

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2267

By Committee on Taxation

2-8

1 AN ACT concerning income taxation; relating to credits; high
2 performance incentive program; amending K.S.A. 2012 Supp. 74-
3 50,131 and ~~repealing the existing section and 79-32,160a and~~
4 **repealing the existing sections; also repealing K.S.A. 2012 Supp. 79-**
5 **32,160f.**
6

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

8 Section 1. K.S.A. 2012 Supp. 74-50,131 is hereby amended to read as
9 follows: 74-50,131. Commencing after December 31, ~~1999 2011~~ **2012**: (a)
10 As used in this act: "Qualified firm" means a for-profit business
11 establishment, subject to state income, sales or property taxes, identified
12 under the North American industry classification system (NAICS)
13 subsectors 112, 221, 311 to 339, 423 to 425, 481 to 519, 521 to 721 and
14 811 to 928 or is identified as a corporate or regional headquarters or back-
15 office operation of a national or multi-national corporation regardless of
16 NAICS designation. The secretary of commerce shall determine eligibility
17 when a difference exists between a firm's primary business activity and
18 NAICS designation. A business establishment may be assigned a NAICS
19 designation according to the primary business activity at a single physical
20 location in the state.

21 (b) In the case of firms in NAICS subsectors 221, 423 to 425, 481 to
22 519, 521 to 721 and 811 to 928, the business establishment must also
23 demonstrate the following:

24 (1) More than $\frac{1}{2}$ of its gross revenues are a result of sales to
25 commercial or governmental customers outside the state of Kansas; or

26 (2) more than $\frac{1}{2}$ of its gross revenues are a result of sales to Kansas
27 manufacturing firms within NAICS subsectors 311 to 339; or

28 (3) more than $\frac{1}{2}$ of its gross revenues are a result of a combination of
29 sales described in (1) and (2).

30 (c) For purposes of determining whether one of the average wage
31 options described in subsection (d) below is satisfied, business
32 establishments located within a metropolitan county, as defined in K.S.A.
33 74-50,114, and amendments thereto, will be compared only to other
34 businesses within that metropolitan county, and business establishments
35 located outside of a metropolitan county will be compared to businesses
36 within an aggregation of counties representing the business establishment's

1 region of the state, which regional aggregation will exclude metropolitan
2 counties. Such aggregation shall be determined by the department of
3 commerce.

4 (d) Additionally, a business establishment having met the criteria as
5 established in subsection (a) or (b), and using the comparison method
6 described in subsection (c), must meet one of the following criteria:

7 (1) The establishment with 500 or fewer full-time equivalent
8 employees will provide an average wage that is above the average wage
9 paid by all firms with 500 or fewer full-time equivalent employees which
10 share the appropriate NAICS designation.

11 (2) The establishment with 500 or fewer full-time equivalent
12 employees is the sole firm within its appropriate NAICS designation
13 which has 500 or fewer full-time equivalent employees.

14 (3) The establishment with more than 500 full-time equivalent
15 employees will provide an average wage that is above the average wage
16 paid by firms with more than 500 full-time equivalent employees which
17 share the appropriate NAICS designation.

18 (4) The establishment with more than 500 full-time equivalent
19 employees is the sole firm within its appropriate NAICS designation
20 which has more than 500 full-time equivalent employees, in which event it
21 shall either provide an average wage that is above the average wage paid
22 by all firms with 500 or fewer full-time equivalent employees which share
23 the appropriate NAICS designation, or be the sole firm within its
24 appropriate NAICS designation.

25 (e) As an alternative to the requirements of subsections (c) and (d), a
26 firm having met the requirements of subsections (a) or (b), may qualify, if
27 excluding taxable disbursements to company owners, the business
28 establishment's annual average wage must be greater than or equal to 1.5
29 times the aggregate average wage paid by industries covered by the
30 employment security law based on data maintained by the secretary of
31 labor.

32 (f) For the purposes of this section, the number of full-time
33 equivalent employees shall be determined by dividing the number of hours
34 worked by part-time employees during the pertinent measurement interval
35 by an amount equal to the corresponding multiple of a 40-hour work week
36 and adding the quotient to the number of full-time employees.

37 (g) The secretary of commerce shall certify annually to the secretary
38 of revenue that a firm meets the criteria for a qualified firm and that the
39 firm is eligible for the benefits and assistance provided under this act. The
40 secretary of commerce is hereby authorized to obtain any and all
41 information necessary to determine such eligibility. Information obtained
42 under this section shall not be subject to disclosure pursuant to K.S.A. 45-
43 215 et seq., and amendments thereto, but shall upon request be made

1 available to the legislative post audit division. The secretary of commerce
2 shall publish rules and regulations for the implementation of this act. Such
3 rules and regulations shall include, but not be limited to:

4 (1) A definition of "training and education" for purposes of K.S.A.
5 74-50,132, and amendments thereto.

6 (2) Establishment of eligibility requirements and application
7 procedures for expenditures from the high performance incentive fund
8 created in K.S.A. 74-50,133, and amendments thereto.

9 (3) Establishment of approval guidelines for private consultants
10 authorized pursuant to K.S.A. 74-50,133, and amendments thereto.

11 (4) Establishment of guidelines for prioritizing business assistance
12 programs pursuant to K.S.A. 74-50,133, and amendments thereto.

13 (5) A definition of "commercial customer" for the purpose of K.S.A.
14 74-50,133, and amendments thereto.

15 (6) A definition of "headquarters" for the purpose of K.S.A. 74-
16 50,133, and amendments thereto.

17 (7) Establishment of guidelines concerning the use and disclosure of
18 any information obtained to determine the eligibility of a firm for the
19 assistance and benefits provided for by this act.

20 **Sec. 2. K.S.A. 2012 Supp. 79-32,160a is hereby amended to read**
21 **as follows: 79-32,160a. (a) For taxable years commencing after**
22 **December 31, 1999, and before January 1, 2012, any taxpayer who shall**
23 **invest in a qualified business facility, as defined in subsection (b) of**
24 **K.S.A. 79-32,154, and amendments thereto, and effective for tax years**
25 **commencing after December 31, 2010, and before January 1, 2012,**
26 **located in an area other than a metropolitan county as defined in**
27 **either K.S.A. 2012 Supp. 74-50,114 or 74-50,211, and amendments**
28 **thereto, and also meets the definition of a business in subsection (b) of**
29 **K.S.A. 74-50,114, and amendments thereto, shall be allowed a credit**
30 **for such investment, in an amount determined under subsection (b) or**
31 **(c), as the case requires, against the tax imposed by the Kansas income**
32 **tax act or where the qualified business facility is the principal place**
33 **from which the trade or business of the taxpayer is directed or**
34 **managed and the facility has facilitated the creation of at least 20 new**
35 **full-time positions, against the premium tax or privilege fees imposed**
36 **pursuant to K.S.A. 40-252, and amendments thereto, or as measured**
37 **by the net income of financial institutions imposed pursuant to article**
38 **11 of chapter 79 of the Kansas Statutes Annotated, and amendments**
39 **thereto, for the taxable year during which commencement of**
40 **commercial operations, as defined in subsection (f) of K.S.A. 79-**
41 **32,154, and amendments thereto, occurs at such qualified business**
42 **facility. In the case of a taxpayer who meets the definition of a**
43 **manufacturing business in subsection (d) of K.S.A. 74-50,114, and**

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

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

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

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

43 (c) The credit allowed by subsection (a) for any taxpayer who

1 invests in a qualified business facility, which is not located in a
2 nonmetropolitan region established under K.S.A. 74-50,116, and
3 amendments thereto, and effective for tax years commencing after
4 December 31, 2010, and before January 1, 2012, located in an area
5 other than a metropolitan county as defined in either K.S.A. 2012
6 Supp. 74-50,114 or 74-50,211, and amendments thereto, and which
7 also meets the definition of business in subsection (b) of K.S.A. 74-
8 50,114, and amendments thereto, on or after the effective date of this
9 act, shall be a portion of the income tax imposed by the Kansas
10 income tax act on the taxpayer's Kansas taxable income, the premium
11 tax or privilege fees imposed pursuant to K.S.A. 40-252, and
12 amendments thereto, or the privilege tax as measured by the net
13 income of financial institutions imposed pursuant to article 11 of
14 chapter 79 of the Kansas Statutes Annotated, and amendments thereto,
15 for the taxable year for which such credit is allowed, but in the case
16 where the qualified business facility investment was made prior to
17 January 1, 1996, not in excess of 50% of such tax. Such portion shall
18 be an amount equal to the sum of the following:

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

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

26 (d) The credit allowed by subsection (a) for each qualified
27 business facility employee and for qualified business facility
28 investment shall be a one-time credit. If the amount of the credit
29 allowed under subsection (a) exceeds the tax imposed by the Kansas
30 income tax act on the taxpayer's Kansas taxable income, the premium
31 tax and privilege fees imposed pursuant to K.S.A. 40-252, and
32 amendments thereto, or the privilege tax as measured by the net
33 income of financial institutions imposed pursuant to article 11 of
34 chapter 79 of the Kansas Statutes Annotated, and amendments thereto,
35 for the taxable year, or in the case where the qualified business facility
36 investment was made prior to January 1, 1996, 50% of such tax
37 imposed upon the amount which exceeds such tax liability or such
38 portion thereof may be carried over for credit in the same manner in
39 the succeeding taxable years until the total amount of such credit is
40 used. Except that, before the credit is allowed, a taxpayer, who meets
41 the definition of a manufacturing business in subsection (d) of K.S.A.
42 74-50,114, and amendments thereto, shall recertify annually that the
43 net increase of a minimum of two qualified business facility employees

1 has continued to be maintained and a taxpayer, who meets the
2 definition of a nonmanufacturing business in subsection (f) of K.S.A.
3 74-50,114, and amendments thereto, shall recertify annually that the
4 net increase of a minimum of five qualified business employees has
5 continued to be maintained.

6 (e) Notwithstanding the foregoing provisions of this section, any
7 taxpayer qualified and certified under the provisions of K.S.A. 74-
8 50,131, and amendments thereto; which, prior to making a
9 commitment to invest in a qualified Kansas business, has filed a
10 certificate of intent to invest in a qualified business facility in a form
11 satisfactory to the secretary of commerce; and that has received
12 written approval from the secretary of commerce for participation
13 and has participated, during the tax year for which the exemption is
14 claimed, in the Kansas industrial training, Kansas industrial
15 retraining or the state of Kansas investments in lifelong learning
16 program or is eligible for the tax credit established in K.S.A. 74-
17 50,132, and amendments thereto, shall be entitled to a credit in an
18 amount equal to 10% of that portion of the qualified business facility
19 investment which exceeds \$50,000 in lieu of the credit provided in
20 subsection (b)(2) or (c)(2) without regard to the number of qualified
21 business facility employees engaged or maintained in employment at
22 the qualified business facility. The credit allowed by this subsection
23 shall be a one-time credit. If the amount thereof exceeds the tax
24 imposed by the Kansas income tax act on the taxpayer's Kansas
25 taxable income or the premium tax or privilege fees imposed pursuant
26 to K.S.A. 40-252, and amendments thereto, or the privilege tax as
27 measured by net income of financial institutions imposed pursuant to
28 article 11 of chapter 79 of the Kansas Statutes Annotated, *and*
29 *amendments thereto*, for the taxable year, the amount thereof which
30 exceeds such tax liability may be carried forward for credit in the
31 succeeding taxable year or years until the total amount of the tax
32 credit is used, except that no such tax credit shall be carried forward
33 for deduction after the 16th taxable year succeeding the taxable year
34 in which such credit initially was claimed, and no carryforward shall
35 be allowed for deduction in any succeeding taxable year unless the
36 taxpayer certifies under oath that the taxpayer continues to meet the
37 requirements of K.S.A. 74-50,131, and amendments thereto, and this
38 act. In no event shall any credit allowed under this section that expired
39 during any taxable year prior to the taxable year commencing
40 January 1, 2011, be revived under the provisions of this act.

41 (f) For tax years commencing after December 31, 2005, any
42 taxpayer claiming credits pursuant to this section, as a condition for
43 claiming and qualifying for such credits, shall provide information

1 pursuant to K.S.A. 2012 Supp. 79-32,243, and amendments thereto, as
2 part of the tax return in which such credits are claimed. Such credits
3 shall not be denied solely on the basis of the contents of the
4 information provided by the taxpayer pursuant to K.S.A. 2012 Supp.
5 79-32,243, and amendments thereto.

6 (g) This section and K.S.A. 79-32,160b, and amendments thereto,
7 shall be part of and supplemental to the job expansion and investment
8 credit act of 1976, and amendments thereto.

9 ~~Sec.-2:~~ 3. K.S.A. 2012 Supp. 74-50,131—is, 79-32,160a and 79-
10 32,160f are hereby repealed.

11 ~~Sec.-3:~~ 4. This act shall take effect and be in force from and after its
12 publication in the statute book.