

1 **As Amended by House Committee**

2 *Session of 2002*

3
4 **HOUSE BILL No. 2989**

5
6 By Committee on New Economy

7
8 2-15
9

10 AN ACT concerning the job expansion and investment credit act; amend-
11 ing K.S.A. 2001 Supp. 79-32,154 and repealing the existing section.
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2001 Supp. 79-32,154 is hereby amended to read
15 as follows: 79-32,154. As used in this act, the following words and phrases
16 shall have the meanings respectively ascribed to them herein:

17 (a) "Facility" shall mean any factory, mill, plant, refinery, warehouse,
18 feedlot, building or complex of buildings located within the state, includ-
19 ing the land on which such facility is located and all machinery, equipment
20 and other real and tangible personal property located at or within such
21 facility used in connection with the operation of such facility. The word
22 "building" shall include only structures within which individuals are cus-
23 tomarily employed or which are customarily used to house machinery,
24 equipment or other property.

25 (b) "*Invest*" or "*investment*", for the purpose of determining the eli-
26 gibility of a taxpayer for the credits created pursuant to this act, means
27 an amount greater than the average amount invested over the five pre-
28 vious years by the taxpayer in a qualified business facility. **If a taxpayer**
29 **has been engaged in commercial operations for less than five**
30 **years, the amount invested shall be greater than the annual aver-**
31 **age amount invested by the taxpayer for the entire period of com-**
32 **mercial operation.** For purposes of determining the value of such cred-
33 its, "*invest*" or "*investment*" shall mean the full amount invested pursuant
34 to this act. **The value of such credit shall not be reduced by the**
35 **value of any existing equipment owned by the taxpayer.**

36 ~~(b)~~(c) "Qualified business facility" shall mean a facility which satisfies
37 the requirements of paragraphs (1) and (2) of this subsection.

38 (1) Such facility is employed by the taxpayer in the operation of a
39 revenue producing enterprise, as defined in subsection ~~(c)~~ (d). Such fa-
40 cility shall not be considered a qualified business facility in the hands of
41 the taxpayer if the taxpayer's only activity with respect to such facility is
42 to lease it to another person or persons. If the taxpayer employs only a
43 portion of such facility in the operation of a revenue producing enterprise,

1 and leases another portion of such facility to another person or persons
2 or does not otherwise use such other portions in the operation of a rev-
3 enue producing enterprise, the portion employed by the taxpayer in the
4 operation of a revenue producing enterprise shall be considered a qual-
5 ified business facility, if the requirements of paragraph (2) of this sub-
6 section are satisfied.

7 (2) If such facility was acquired by the taxpayer from another person
8 or persons, such facility was not employed, immediately prior to the trans-
9 fer of title to such facility to the taxpayer, or to the commencement of
10 the term of the lease of such facility to the taxpayer, by any other person
11 or persons in the operation of a revenue producing enterprise and the
12 taxpayer continues the operation of the same or substantially identical
13 revenue producing enterprise, as defined in subsection ~~(i)~~ (j), at such
14 facility.

15 ~~(c)~~ (d) “Revenue producing enterprise” shall mean:

16 (1) The assembly, fabrication, manufacture or processing of any ag-
17 ricultural, mineral or manufactured product;

18 (2) the storage, warehousing, distribution or sale of any products of
19 agriculture, aquaculture, mining or manufacturing;

20 (3) the feeding of livestock at a feedlot;

21 (4) the operation of laboratories or other facilities for scientific, ag-
22 ricultural, aquacultural, animal husbandry or industrial research, devel-
23 opment or testing;

24 (5) the performance of services of any type;

25 (6) the feeding of aquatic plants and animals at an aquaculture
26 operation;

27 (7) the administrative management of any of the foregoing activities;
28 or

29 (8) any combination of any of the foregoing activities.

30 “Revenue producing enterprise” shall not mean a swine production
31 facility as defined in K.S.A. 17-5903, and amendments thereto.

32 ~~(d)~~ (e) “Qualified business facility employee” shall mean a person
33 employed by the taxpayer in the operation of a qualified business facility
34 during the taxable year for which the credit allowed by K.S.A. 79-32,153,
35 and amendments thereto, is claimed:

36 (1) A person shall be deemed to be so engaged if such person per-
37 forms duties in connection with the operation of the qualified business
38 facility on: (A) A regular, full-time basis; (B) a part-time basis, provided
39 such person is customarily performing such duties at least 20 hours per
40 week throughout the taxable year; or (C) a seasonal basis, provided such
41 person performs such duties for substantially all of the season customary
42 for the position in which such person is employed. The number of qual-
43 ified business facility employees during any taxable year shall be deter-

1 mined by dividing by 12 the sum of the number of qualified business
2 facility employees on the last business day of each month of such taxable
3 year. If the qualified business facility is in operation for less than the entire
4 taxable year, the number of qualified business facility employees shall be
5 determined by dividing the sum of the number of qualified business fa-
6 cility employees on the last business day of each full calendar month
7 during the portion of such taxable year during which the qualified busi-
8 ness facility was in operation by the number of full calendar months dur-
9 ing such period. Notwithstanding the provisions of this subsection, for
10 the purpose of computing the credit allowed by K.S.A. 79-32,153, and
11 amendments thereto, in the case of an investment in a qualified business
12 facility, which facility existed and was operated by the taxpayer or related
13 taxpayer prior to such investment, the number of qualified business fa-
14 cility employees employed in the operation of such facility shall be re-
15 duced by the average number, computed as provided in this subsection,
16 of individuals employed in the operation of the facility during the taxable
17 year preceding the taxable year in which the qualified business facility
18 investment was made at the facility.

19 (2) For taxable years commencing after December 31, 1997, in the
20 case of a taxpayer claiming a credit against the premium tax and privilege
21 fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the
22 privilege tax as measured by net income of financial institutions imposed
23 pursuant to ~~chapter 79 article 11~~ *article 11 of chapter 79* of the Kansas
24 Statutes Annotated, *and amendments thereto*, “qualified business em-
25 ployee” shall not mean any person who is employed in the operation of
26 a qualified business facility in the state due to the merger, acquisition or
27 other reconfiguration of the taxpayer unless such employee’s position rep-
28 represents a net gain of total positions created by the taxpayer and the em-
29 ployee’s position was not in existence at the time of the merger acquisition
30 or other reconfiguration of the taxpayer.

31 ~~(e)~~ (f) “Qualified business facility investment” shall mean the value
32 of the real and tangible personal property, except inventory or property
33 held for sale to customers in the ordinary course of the taxpayer’s busi-
34 ness, which constitutes the qualified business facility, or which is used by
35 the taxpayer in the operation of the qualified business facility, during the
36 taxable year for which the credit allowed by K.S.A. 79-32,153, and amend-
37 ments thereto, is claimed. The value of such property during such taxable
38 year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight
39 times the net annual rental rate, if leased by the taxpayer. The net annual
40 rental rate shall be the annual rental rate paid by the taxpayer less any
41 annual rental rate received by the taxpayer from subrentals. The qualified
42 business facility investment shall be determined by dividing by 12 the
43 sum of the total value of such property on the last business day of each

1 calendar month of the taxable year. If the qualified business facility is in
2 operation for less than an entire taxable year, the qualified business facility
3 investment shall be determined by dividing the sum of the total value of
4 such property on the last business day of each full calendar month during
5 the portion of such taxable year during which the qualified business fa-
6 cility was in operation by the number of full calendar months during such
7 period. Notwithstanding the provisions of this subsection, for the purpose
8 of computing the credit allowed by K.S.A. 79-32,153, and amendments
9 thereto, in the case of an investment in a qualified business facility, which
10 facility existed and was operated by the taxpayer or related taxpayer prior
11 to such investment the amount of the taxpayer's qualified business facility
12 investment in such facility shall be reduced by the average amount, com-
13 puted as provided in this subsection, of the investment of the taxpayer or
14 a related taxpayer in the facility for the taxable year preceding the taxable
15 year in which the qualified business facility investment was made at the
16 facility. *The value of any investments in used equipment shall be the book*
17 *value of such equipment and shall not be deemed to effect the net value*
18 *of such equipment.*

19 ~~(f)~~ (g) "Commencement of commercial operations" shall be deemed
20 to occur during the first taxable year for which the qualified business
21 facility is first available for use by the taxpayer, or first capable of being
22 used by the taxpayer, in the revenue producing enterprise in which the
23 taxpayer intends to use the qualified business facility.

24 ~~(g)~~ (h) "Qualified business facility income" shall mean the Kansas
25 taxable income derived by the taxpayer from the operation of the qualified
26 business facility. If a taxpayer has income derived from the operation of
27 a qualified business facility as well as from other activities conducted
28 within this state, the Kansas taxable income derived by the taxpayer from
29 the operation of the qualified business facility shall be determined by
30 multiplying the taxpayer's Kansas taxable income by a fraction, the nu-
31 merator of which is the property factor, as defined in paragraph (1), plus
32 the payroll factor, as defined in paragraph (2), and the denominator of
33 which is two. In the case of financial institutions, the property and payroll
34 factors shall be computed utilizing the specific provisions of the appor-
35 tionment method applicable to financial institutions, if enacted, and the
36 qualified business facility income shall be based upon net income.

37 (1) The property factor is a fraction, the numerator of which is the
38 average value of the taxpayer's real and tangible personal property owned
39 or rented and used in connection with the operation of the qualified
40 business facility during the tax period, and the denominator of which is
41 the average value of all the taxpayer's real and tangible personal property
42 owned or rented and used in this state during the tax period. The average
43 value of all such property shall be determined as provided in K.S.A. 79-

1 3281 and 79-3282, and amendments thereto.

2 (2) The payroll factor is a fraction, the numerator of which is the total
3 amount paid during the tax period by the taxpayer for compensation to
4 persons qualifying as qualified business facility employees, as determined
5 under subsection ~~(d)~~ (e), at the qualified business facility, and the denom-
6 inator of which is the total amount paid in this state during the tax period
7 by the taxpayer for compensation. The compensation paid in this state
8 shall be determined as provided in K.S.A. 79-3283, and amendments
9 thereto.

10 The formula set forth in this subsection ~~(g)~~ (h) shall not be used for
11 any purpose other than determining the qualified business facility income
12 attributable to a qualified business facility.

13 ~~(h)~~ (i) “Related taxpayer” shall mean (1) a corporation, partnership,
14 trust or association controlled by the taxpayer; (2) an individual, corpo-
15 ration, partnership, trust or association in control of the taxpayer; or (3)
16 a corporation, partnership, trust or association controlled by an individual,
17 corporation, partnership, trust or association in control of the taxpayer.
18 For the purposes of this act, “control of a corporation” shall mean own-
19 ership, directly or indirectly, of stock possessing at least 80% of the total
20 combined voting power of all classes of stock entitled to vote and at least
21 80% of all other classes of stock of the corporation; “control of a part-
22 nership or association” shall mean ownership of at least 80% of the capital
23 or profits interest in such partnership or association; and “control of a
24 trust” shall mean ownership, directly or indirectly, of at least 80% of the
25 beneficial interest in the principal or income of such trust.

26 ~~(i)~~ (j) “Same or substantially identical revenue producing enterprise”
27 shall mean a revenue producing enterprise in which the products pro-
28 duced or sold, services performed or activities conducted are the same in
29 character and use, are produced, sold, performed or conducted in the
30 same manner and to or for the same type of customers as the products,
31 services or activities produced, sold, performed or conducted in another
32 revenue producing enterprise.

33 **New Sec. 2. The provisions of this act shall be effective for all**
34 **taxable years commencing after December 31, 1992. No taxpayer**
35 **shall be subject to audit, penalty or interest for underpayment of**
36 **tax due to failure to properly calculate the value of an investment**
37 **by deducting the value of any existing equipment owned by the**
38 **taxpayer.**

39 ~~Sec. 3.~~ K.S.A. 2001 Supp. 79-32,154 is hereby repealed.

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

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