

CHAPTER 184
HOUSE BILL No. 2004

AN ACT concerning economic development; extending the rural business development tax credit; regarding regional foundation funds; establishing the enterprise facilitation fund; establishing the Kansas film production tax credit act; concerning the Kansas angel investor tax credit act; amending K.S.A. 2006 Supp. 74-50,154, 74-8132, 74-8133, 74-8134 and 74-8135 and repealing the existing sections.

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

Section 1. K.S.A. 2006 Supp. 74-50,154 is hereby amended to read as follows: 74-50,154. (a) As used in this act: (1) "Contributions" means and includes the donation of cash or property other than used clothing in an amount or value of \$250 or more. Contributions shall be valued as follows:

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

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

(C) contributions of real estate are allowable for credit only when title of such real estate is in fee simple absolute and is clear of any encumbrances; and

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

(2) "region" means multi-county areas as defined by the secretary of commerce;

(3) "regional foundation" means any organization in Kansas that demonstrates capacity to provide economic development services to regions as defined by this act, and: (A) Has obtained a ruling from the internal revenue service of the United States department of treasury that such organization is exempt from income taxation under the provisions of section 501(c)(3) or 501(c)(6) of the federal internal revenue code;

(B) has been designated as a certified development company by the United States small business administration;

(C) has been designated as an economic development district by the United States department of commerce's economic development administration;

(D) has been organized as a regional planning commission under K.S.A. 12-744 et seq., and amendments thereto, or its predecessor, K.S.A. 12-716 et seq., and amendments thereto; or

(E) is incorporated in the state of Kansas as a nonstock, nonprofit corporation;

(4) "rural community" means any city having a population of fewer than 50,000 or except as otherwise provided, any unincorporated area. Unincorporated areas within any county having a population of more than 100,000 are not eligible; and

(5) "taxpayer" means: (A) Any business entity authorized to do business in the state of Kansas which is subject to the state income tax imposed by the provisions of the Kansas income tax act;

(B) any individual subject to the state income tax imposed by the provisions of the Kansas income tax act;

(C) any national banking association, state bank, trust company or savings and loan association paying an annual tax on its net income pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated; or

(D) any insurance company paying the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto.

(b) For taxable years commencing after December 31, 2004, any taxpayer contributing to a regional foundation designated by the secretary of commerce, shall be allowed a credit, as provided in this act, against the tax imposed by the Kansas income tax act, the tax on net income of national banking associations, state banks, trust companies or savings and loan associations imposed under article 11 of chapter 79 of the Kansas Statutes Annotated, or the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, if the proposal of the regional foundation is approved pursuant to this act.

(c) (1) *On December 31, 2007, June 30, 2008, and each June 30 there-*

after, each regional foundation shall transfer 5% of funds raised in the previous fiscal year from the marketing of the rural business tax credits to be credited to the enterprise facilitation fund created in section 2, and amendments thereto.

(2) The secretary of commerce may adopt rules and regulations for the disbursement of regional foundation funds to the enterprise facilitation fund.

~~(c)~~ (d) (1) The secretary of commerce is hereby authorized to ~~promulgate~~ ~~adopt~~ rules and regulations for establishing criteria for evaluating proposals to designate regional foundations as defined by this act with the assistance of the secretary of revenue.

(2) The proposal shall set forth the program to be conducted, why the program is needed, the estimated amount to be invested in the program, composition of the board that shall be making investment decisions, policies stating the organization shall offer services to all counties in that region and the plans for implementing the program.

(3) The secretary of commerce shall select regional foundations pursuant to rules and regulations ~~promulgated~~ ~~adopted~~ pursuant to subsection (c)(1) to use the sale of credits to establish regional business development funds.

(4) The total amount of credits allowed under this act shall not exceed \$2,500,000 for fiscal year 2005; \$2,500,000 for fiscal year 2006; and \$2,000,000 ~~for fiscal year 2007~~ *per year for fiscal years 2007 through, and including, 2012.* Each region as defined by this act shall receive an equal share of this allocation.

(5) Any credits not sold by such regional foundations shall be reclaimed by the secretary from such region and redistributed to other regions that sold all credits previously issued.

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

~~(d)~~ (e) (1) The amount of credit allowed pursuant to this act, shall not exceed 75% of the total amount contributed during the taxable year by the taxpayer to a regional foundation approved pursuant to this act.

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

~~(e)~~ (f) The provisions of this act shall be applicable to all taxable years beginning after December 31, 2004.

New Sec. 2. (a) There is hereby established in the state treasury the enterprise facilitation fund which shall be administered by the secretary of commerce. Expenditures from the fund shall be for the purpose of supporting enterprise facilitation projects within the state. All expenditures from the enterprise facilitation fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of commerce or the designee of the secretary.

(b) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the enterprise facilitation fund interest earnings based on:

(1) The average daily balance of moneys in the enterprise facilitation fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(c) The secretary of commerce may adopt rules and regulations to facilitate disbursement of enterprise facilitation funds to enterprise facilitation projects according to the provisions of this section.

New Sec. 3. Sections 3 through 5, and amendments thereto, shall be known and may be cited as the Kansas film production tax credit act.

New Sec. 4. (a) For all taxable years commencing after December 31, 2006, a credit against the tax imposed by the Kansas income tax act shall be allowed for direct production expenditures made by an eligible film production company. Such credit shall be in an amount equal to 30% of direct production expenditures made in Kansas that are directly attributable to the production of a film in Kansas and that have been awarded

by the department of revenue. The tax credit shall be deducted from the eligible film production company's income tax liability for the taxable year in which the expenditures are made by the eligible film production company. If the amount of the film production tax credit allowed exceeds the film production company's income tax liability for the taxable year, the taxpayer may carry over the amount thereof that exceeds such tax liability for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the third taxable year succeeding the year in which the costs are incurred. If the eligible film production company is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability entity, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the member of such limited liability entity in the same manner as such shareholder, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability entity.

(b) A long-form narrative film production for which the film production tax credit is claimed shall contain an acknowledgment that the production was filmed in Kansas.

(c) To be eligible for the film production tax credit, a film production company shall submit to the department of commerce information required by the department to demonstrate conformity with the requirements of this act. Information supplied shall include expected direct production expenditures to be made in Kansas with respect to the film production for which the film production company is seeking the film production tax credit. The department of commerce may reserve a tax credit amount based upon the expected direct production expenditures. The department of commerce shall determine the eligibility of the company and shall certify this information to the department of revenue in a manner and at times the department of commerce and department of revenue shall agree upon.

(d) To receive a film production tax credit, a film production company shall apply to the department of revenue on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures made in Kansas with respect to the film production for which the film production company is seeking the film production tax credit. The department of revenue may award a film production tax credit based on the application submitted and the amount of tax credit reserved by the department of commerce. Upon approval of the application and the awarding of the tax credit the department of revenue shall certify to the film production company and the department of commerce the amount of the tax credit awarded.

(e) The secretary of commerce and the secretary of revenue are hereby authorized to adopt rules and regulations to implement and administer the provisions of this act.

New Sec. 5. As used in sections 3 through 5, and amendments thereto:

(a) "Direct production expenditure" means an expenditure incurred in the state of Kansas in the production of a Kansas film including:

(1) Payment of wages, fringe benefits or fees for talent, management or labor to a person who is a Kansas resident for purposes of the Kansas income tax act;

(2) payment to a personal services corporation for the services of a performing artist, if:

(A) The personal services corporation is subject to taxation under the provisions of the Kansas income tax act; or

(B) the performing artist receiving payment from the personal services corporation pays Kansas income tax; and

(3) any of the following provided by a vendor:

(A) The story and scenario to be used for a film;

(B) set construction and operations, wardrobe, accessories and related services;

(C) photography, sound synchronization, lighting and related services;

(D) editing and related services;

(E) rental of facilities and equipment;

(F) leasing of vehicles;

- (G) food or lodging;
- (H) airfare if purchased through a Kansas-based travel agency or travel company;
- (I) insurance coverage and bonding if purchased through a Kansas-based insurance agent; and
- (J) other direct costs of producing a film in accordance with generally accepted entertainment industry practice.

(b) "Eligible film production company" means a film production company that has received certification from the department of commerce.

(c) "Film" means any film, video, commercial or television production, as approved by the department of commerce, that is 30 minutes or less in length with an expected in-state expenditure budget in excess of \$50,000, or that is over 30 minutes in length with an expected in-state expenditure budget in excess of \$100,000. Film shall not include the following:

- (1) News or current events programming;
- (2) talk show;
- (3) production produced primarily for industrial, corporate or institutional purposes, and for internal use;
- (4) sports event or sports programming;
- (5) gala presentation or awards programming;
- (6) infomercial or any production that directly solicits funds;
- (7) political advertisement; or
- (8) production that is considered obscene.

(d) "Film production company" means a person that produces one or more films.

New Sec. 6. (a) No tax credits authorized by sections 3 through 5, and amendments thereto, shall be allowed for any tax year commencing on or after January 1, 2013.

(b) The total amount of tax credits which may be allowed under sections 3 through 5, and amendments thereto, shall not exceed \$2,000,000 per tax year.

Sec. 7. K.S.A. 2006 Supp. 74-8132 is hereby amended to read as follows: 74-8132. As used in this act:

(a) "Angel investor" and "investor" mean an accredited ~~individual~~ investor *who is a natural person or an owner of a permitted entity investor, who is of high net worth, as defined in 17 C.F.R. 230.501(a) as in effect on the effective date of this act, and who seeks high returns through private investments in start-up companies and may seek active involvement in business, such as consulting and mentoring the entrepreneur.* For the purposes of this act, a person who serves as an executive, officer, employee, vendor or independent contractor of the business in which an otherwise qualified cash investment is made is not an angel investor and such person shall not qualify for the issuance of tax credits for such investment;

(b) "*Bioscience business*" means what is reflected in K.S.A. 2006 Supp. 74-99b83, and amendments thereto;

~~(b)~~ (c) "cash investment" means money or money equivalent in consideration for qualified securities;

~~(c)~~ (d) "KTEC" means the Kansas technology enterprise corporation, a public instrumentality created pursuant to K.S.A. 74-8101, and amendments thereto;

~~(d)~~ (e) "Kansas business" means any business owned by an individual, any partnership, association or corporation domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that does business primarily in Kansas or does substantially all of such businesses' production in Kansas;

(f) "*owner*" means any natural person who is, directly or indirectly, a partner, stockholder or member in a permitted entity investor;

(g) "*permitted entity investor*" means (A) any general partnership, limited partnership, corporation that has in effect a valid election to be taxed as an S corporation under the United States internal revenue code, or a limited liability company that has elected to be taxed as a partnership under the United States internal revenue code and (B) that was established and is operated for the sole purpose of making investments in other entities;

~~(e)~~ (h) "qualified Kansas business" means the Kansas businesses that are approved and certified as qualified Kansas businesses as provided in

K.S.A. 2006 Supp. 74-8134, and amendments thereto; and

~~(i)~~ (i) “qualified securities” means a cash investment through any one or more forms of financial assistance as provided in this subsection that have been approved in form and substance by KTEC. Such forms of financial assistance are: (1) Any form of equity, such as: (A) A general or limited, partnership interest; (B) common stock; (C) preferred stock, with or without voting rights, without regard to seniority position, and whether or not convertible into common stock; or (D) any form of subordinate or convertible debt, or both, with warrants or other means of equity conversion attached; or

(2) a debt instrument, such as a note or debenture that is secured or unsecured, subordinated to the general creditors of the debtor and requires no payments of principal, other than principal payments required to be made out of any future profits of the debtor, for at least a seven-year period after commencement of such debt instrument’s term.

Sec. 8. K.S.A. 2006 Supp. 74-8133 is hereby amended to read as follows: 74-8133. (a) A credit against the tax imposed by article 32 of chapter 79 of the Kansas Statutes Annotated on the Kansas taxable income of an angel investor and against the tax imposed by K.S.A. 40-252, and amendments thereto, shall be allowed for a cash investment in the qualified securities of a qualified Kansas business. The credit shall be in a total amount equal to 50% of such investors’ cash investment in any qualified Kansas business, subject to the limitations set forth in subsection (b). This tax credit may be used in its entirety in the taxable year in which the cash investment is made except that no tax credit shall be allowed in a year prior to January 1, 2005. If the amount by which that portion of the credit allowed by this section exceeds the investors’ liability in any one taxable year, beginning in the year 2005, the remaining portion of the credit may be carried forward until the total amount of the credit is used. *If the investor is a permitted entity investor, the credit provided by this section shall be claimed by the owners of the permitted entity investor in proportion to their ownership share of the permitted entity investor.*

(b) The secretary of revenue shall not allow tax credits ~~that are attributable to an individual investor of more than \$50,000 of cash investments in the qualified securities of a single Kansas business or for cash investments in the qualified securities of more than five Kansas businesses each year of more than \$50,000 for a single Kansas business or a total of \$250,000 in tax credits for a single year per investor who is a natural person or owner of a permitted entity investor.~~ No tax credits authorized by this act shall be allowed for any cash investments in qualified securities for any year after the year 2016. ~~The cumulative aggregate amount of the tax credits allowed by the secretary of revenue, pursuant to this act, shall not exceed \$20,000,000.~~ The total amount of tax credits which may be allowed under this section shall not exceed ~~\$2,000,000 per tax year~~ \$4,000,000 during the tax year 2007 and \$6,000,000 for tax year 2008 and each tax year thereafter. The balance of unissued tax credits may be carried over for issuance in future years until 2016.

(c) A cash investment in a qualified security shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the internal revenue code.

(d) No investor shall claim a credit under this section for cash investments in Kansas venture capital, inc. No Kansas venture capital company shall qualify for the tax credit for an investment in a fund created by articles 81, 82, 83 or 84 of chapter 74 of the Kansas Statutes Annotated.

(e) ~~Any investor that is not subject to taxation who has not owed any Kansas income tax under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated and that for the immediate past three taxable years, who does not reasonably believe that it will owe any such tax for the current taxable year and who makes a cash investment in a qualified security of a qualified Kansas business shall be deemed to acquire an interest in the nature of a transferable credit limited to an amount equal to 50% of this cash investment. This interest may be transferred to an investor any natural person of net worth, as defined in 17 C.F.R. 230.501(a) as in effect on the effective date of this act whether or not such person is then an investor and be claimed by this investor the transferee as a credit against the investor’s transferee’s Kansas income tax liability beginning in the year provided in subsection (a). No person shall be entitled to a refund for the interest created under this section. Only the full~~

credit for any one investment may be transferred and this interest may only be transferred one time. A credit acquired by transfer shall be subject to the limitations prescribed in this section. Documentation of any credit acquired by transfer shall be provided by the investor in the manner required by the director of taxation.

(f) The reasonable costs of the administration of this act, the review of applications for certification as qualified Kansas businesses and the issuance of tax credits authorized by this act shall be reimbursed through fees paid by the qualified Kansas businesses and the investors or the transferees of investors, according to a reasonable fee schedule adopted by the corporation.

Sec. 9. K.S.A. 2006 Supp. 74-8134 is hereby amended to read as follows: 74-8134. (a) Before an angel investor may be entitled to receive tax credits, as authorized by this act, such investor must have made a cash investment in a qualified security of a qualified Kansas business. This business must have been approved by KTEC as a qualified Kansas business prior to the date on which the cash investment was made. To be designated as a qualified Kansas business, a business must make application to KTEC in accordance with the provisions of this section.

(b) Such application to KTEC shall be in form and substance as required by KTEC, but shall include at least the following:

(1) The name of the business and certified copies of the organizational documents of the business;

(2) a business plan, including a description of the business and the management, product, market and financial plan of business;

(3) a statement of the business innovative and proprietary technology, product or service;

(4) a statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created;

(5) a description of the qualified securities to be issued, the consideration to be paid for the qualified securities, the amount of any tax credits requested and the earliest year in which the tax credits may be redeemed;

(6) a statement of the amount, timing and projected use of the proceeds to be raised from the proposed sale of qualified securities; and

(7) such other information as KTEC may request, such as the names, addresses and taxpayer identification numbers of all investors who may qualify for the tax credit. Such list of investors who may qualify for the tax credits shall be amended as new qualified securities are sold or as any information on the list shall change.

(c) No business shall be designated as a qualified Kansas business unless such business meets all of the following criteria:

(1) The business must not have had annual gross revenues of more than \$5,000,000 in the most recent tax year of the business;

(2) ~~the business~~ *businesses that are not bioscience businesses* must have been in operation for less than five years; *bioscience businesses must have been in operation for less than 10 years;*

(3) *all else equal, first consideration will be given to animal health companies.*

~~(3)~~ (4) the business must not have ownership interests including, but not limited to, common or preferred shares of stock that can be traded by the public via a stock exchange, electronic exchange, bulletin board or other public market place on or before the date that a qualifying investment is made;

~~(4)~~ (5) the business must not be engaged primarily in any one or more of the following enterprises: (A) Any service provider set forth in K.S.A. 17-2707, and amendments thereto; (B) the business of banking, savings and loan or lending institutions, credit or finance, or financial brokerage or investments; (C) the provision of professional services, such as legal, accounting or engineering services; (D) governmental, charitable, religious or trade organizations; (E) the ownership, development, brokerage, sales or leasing of real estate; (F) insurance; (G) construction or construction management or contracting; (H) business consulting or brokerage; (I) any business engaged primarily as a passive business, having irregular or noncontinuous operations, or deriving substantially all of the income of the business from passive investments that generate interest, dividends, royalties, or capital gains, or any business arrangements the effect of which is to immunize an investor from risk of loss; (J) any Kansas certified capital formation company; ~~and~~ (K) any activity that is in violation of the law; and (L) *any business raising money primarily to purchase real estate,*

land or fixtures; and

~~(5)~~ (6) the business must satisfy all other requirements of this act.

(d) Notwithstanding the requirements of subsection (c), a business may be considered as a qualified Kansas business under the provisions of this act if such business falls within a standard industrial classification code.

(e) The portions of documents and other materials submitted to KTEC that contain trade secrets shall be kept confidential and shall be maintained in a secured environment by the president of KTEC. For the purposes of this act, such portions of documents and other materials means any customer lists, any formula, compound, production data or compilation of information certain individuals within a commercial concern using such portions of documents and other material means to fabricate, produce or compound an article of trade, or, any service having commercial value, which gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service.

(f) A qualified Kansas business shall have the burden of proof to demonstrate to KTEC the qualifications of the business under this section and shall have the obligation to notify KTEC in a timely manner of any changes in the qualifications of the business or in the eligibility of investors to claim a tax credit for cash investment in a qualified security.

Sec. 10. K.S.A. 2006 Supp. 74-8135 is hereby amended to read as follows: 74-8135. (a) The designation of a business as a qualified Kansas business shall be made by KTEC, and such designation must be renewed annually. A business shall be so designated if KTEC determines, based upon the application submitted by the business and any additional investigation the staff of KTEC shall make, that the following criteria have been or shall be satisfied:

(1) The business has a reasonable chance of success;

~~(2) the ability of investors in the business to receive tax credits for cash investments in qualified securities of the business is necessary, because funding otherwise available for the business is not available on commercially reasonable terms;~~

~~(3) the business has the reasonable potential to create measurable employment within the state;~~

~~(4) (3) the business has an innovative and proprietary technology, product and service;~~

~~(5) (4) the existing owners of the business and other founders have made or are committed to make a substantial financial and time commitment to the business;~~

~~(6) (5) the securities to be issued and purchased are qualified securities; and~~

~~(7) (6) binding commitments have been made by the business to KTEC for adequate reporting of financial data, including a requirement for an annual report, or, if required by the board of directors of KTEC, an annual audit of the financial and operational records of the business, the right of access to the financial records of the business and the right of KTEC to record and publish normal and customary data and information related to the issuance of tax credits that are not otherwise determined to be trade or business secrets.~~

(b) *In addition to reports by the businesses to KTEC and its board of directors, KTEC will also provide an annual report, on or before February 1, to the governor, to the senate committee on commerce, the house committee on economic development and tourism and the joint committee on economic development and any successor committees thereto, on the marketing and use of the angel investor tax credits. This report will include the following: The amount of tax credits used in the previous fiscal year including what percentage was claimed by individuals and what percentage was claimed by investment firms; the types of businesses that benefited from the tax credits; and any aggregate job creation or capital investment in Kansas that resulted from the use of the tax credits for a period of five years beginning from the date on which the tax credits were awarded. In addition, the annual report will provide information regarding what businesses which derived benefit from the tax credits remained in Kansas and what businesses ceased business, what businesses were purchased and what businesses may have moved out-of-state and why.*

Sec. 11. K.S.A. 2006 Supp. 74-50,154, 74-8132, 74-8133, 74-8134 and 74-8135 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its

publication in the statute book.

Approved May 11, 2007.

