

**As Amended by House Committee**

***[As Amended by Senate Committee of the Whole]***

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*Session of 2004*

## **SENATE BILL No. 417**

By Committee on Commerce

2-2

14 AN ACT concerning income taxation; relating to rural business devel-  
15 opment tax credits; amending K.S.A. 40-2803 and 40-2804 and K.S.A.  
16 2003 Supp. 79-32,117 and repealing the existing sections.

17

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

19 New Section 1. (a) As used in this act: (1) “Contributions” means  
20 and includes the donation of cash, services or property other than used  
21 clothing in an amount or value of \$250 or more. Contributions shall be  
22 valued as follows:

23 (A) Stocks and bonds contributed shall be valued at the stock market  
24 price on the date of transfer;

25 (B) personal property items contributed shall be valued at the lesser  
26 of the item’s fair market value or cost to the donor and may be inclusive  
27 of costs incurred in making the contribution. Such value shall not include  
28 sales tax;

29 (C) contributions of real estate are allowable for credit only when  
30 title of such real estate is in fee simple absolute and is clear of any en-  
31 cumberances; and

32 (D) the amount of credit allowable shall be based upon the lesser of  
33 two current independent appraisals conducted by state licensed  
34 appraisers;

35 (2) “region” means multi-county areas as defined by the secretary of  
36 commerce;

37 (3) “regional foundation” means any organization in Kansas that dem-  
38 onstrates capacity to provide economic development services to regions  
39 as defined by this act, and: (A) Has obtained a ruling from the internal  
40 revenue service of the United States department of treasury that such  
41 organization is exempt from income taxation under the provisions of sec-  
42 tion 501(c)(3) or 501(c)(6) of the federal internal revenue code;

43 (B) has been designated as a community development company by

- 1 the United States small business administration;
- 2 (C) has been designated as an economic development district by the  
3 United States department of commerce's economic development  
4 administration;
- 5 (D) has been organized as a regional planning commission under  
6 K.S.A. 12-744 *et seq.*, and amendments thereto, or its predecessor, K.S.A.  
7 12-716 *et seq.*, and amendments thereto; or
- 8 (E) is incorporated in the state of Kansas as a nonstock, nonprofit  
9 corporation;
- 10 (4) "rural community" means any city having a population of fewer  
11 than 50,000 or except as otherwise provided, any unincorporated area.  
12 Unincorporated areas within any county having a population of more than  
13 100,000 are not eligible; and
- 14 (5) "taxpayer" means: (A) Any business entity authorized to do busi-  
15 ness in the state of Kansas which is subject to the state income tax im-  
16 posed by the provisions of the Kansas income tax act;
- 17 (B) any individual subject to the state income tax imposed by the  
18 provisions of the Kansas income tax act;
- 19 (C) any national banking association, state bank, trust company or  
20 savings and loan association paying an annual tax on its net income pur-  
21 suant to article 11 of chapter 79 of the Kansas Statutes Annotated; or
- 22 (D) any insurance company paying the premium tax and privilege  
23 fees imposed pursuant to K.S.A. 40-252, and amendments thereto.
- 24 (b) For taxable years commencing after December 31, 2003, any tax-  
25 payer contributing to a regional foundation designated by the secretary  
26 of commerce, shall be allowed a credit, as provided in this act, against  
27 the tax imposed by the Kansas income tax act, the tax on net income of  
28 national banking associations, state banks, trust companies or savings and  
29 loan associations imposed under article 11 of chapter 79 of the Kansas  
30 Statutes Annotated, or the premium tax or privilege fees imposed pur-  
31 suant to K.S.A. 40-252, and amendments thereto, if the proposal of the  
32 regional foundation is approved pursuant to this act.
- 33 (c) (1) The secretary of commerce is hereby authorized to promul-  
34 gate rules and regulations for establishing criteria for evaluating proposals  
35 to designate regional foundations as defined by this act with the assistance  
36 of the secretary of revenue.
- 37 (2) The proposal shall set forth the program to be conducted, why  
38 the program is needed, the estimated amount to be invested in the pro-  
39 gram, composition of the board that shall be making investment decisions,  
40 policies stating the organization shall offer services to all counties in that  
41 region and the plans for implementing the program.
- 42 (3) The secretary of commerce shall select regional foundations pur-  
43 suant to rules and regulations promulgated pursuant to subsection (c)(1)

1 to use the sale of credits to establish regional business development funds.

2 (4) The total amount of credits allowed under this act shall not exceed  
3 \$2,500,000 for fiscal year 2005; \$2,500,000 for fiscal year 2006; and  
4 \$2,000,000 for fiscal year 2007. Each region as defined by this act shall  
5 receive an equal share of this allocation.

6 (5) Any credits not sold by such regional foundations shall be re-  
7 claimed by the secretary from such region and redistributed to other  
8 regions that sold all credits previously issued.

9 (6) The secretary shall annually review and approve or disapprove the  
10 proposal of each designated regional foundation for continued eligibility  
11 for tax credits. The department of commerce retains that right to reclaim  
12 credits in such cases the regional foundation closes or there is demon-  
13 strated violation of the organization's policies. Changes to the investment  
14 policies of each regional foundation are subject to approval of the  
15 secretary.

16 (d) (1) The amount of credit allowed pursuant to this act, shall not  
17 exceed ~~70%~~ ~~50%~~ ~~[70%]~~ 50% of the total amount contributed during the  
18 taxable year by the taxpayer to a regional foundation approved pursuant  
19 to this act.

20 (2) If the amount of the credit allowed by this act, exceeds the tax-  
21 payer's income tax liability imposed under the Kansas income tax act,  
22 such excess amount shall be refunded to the taxpayer.

23 (e) The provisions of this act shall be applicable to all taxable years  
24 beginning after December 31, 2003.

25 Sec. 2. K.S.A. 40-2803 is hereby amended to read as follows: 40-  
26 2803. For the purpose of computing the tax imposed upon life insurance  
27 companies under the provisions of this act the term "net income" shall  
28 mean the net taxable income for the preceding calendar year of such  
29 company as determined under the provisions of section 802 of the internal  
30 revenue code of 1954, as heretofore or hereafter amended. The term  
31 "net income" shall not include dividends received from stock issued by  
32 Kansas Venture Capital, Inc. to the extent such dividends are included in  
33 the Kansas taxable income of a corporation, interest income on obligations  
34 of this state or a political subdivision thereof which is specifically exempt  
35 from income tax under the laws of this state authorizing the issuance of  
36 such obligations. The term "net income" shall include the amount of any  
37 charitable contribution made to the extent the same is claimed as the  
38 basis for the credit allowed pursuant to K.S.A. 79-32,196, *and amend-*  
39 *ments thereto. The term "net income" shall include the amount of any*  
40 *contribution made to the extent the same is claimed as the basis for the*  
41 *credit allowed pursuant to section 1, and amendments thereto.* In case  
42 the entire business of such company is not transacted within this state,  
43 the net income for the purposes of this act shall be determined by mul-

1 tripling such net income by a fraction, the numerator of which shall be  
2 the premiums received from business transacted within this state and the  
3 denominator of which is the amount of premiums received by such com-  
4 pany from all its business. Insurance companies connected through stock  
5 ownership, which operate under common control and management are  
6 hereby authorized to make a consolidated return for the purpose of de-  
7 termining “net income” under the provisions of this section and inter-  
8 company transactions shall not be considered or included for the purpose  
9 of such determination.

10 Sec. 3. K.S.A. 40-2804 is hereby amended to read as follows: 40-  
11 2804. For the purpose of computing the tax imposed under the provisions  
12 of this act the term “net income” as applied to a domestic fire and casualty  
13 insurance company shall mean the amount required to be reported as  
14 “net income” in the annual statement form required to be filed by such  
15 company with the Kansas commissioner of insurance under the provisions  
16 of K.S.A. 40-225, and amendments thereto; as applied to a domestic mu-  
17 tual hail insurance company the term “net income” shall mean the  
18 amount required to be reported as “net income,” annual increase in re-  
19 serve fund in section VII of the annual statement form required to be  
20 filed by such company with the Kansas commissioner of insurance under  
21 the provisions of K.S.A. 40-225, and amendments thereto; and as applied  
22 to a domestic county mutual fire insurance company the term “net in-  
23 come” shall mean the amount required to be reported as “net income,”  
24 annual net gain in its combined reserve and general funds in section VII  
25 of the annual statement form required to be filed by such company with  
26 the Kansas commissioner of insurance under the provisions of K.S.A. 40-  
27 225, and amendments thereto. If any such domestic fire and casualty  
28 insurance company, domestic mutual hail insurance company, or domes-  
29 tic county mutual fire insurance company does business in states other  
30 than Kansas its “net income” shall be determined by the proportion of  
31 net premiums (gross premiums less cancellations) received from business  
32 written in Kansas compared to total net premiums received from all its  
33 business. Insurance companies connected through stock ownership with  
34 a common parent corporation, which operate under common control and  
35 management are hereby authorized to make a consolidated return for the  
36 purpose of determining “net income” under the provisions of this section  
37 and intercompany transactions shall not be considered or included for  
38 the purpose of such determination. If a domestic insurance company is  
39 exempt for any reason from filing an annual statement with the Kansas  
40 insurance department, its net income shall be determined in the same  
41 manner as herein provided. For the purposes of this section, the term  
42 “net income” shall not include dividends received from stock issued by  
43 Kansas Venture Capital, Inc. to the extent such dividends are included in

1 the Kansas taxable income of a corporation, interest income on obligations  
2 of this state or a political subdivision thereof which is specifically exempt  
3 from income tax under the laws of this state authorizing the issuance of  
4 such obligations. For the purposes of this section, the term “net income”  
5 shall include the amount of any charitable contribution made to the extent  
6 the same is claimed as the basis for the credit allowed pursuant to K.S.A.  
7 79-32,196, and amendments thereto. *For the purposes of this section, the*  
8 *term “net income” shall include the amount of any contribution made to*  
9 *the extent the same is claimed as the basis for the credit allowed pursuant*  
10 *to section 1, and amendments thereto.*

11 Sec. 4. K.S.A. 2003 Supp. 79-32,117 is hereby amended to read as  
12 follows: 79-32,117. (a) The Kansas adjusted gross income of an individual  
13 means such individual’s federal adjusted gross income for the taxable year,  
14 with the modifications specified in this section.

15 (b) There shall be added to federal adjusted gross income:

16 (i) Interest income less any related expenses directly incurred in the  
17 purchase of state or political subdivision obligations, to the extent that  
18 the same is not included in federal adjusted gross income, on obligations  
19 of any state or political subdivision thereof, but to the extent that interest  
20 income on obligations of this state or a political subdivision thereof issued  
21 prior to January 1, 1988, is specifically exempt from income tax under the  
22 laws of this state authorizing the issuance of such obligations, it shall be  
23 excluded from computation of Kansas adjusted gross income whether or  
24 not included in federal adjusted gross income. Interest income on obli-  
25 gations of this state or a political subdivision thereof issued after Decem-  
26 ber 31, 1987, shall be excluded from computation of Kansas adjusted  
27 gross income whether or not included in federal adjusted gross income.

28 (ii) Taxes on or measured by income or fees or payments in lieu of  
29 income taxes imposed by this state or any other taxing jurisdiction to the  
30 extent deductible in determining federal adjusted gross income and not  
31 credited against federal income tax. This paragraph shall not apply to taxes  
32 imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amend-  
33 ments thereto, for privilege tax year 1995, and all such years thereafter.

34 (iii) The federal net operating loss deduction.

35 (iv) Federal income tax refunds received by the taxpayer if the de-  
36 duction of the taxes being refunded resulted in a tax benefit for Kansas  
37 income tax purposes during a prior taxable year. Such refunds shall be  
38 included in income in the year actually received regardless of the method  
39 of accounting used by the taxpayer. For purposes hereof, a tax benefit  
40 shall be deemed to have resulted if the amount of the tax had been de-  
41 ducted in determining income subject to a Kansas income tax for a prior  
42 year regardless of the rate of taxation applied in such prior year to the  
43 Kansas taxable income, but only that portion of the refund shall be in-

1 cluded as bears the same proportion to the total refund received as the  
2 federal taxes deducted in the year to which such refund is attributable  
3 bears to the total federal income taxes paid for such year. For purposes  
4 of the foregoing sentence, federal taxes shall be considered to have been  
5 deducted only to the extent such deduction does not reduce Kansas tax-  
6 able income below zero.

7 (v) The amount of any depreciation deduction or business expense  
8 deduction claimed on the taxpayer's federal income tax return for any  
9 capital expenditure in making any building or facility accessible to the  
10 handicapped, for which expenditure the taxpayer claimed the credit al-  
11 lowed by K.S.A. 79-32,177, and amendments thereto.

12 (vi) Any amount of designated employee contributions picked up by  
13 an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965,  
14 and amendments to such sections.

15 (vii) The amount of any charitable contribution made to the extent  
16 the same is claimed as the basis for the credit allowed pursuant to K.S.A.  
17 79-32,196, and amendments thereto.

18 (viii) The amount of any costs incurred for improvements to a swine  
19 facility, claimed for deduction in determining federal adjusted gross in-  
20 come, to the extent the same is claimed as the basis for any credit allowed  
21 pursuant to K.S.A. 2003 Supp. 79-32,204 and amendments thereto.

22 (ix) The amount of any ad valorem taxes and assessments paid and  
23 the amount of any costs incurred for habitat management or construction  
24 and maintenance of improvements on real property, claimed for deduc-  
25 tion in determining federal adjusted gross income, to the extent the same  
26 is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203  
27 and amendments thereto.

28 (x) Amounts received as nonqualified withdrawals, as defined by  
29 K.S.A. 2003 Supp. 75-643, and amendments thereto, if, at the time of  
30 contribution to a family postsecondary education savings account, such  
31 amounts were subtracted from the federal adjusted gross income pur-  
32 suant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amend-  
33 ments thereto, or if such amounts are not already included in the federal  
34 adjusted gross income.

35 (xi) *The amount of any contribution made to the same extent the same*  
36 *is claimed as the basis for the credit allowed pursuant to section 1, and*  
37 *amendments thereto.*

38 (c) There shall be subtracted from federal adjusted gross income:

39 (i) Interest or dividend income on obligations or securities of any  
40 authority, commission or instrumentality of the United States and its pos-  
41 sessions less any related expenses directly incurred in the purchase of  
42 such obligations or securities, to the extent included in federal adjusted  
43 gross income but exempt from state income taxes under the laws of the

1 United States.

2 (ii) Any amounts received which are included in federal adjusted  
3 gross income but which are specifically exempt from Kansas income tax-  
4 ation under the laws of the state of Kansas.

5 (iii) The portion of any gain or loss from the sale or other disposition  
6 of property having a higher adjusted basis for Kansas income tax purposes  
7 than for federal income tax purposes on the date such property was sold  
8 or disposed of in a transaction in which gain or loss was recognized for  
9 purposes of federal income tax that does not exceed such difference in  
10 basis, but if a gain is considered a long-term capital gain for federal in-  
11 come tax purposes, the modification shall be limited to that portion of  
12 such gain which is included in federal adjusted gross income.

13 (iv) The amount necessary to prevent the taxation under this act of  
14 any annuity or other amount of income or gain which was properly in-  
15 cluded in income or gain and was taxed under the laws of this state for a  
16 taxable year prior to the effective date of this act, as amended, to the  
17 taxpayer, or to a decedent by reason of whose death the taxpayer acquired  
18 the right to receive the income or gain, or to a trust or estate from which  
19 the taxpayer received the income or gain.

20 (v) The amount of any refund or credit for overpayment of taxes on  
21 or measured by income or fees or payments in lieu of income taxes im-  
22 posed by this state, or any taxing jurisdiction, to the extent included in  
23 gross income for federal income tax purposes.

24 (vi) Accumulation distributions received by a taxpayer as a beneficiary  
25 of a trust to the extent that the same are included in federal adjusted  
26 gross income.

27 (vii) Amounts received as annuities under the federal civil service  
28 retirement system from the civil service retirement and disability fund  
29 and other amounts received as retirement benefits in whatever form  
30 which were earned for being employed by the federal government or for  
31 service in the armed forces of the United States.

32 (viii) Amounts received by retired railroad employees as a supple-  
33 mental annuity under the provisions of 45 U.S.C. 228b (a) and 228c (a)(1)  
34 *et seq.*

35 (ix) Amounts received by retired employees of a city and by retired  
36 employees of any board of such city as retirement allowances pursuant to  
37 K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter  
38 ordinance exempting a city from the provisions of K.S.A. 13-14,106, and  
39 amendments thereto.

40 (x) For taxable years beginning after December 31, 1976, the amount  
41 of the federal tentative jobs tax credit disallowance under the provisions  
42 of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978,  
43 the amount of the targeted jobs tax credit and work incentive credit dis-

1 allowances under 26 U.S.C. 280 C.

2 (xi) For taxable years beginning after December 31, 1986, dividend  
3 income on stock issued by Kansas Venture Capital, Inc.

4 (xii) For taxable years beginning after December 31, 1989, amounts  
5 received by retired employees of a board of public utilities as pension and  
6 retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249  
7 and amendments thereto.

8 (xiii) For taxable years beginning after December 31, 1993, the  
9 amount of income earned on contributions deposited to an individual  
10 development account under K.S.A. 79-32,117h, and amendments thereto.

11 (xiv) For all taxable years commencing after December 31, 1996, that  
12 portion of any income of a bank organized under the laws of this state or  
13 any other state, a national banking association organized under the laws  
14 of the United States, an association organized under the savings and loan  
15 code of this state or any other state, or a federal savings association or-  
16 ganized under the laws of the United States, for which an election as an  
17 S corporation under subchapter S of the federal internal revenue code is  
18 in effect, which accrues to the taxpayer who is a stockholder of such  
19 corporation and which is not distributed to the stockholders as dividends  
20 of the corporation.

21 (xv) For all taxable years beginning after December 31, 1999,  
22 amounts not exceeding \$2,000, or \$4,000 for a married couple filing a  
23 joint return, for each designated beneficiary which are contributed to a  
24 family postsecondary education savings account established under the  
25 Kansas postsecondary education savings program for the purpose of pay-  
26 ing the qualified higher education expenses of a designated beneficiary  
27 at an institution of postsecondary education. The terms and phrases used  
28 in this paragraph shall have the meaning respectively ascribed thereto by  
29 the provisions of K.S.A. 2003 Supp. 75-643, and amendments thereto,  
30 and the provisions of such section are hereby incorporated by reference  
31 for all purposes thereof.

32 (d) There shall be added to or subtracted from federal adjusted gross  
33 income the taxpayer's share, as beneficiary of an estate or trust, of the  
34 Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and  
35 amendments thereto.

36 (e) The amount of modifications required to be made under this sec-  
37 tion by a partner which relates to items of income, gain, loss, deduction  
38 or credit of a partnership shall be determined under K.S.A. 79-32,131,  
39 and amendments thereto, to the extent that such items affect federal  
40 adjusted gross income of the partner.

41 Sec. 5. K.S.A. 40-2803 and 40-2804 and K.S.A. 2003 Supp. 79-32,117  
42 are hereby repealed.

43



1     Sec. 6. This act shall take effect and be in force from and after its  
2     publication in the statute book.