition period. The credit allowed by
25 this subsection shall be a one-time credit. If the amount thereof exceeds
26 the tax imposed by the Kansas income tax act on the taxpayer's Kansas
27 taxable income or the premium tax or privilege fees imposed pursuant to
28 K.S.A. 40-252, and amendments thereto, or the privilege tax as measured
29 by net income of financial institutions imposed pursuant to article 11 of
30 chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for
31 the taxable year, the amount thereof ~~which~~ *that* exceeds such tax liability
32 may be carried forward for credit in the succeeding taxable year or years
33 until the total amount of the tax credit is used, except that no such tax
34 credit shall be carried forward for deduction after the 16th taxable year
35 succeeding the taxable year in which such credit initially was claimed, and
36 no carryforward shall be allowed for deduction in any succeeding taxable
37 year unless the taxpayer certifies under oath that the taxpayer continues to
38 meet the requirements of K.S.A. 74-50,131, and amendments thereto, and
39 this act. In no event shall any credit allowed under this section that expired
40 during any taxable year prior to the taxable year commencing January 1,
41 2011, be revived under the provisions of this act.

42 (f) *For projects placed into service on and after January 1, 2021, a*
43 *taxpayer may transfer up to 50% of the tax credit allowed under*

1 subsection (e), as provided in this subsection. The taxpayer may make a
2 transfer to one or more transferees, but the total of all transfers shall not
3 exceed 50% of the taxpayer's tax credit. The taxpayer shall make the
4 transfer or transfers within a single tax year. The credit may be
5 transferred to any individual or entity and shall be claimed in the year the
6 credit was transferred against the transferee's tax liability for the income
7 tax under the Kansas income tax act or the premium tax or privilege fees
8 imposed pursuant to K.S.A. 40-252, and amendments thereto, or the
9 privilege tax as measured by the net income of financial institutions
10 imposed pursuant to article 11 of chapter 79 of the Kansas Statutes
11 Annotated, and amendments thereto. The amount of the credit that exceeds
12 the transferee's tax liability for such year may be carried forward for
13 credit in the succeeding taxable year or years until the total amount of the
14 tax credit is used, except that no such credit shall be carried forward for
15 deduction after the 16th taxable year succeeding the taxable year in which
16 such credit initially was claimed. The taxpayer or transferee shall provide
17 such documentation of the tax credit transfer to the secretary of revenue as
18 may be required by the secretary.

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

23 (h) For tax years commencing after December 31, 2005, any taxpayer
24 claiming credits pursuant to this section, as a condition for claiming and
25 qualifying for such credits, shall provide information pursuant to K.S.A.
26 79-32,243, and amendments thereto, as part of the tax return in which such
27 credits are claimed. Such credits shall not be denied solely on the basis of
28 the contents of the information provided by the taxpayer pursuant to
29 K.S.A. 79-32,243, and amendments thereto.

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

33 Sec. 2. K.S.A. 79-32,160a is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its
35 publication in the statute book.