

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend **Senate Substitute for HB 2157**, on page 7, following line 10, by inserting:

"Sec. 2. K.S.A. 79-32,141 is hereby amended to read as follows: 79-32,141. (a) The director may allocate gross income, deductions, credits, or allowances between two or more organizations, trades or businesses (whether or not incorporated, or organized in the United States or affiliated) owned or controlled directly or indirectly by the same interests, if the director determines such allocation is necessary to prevent evasion of taxes or to clearly reflect income of the organizations, trades or businesses.

(b) Commencing with the tax year which commences after December 31, 2011, and all taxable years thereafter, credits claimed by a corporation that is a member of a unitary group filing a combined report that has earned credits pursuant to subsection (e) of K.S.A. 79-32,160a, and amendments thereto, that has filed a certificate of intent on or after October 1, 2011, and prior to June 30, 2013, to place in service a qualified business facility investment of at least \$10,000,000 and create a minimum of 50 new jobs that satisfy the average wage requirements set forth in K.S.A. 74-50,131, and amendments thereto, at a qualified business facility after October 1, 2011, and that has entered into an agreement with the secretary of commerce, may apply such tax credits, including any carryforward credits, earned pursuant to subsection (e) of K.S.A. 79-32,160a, and amendments thereto, against the tax liability of any member or members of such group in such combined report in the following manner:

(1) Credits earned prior to January 1, 2012, and claimed in taxable years commencing after

December 31, 2011, shall be subject to the following limitations:

(A) The amount of carryforward credits applied against the tax liability of any member or members of a unitary group shall not exceed in the aggregate 15% of the carryforward credits available during the taxable year in which the carryforward credits are first applied against the tax liability of any member or members of any such group. Such limitation shall be effective for the taxable year in which the carryforward credits are first applied against a member or members of the group and the six immediately succeeding taxable years. Any carryforward credits not applied during the seven-year period set forth herein may be applied without limitation against the tax liability of any member or members of such group for the remainder of the credit carryforward period under subsection (e) of K.S.A. 79-32,160a, and amendments thereto.

(B) In the event the remainder of the credit carryforward period under subsection (e) of K.S.A. 79-32,160a, and amendments thereto, at the time the carryforward credits are first applied against the tax liability of any member or members of such group is less than seven years, then the carryforward credits applied against the liability of any member or members of such group shall not in the aggregate exceed the percentage of carryforward credits determined by dividing the total carryforward credits by the number of years remaining in the carryforward period under subsection (e) of K.S.A. 79-32,160a, and amendments thereto.

(2) Credits earned after January 1, 2012, may be applied against the tax liability of any member or members of such group in such combined report in such manner as may be determined by the corporation.

(3) Failure to comply with the capital investment and job creation requirements set forth in subsection (b) of K.S.A. 79-32,141, and amendments thereto, within 36 months of the date of the agreement with the secretary of commerce, shall result in the corporation remitting to the state an

amount equal to the amount of credits applied against the tax liability of the other members of the unitary group. A corporation that has entered into a separate agreement with the secretary of commerce shall have 54 months to comply with the capital investment and job creation requirements set forth in subsection (b) of K.S.A. 79-32,141, and amendments thereto.

Sec. 3. K.S.A. 2011 Supp. 79-32,160a is hereby amended to read as follows: 79-32,160a. (a) For taxable years commencing after December 31, 1999, and before January 1, 2012, any taxpayer who shall invest in a qualified business facility, as defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto, and effective for tax years commencing after December 31, 2010, and before January 1, 2012, located in an area other than a metropolitan county as defined in either K.S.A. 2011 Supp. 74-50,114 or 74-50,211, and amendments thereto, and also meets the definition of a business in subsection (b) of K.S.A. 74-50,114, and amendments thereto, shall be allowed a credit for such investment, in an amount determined under subsection (b) or (c), as the case requires, against the tax imposed by the Kansas income tax act or where the qualified business facility is the principal place from which the trade or business of the taxpayer is directed or managed and the facility has facilitated the creation of at least 20 new full-time positions, against the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year during which commencement of commercial operations, as defined in subsection (f) of K.S.A. 79-32,154, and amendments thereto, occurs at such qualified business facility. In the case of a taxpayer who meets the definition of a manufacturing business in subsection (d) of K.S.A. 74-50,114, and amendments thereto, no credit shall be allowed under this section unless the number of qualified business facility employees, as determined under subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or maintained in employment at the qualified

business facility as a direct result of the investment by the taxpayer for the taxable year for which the credit is claimed equals or exceeds two. In the case of a taxpayer who meets the definition of a nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and amendments thereto, no credit shall be allowed under this section unless the number of qualified business facility employees, as determined under subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or maintained in employment at the qualified business facility as a direct result of the investment by the taxpayer for the taxable year for which the credit is claimed equals or exceeds five. Where an employee performs services for the taxpayer outside the qualified business facility, the employee shall be considered engaged or maintained in employment at the qualified business facility if: (1) The employee's service performed outside the qualified business facility is incidental to the employee's service inside the qualified business facility; or (2) the base of operations or, the place from which the service is directed or controlled, is at the qualified business facility.

(b) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility which is located in a designated nonmetropolitan region established under K.S.A. 74-50,116, and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year for which such credit is allowed, but in the case where the qualified business facility investment was made prior to January 1, 1996, not in excess of 50% of such tax. Such portion shall be an amount equal to the sum of the following:

(1) Two thousand five hundred dollars for each qualified business facility employee

determined under K.S.A. 79-32,154, and amendments thereto; plus

(2) one thousand dollars for each \$100,000, or major fraction thereof, which shall be deemed to be 51% or more, in qualified business facility investment, as determined under K.S.A. 79-32,154, and amendments thereto.

(c) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility, which is not located in a nonmetropolitan region established under K.S.A. 74-50,116, and amendments thereto, and effective for tax years commencing after December 31, 2010, and before January 1, 2012, located in an area other than a metropolitan county as defined in either K.S.A. 2011 Supp. 74-50,114 or 74-50,211, and amendments thereto, and which also meets the definition of business in subsection (b) of K.S.A. 74-50,114, and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year for which such credit is allowed, but in the case where the qualified business facility investment was made prior to January 1, 1996, not in excess of 50% of such tax. Such portion shall be an amount equal to the sum of the following:

(1) One thousand five hundred dollars for each qualified business facility employee as determined under K.S.A. 79-32,154, and amendments thereto; and

(2) one thousand dollars for each \$100,000, or major fraction thereof, which shall be deemed to be 51% or more, in qualified business facility investment as determined under K.S.A. 79-32,154, and amendments thereto.

(d) The credit allowed by subsection (a) for each qualified business facility employee and for

qualified business facility investment shall be a one-time credit. If the amount of the credit allowed under subsection (a) exceeds the tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year, or in the case where the qualified business facility investment was made prior to January 1, 1996, 50% of such tax imposed upon the amount which exceeds such tax liability or such portion thereof may be carried over for credit in the same manner in the succeeding taxable years until the total amount of such credit is used. Except that, before the credit is allowed, a taxpayer, who meets the definition of a manufacturing business in subsection (d) of K.S.A. 74-50,114, and amendments thereto, shall recertify annually that the net increase of a minimum of two qualified business facility employees has continued to be maintained and a taxpayer, who meets the definition of a nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and amendments thereto, shall recertify annually that the net increase of a minimum of five qualified business employees has continued to be maintained.

(e) Notwithstanding the foregoing provisions of this section, any taxpayer qualified and certified under the provisions of K.S.A. 74-50,131, and amendments thereto; which, prior to making a commitment to invest in a qualified Kansas business, has filed a certificate of intent to invest in a qualified business facility in a form satisfactory to the secretary of commerce; and that has received written approval from the secretary of commerce for participation and has participated, during the tax year for which the exemption is claimed, in the Kansas industrial training, Kansas industrial retraining or the state of Kansas investments in lifelong learning program or is eligible for the tax credit established in K.S.A. 74-50,132, and amendments thereto, shall be entitled to a credit in an amount

equal to 10% of that portion of the qualified business facility investment which exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2) without regard to the number of qualified business facility employees engaged or maintained in employment at the qualified business facility. The credit allowed by this subsection shall be a one-time credit. If the amount thereof exceeds the tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income or the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year, the amount thereof which exceeds such tax liability may be carried forward for credit in the succeeding taxable year or years until the total amount of the tax credit is used, except that no such tax credit shall be carried forward for deduction after the 16th taxable year succeeding the taxable year in which such credit initially was claimed, and no carryforward shall be allowed for deduction in any succeeding taxable year unless the taxpayer certifies under oath that the taxpayer continues to meet the requirements of K.S.A. 74-50,131, and amendments thereto, and this act. In no event shall any credit allowed under this section that expired during any taxable year prior to the taxable year commencing January 1, 2011, be revived under the provisions of this act.

(f) For tax years commencing after December 31, 2005, any taxpayer claiming credits pursuant to this section, as a condition for claiming and qualifying for such credits, shall provide information pursuant to K.S.A. 2011 Supp. 79-32,243, and amendments thereto, as part of the tax return in which such credits are claimed. Such credits shall not be denied solely on the basis of the contents of the information provided by the taxpayer pursuant to K.S.A. 2011 Supp. 79-32,243, and amendments thereto.

(g) This section and K.S.A. 79-32,160b, and amendments thereto, shall be part of and

supplemental to the job expansion and investment credit act of 1976, and amendments thereto.";

And by renumbering sections accordingly;

Also on page 7, in line 11, after "Sec. 2." by inserting "K.S.A. 79-32,141 and"; also in line 11, by striking "is" and inserting ", 79-32,160a and 79-32,160f are";

On page 1, in the title, in line 2, after "requirements;" by inserting "credits;"; in line 3, after "amending" by inserting "K.S.A. 79-32,141 and"; also in line 3, after "79-3279" by inserting "and 79-32,160a"; in line 4, by striking "section" and inserting "sections; also repealing K.S.A. 2011 Supp. 79-32,160f"

Senator _____