

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2603

By Joint Committee on Economic Development

1-3

10 AN ACT concerning income taxation; relating to credits; clarifying the
11 definition of qualified business facility employee and qualified business
12 facility investment; amending K.S.A. 2007 Supp. 79-32,154 and re-
13 pealing the existing section.

14

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

16 Section 1. K.S.A. 2007 Supp. 79-32,154 is hereby amended to read
17 as follows: 79-32,154. As used in this act, the following words and phrases
18 shall have the meanings respectively ascribed to them herein:

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

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

29 (1) Such facility is employed by the taxpayer in the operation of a
30 revenue producing enterprise, as defined in subsection (c). Such facility
31 shall not be considered a qualified business facility in the hands of the
32 taxpayer if the taxpayer's only activity with respect to such facility is to
33 lease it to another person or persons. If the taxpayer employs only a
34 portion of such facility in the operation of a revenue producing enterprise,
35 and leases another portion of such facility to another person or persons
36 or does not otherwise use such other portions in the operation of a rev-
37 enue producing enterprise, the portion employed by the taxpayer in the
38 operation of a revenue producing enterprise shall be considered a qual-
39 ified business facility, if the requirements of paragraph (2) of this sub-
40 section are satisfied.

41 (2) If such facility was acquired by the taxpayer from another person
42 or persons, such facility was not employed, immediately prior to the trans-
43 fer of title to such facility to the taxpayer, or to the commencement of

1 the term of the lease of such facility to the taxpayer, by any other person
2 or persons in the operation of a revenue producing enterprise and the
3 taxpayer continues the operation of the same or substantially identical
4 revenue producing enterprise, as defined in subsection (i), at such facility.

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

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

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

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

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

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

15 (6) the feeding of aquatic plants and animals at an aquaculture
16 operation;

17 (7) the administrative management of any of the foregoing activities;

18 or

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

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

22 (d) “Qualified business facility employee” shall mean a person em-
23 ployed by the taxpayer in the operation of a qualified business facility
24 during the taxable year for which the credit allowed by K.S.A. 79-32,153,
25 and amendments thereto, is claimed:

26 (1) A person shall be deemed to be so engaged if such person per-
27 forms duties in connection with the operation of the qualified business
28 facility on: (A) A regular, full-time basis; (B) a part-time basis, provided
29 such person is customarily performing such duties at least 20 hours per
30 week throughout the taxable year; or (C) a seasonal basis, provided such
31 person performs such duties for substantially all of the season customary
32 for the position in which such person is employed. The number of qual-
33 ified business facility employees during any taxable year shall be deter-
34 mined by dividing by 12 the sum of the number of qualified business
35 facility employees on the last business day of each month of such taxable
36 year. If the qualified business facility is in operation for less than the entire
37 taxable year, the number of qualified business facility employees shall be
38 determined by dividing the sum of the number of qualified business fa-
39 cility employees on the last business day of each full calendar month
40 during the portion of such taxable year during which the qualified busi-
41 ness facility was in operation by the number of full calendar months dur-
42 ing such period. Notwithstanding the provisions of this subsection, for
43 the purpose of computing the credit allowed by K.S.A. 79-32,153, and

1 amendments thereto, in the case of an investment in a qualified business
2 facility, which facility existed and was operated by the taxpayer or related
3 taxpayer prior to such investment, the number of qualified business fa-
4 cility employees employed in the operation of such facility shall be re-
5 duced by the average number, computed as provided in this subsection,
6 of individuals employed in the operation of the facility during the taxable
7 year preceding the taxable year in which the qualified business facility
8 investment was made at the facility.

9 (2) *In the event the taxpayer is a member of a unitary group filing a*
10 *combined report, then qualified business facility employee shall include a*
11 *person employed by any member of the combined group, provided that*
12 *such employee was engaged or maintained in employment as a direct*
13 *result of the investment made by a member of the combined group, **except***
14 **that the provisions of this sentence shall not apply to subsection**
15 **(e) of K.S.A. 79-32,160a, and amendments thereto.**

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

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

1 the portion of such taxable year during which the qualified business fa-
2 cility was in operation by the number of full calendar months during such
3 period. Notwithstanding the provisions of this subsection, for the purpose
4 of computing the credit allowed by K.S.A. 79-32,153, and amendments
5 thereto, in the case of an investment in a qualified business facility, which
6 facility existed and was operated by the taxpayer or related taxpayer prior
7 to such investment the amount of the taxpayer's qualified business facility
8 investment in such facility shall be reduced by the average amount, com-
9 puted as provided in this subsection, of the investment of the taxpayer or
10 a related taxpayer in the facility for the taxable year preceding the taxable
11 year in which the qualified business facility investment was made at the
12 facility.

13 *In the event the taxpayer is a member of a unitary group filing a com-*
14 *combined report, then qualified business facility investment shall include the*
15 *investment made by any member of the combined group which results in*
16 *the engagement or maintaining in employment of the required qualified*
17 *business facility employees by a member of the combined group, **except***
18 **that the provisions of this sentence shall not apply to subsection**
19 **(e) of K.S.A. 79-32,160a, and amendments thereto.**

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

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

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

1 value of all such property shall be determined as provided in K.S.A. 79-
2 3281 and 79-3282, and amendments thereto.

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

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

14 (h) “Related taxpayer” shall mean (1) a corporation, partnership, trust
15 or association controlled by the taxpayer; (2) an individual, corporation,
16 partnership, trust or association in control of the taxpayer; or (3) a cor-
17 poration, partnership, trust or association controlled by an individual, cor-
18 poration, partnership, trust or association in control of the taxpayer. For
19 the purposes of this act, “control of a corporation” shall mean ownership,
20 directly or indirectly, of stock possessing at least 80% of the total com-
21 bined voting power of all classes of stock entitled to vote and at least 80%
22 of all other classes of stock of the corporation; “control of a partnership
23 or association” shall mean ownership of at least 80% of the capital or
24 profits interest in such partnership or association; and “control of a trust”
25 shall mean ownership, directly or indirectly, of at least 80% of the ben-
26 efiticial interest in the principal or income of such trust.

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

34 Sec. 2. K.S.A. 2007 Supp. 79-32,154 is hereby repealed.

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