

## HOUSE BILL No. 2990

By Committee on New Economy

2-15

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AN ACT concerning the job expansion and investment credit act; relating to qualified business facility employees; amending K.S.A. 2001 Supp. 79-32,154 and repealing the existing section.

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

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

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

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

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the

1 taxpayer continues the operation of the same or substantially identical  
2 revenue producing enterprise, as defined in subsection (i), at such facility.

3 (c) “Revenue producing enterprise” shall mean:

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

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

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

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

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

13 (6) the feeding of aquatic plants and animals at an aquaculture  
14 operation;

15 (7) the administrative management of any of the foregoing activities;  
16 or

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

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

20 (d) “Qualified business facility employee” shall mean a person em-  
21 ployed by the taxpayer in the operation of a qualified business facility  
22 during the taxable year for which the credit allowed by K.S.A. 79-32,153,  
23 and amendments thereto, is claimed, *however, if the taxpayer demon-*  
24 *strates to the satisfaction of the secretary of commerce and housing that*  
25 *such persons have been hired as part of a planned, multi-year expansion,*  
26 *the secretary may authorize the taxpayer to claim credit for such em-*  
27 *ployees during any taxable year during the multi-year expansion:*

28 (1) A person shall be deemed to be so engaged if such person per-  
29 forms duties in connection with the operation of the qualified business  
30 facility on: (A) A regular, full-time basis; (B) a part-time basis, provided  
31 such person is customarily performing such duties at least 20 hours per  
32 week throughout the taxable year; or (C) a seasonal basis, provided such  
33 person performs such duties for substantially all of the season customary  
34 for the position in which such person is employed. The number of qual-  
35 ified business facility employees during any taxable year shall be deter-  
36 mined by dividing by 12 the sum of the number of qualified business  
37 facility employees on the last business day of each month of such taxable  
38 year. If the qualified business facility is in operation for less than the entire  
39 taxable year, the number of qualified business facility employees shall be  
40 determined by dividing the sum of the number of qualified business fa-  
41 cility employees on the last business day of each full calendar month  
42 during the portion of such taxable year during which the qualified busi-  
43 ness facility was in operation by the number of full calendar months dur-

1 ing such period. Notwithstanding the provisions of this subsection, for  
2 the purpose of computing the credit allowed by K.S.A. 79-32,153, and  
3 amendments thereto, in the case of an investment in a qualified business  
4 facility, which facility existed and was operated by the taxpayer or related  
5 taxpayer prior to such investment, the number of qualified business fa-  
6 cility employees employed in the operation of such facility shall be re-  
7 duced by the average number, computed as provided in this subsection,  
8 of individuals employed in the operation of the facility during the taxable  
9 year preceding the taxable year in which the qualified business facility  
10 investment was made at the facility.

11 (2) For taxable years commencing after December 31, 1997, in the  
12 case of a taxpayer claiming a credit against the premium tax and privilege  
13 fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the  
14 privilege tax as measured by net income of financial institutions imposed  
15 pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, "qual-  
16 ified business employee" shall not mean any person who is employed in  
17 the operation of a qualified business facility in the state due to the merger,  
18 acquisition or other reconfiguration of the taxpayer unless such em-  
19 ployee's position represents a net gain of total positions created by the  
20 taxpayer and the employee's position was not in existence at the time of  
21 the merger acquisition or other reconfiguration of the taxpayer.

22 (e) "Qualified business facility investment" shall mean the value of  
23 the real and tangible personal property, except inventory or property held  
24 for sale to customers in the ordinary course of the taxpayer's business,  
25 which constitutes the qualified business facility, or which is used by the  
26 taxpayer in the operation of the qualified business facility, during the  
27 taxable year for which the credit allowed by K.S.A. 79-32,153, and amend-  
28 ments thereto, is claimed, *however, if the taxpayer demonstrates to the*  
29 *satisfaction of the secretary of commerce and housing that such invest-*  
30 *ments have been made as part of a planned, multi-year expansion, the*  
31 *secretary may authorize the taxpayer to claim credit for such investments*  
32 *during any taxable year during the multi-year expansion.* The value of  
33 such property during such taxable year shall be: (1) Its original cost if  
34 owned by the taxpayer; or (2) eight times the net annual rental rate, if  
35 leased by the taxpayer. The net annual rental rate shall be the annual  
36 rental rate paid by the taxpayer less any annual rental rate received by  
37 the taxpayer from subrentals. The qualified business facility investment  
38 shall be determined by dividing by 12 the sum of the total value of such  
39 property on the last business day of each calendar month of the taxable  
40 year. If the qualified business facility is in operation for less than an entire  
41 taxable year, the qualified business facility investment shall be determined  
42 by dividing the sum of the total value of such property on the last business  
43 day of each full calendar month during the portion of such taxable year

1 during which the qualified business facility was in operation by the num-  
2 ber of full calendar months during such period. Notwithstanding the pro-  
3 visions of this subsection, for the purpose of computing the credit allowed  
4 by K.S.A. 79-32,153, and amendments thereto, in the case of an invest-  
5 ment in a qualified business facility, which facility existed and was oper-  
6 ated by the taxpayer or related taxpayer prior to such investment the  
7 amount of the taxpayer's qualified business facility investment in such  
8 facility shall be reduced by the average amount, computed as provided  
9 in this subsection, of the investment of the taxpayer or a related taxpayer  
10 in the facility for the taxable year preceding the taxable year in which the  
11 qualified business facility investment was made at the facility.

12 (f) "Commencement of commercial operations" shall be deemed to  
13 occur during the first taxable year for which the qualified business facility  
14 is first available for use by the taxpayer, or first capable of being used by  
15 the taxpayer, in the revenue producing enterprise in which the taxpayer  
16 intends to use the qualified business facility.

17 (g) "Qualified business facility income" shall mean the Kansas taxable  
18 income derived by the taxpayer from the operation of the qualified busi-  
19 ness facility. If a taxpayer has income derived from the operation of a  
20 qualified business facility as well as from other activities conducted within  
21 this state, the Kansas taxable income derived by the taxpayer from the  
22 operation of the qualified business facility shall be determined by multi-  
23 plying the taxpayer's Kansas taxable income by a fraction, the numerator  
24 of which is the property factor, as defined in paragraph (1), plus the  
25 payroll factor, as defined in paragraph (2), and the denominator of which  
26 is two. In the case of financial institutions, the property and payroll factors  
27 shall be computed utilizing the specific provisions of the apportionment  
28 method applicable to financial institutions, if enacted, and the qualified  
29 business facility income shall be based upon net income.

30 (1) The property factor is a fraction, the numerator of which is the  
31 average value of the taxpayer's real and tangible personal property owned  
32 or rented and used in connection with the operation of the qualified  
33 business facility during the tax period, and the denominator of which is  
34 the average value of all the taxpayer's real and tangible personal property  
35 owned or rented and used in this state during the tax period. The average  
36 value of all such property shall be determined as provided in K.S.A. 79-  
37 3281 and 79-3282, and amendments thereto.

38 (2) The payroll factor is a fraction, the numerator of which is the total  
39 amount paid during the tax period by the taxpayer for compensation to  
40 persons qualifying as qualified business facility employees, as determined  
41 under subsection (d), at the qualified business facility, and the denomi-  
42 nator of which is the total amount paid in this state during the tax period  
43 by the taxpayer for compensation. The compensation paid in this state

1 shall be determined as provided in K.S.A. 79-3283, and amendments  
2 thereto.

3 The formula set forth in this subsection (g) shall not be used for any  
4 purpose other than determining the qualified business facility income  
5 attributable to a qualified business facility.

6 (h) "Related taxpayer" shall mean (1) a corporation, partnership, trust  
7 or association controlled by the taxpayer; (2) an individual, corporation,  
8 partnership, trust or association in control of the taxpayer; or (3) a cor-  
9 poration, partnership, trust or association controlled by an individual, cor-  
10 poration, partnership, trust or association in control of the taxpayer. For  
11 the purposes of this act, "control of a corporation" shall mean ownership,  
12 directly or indirectly, of stock possessing at least 80% of the total com-  
13 bined voting power of all classes of stock entitled to vote and at least 80%  
14 of all other classes of stock of the corporation; "control of a partnership  
15 or association" shall mean ownership of at least 80% of the capital or  
16 profits interest in such partnership or association; and "control of a trust"  
17 shall mean ownership, directly or indirectly, of at least 80% of the ben-  
18 efiticial interest in the principal or income of such trust.

19 (i) "Same or substantially identical revenue producing enterprise"  
20 shall mean a revenue producing enterprise in which the products pro-  
21 duced or sold, services performed or activities conducted are the same in  
22 character and use, are produced, sold, performed or conducted in the  
23 same manner and to or for the same type of customers as the products,  
24 services or activities produced, sold, performed or conducted in another  
25 revenue producing enterprise.

26 Sec. 2. K.S.A. 2001 Supp. 79-32,154 is hereby repealed.

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

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