

SENATE BILL No. 334

By Committee on Commerce

1-26

Proposed Amendment to Senate Bill No. 334  
For Committee on Commerce  
February 14, 2018  
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Office of Revisor of Statutes  
Allowing disclosure of information for taxpayers  
claiming credits under K.S.A. 79-32,160a(e)

1 AN ACT concerning economic development; relating to the high  
2 performance incentive program; tax credit availability; amending  
3 K.S.A. 2017 Supp. 79-32,160a and repealing the existing section

disclosure of recipient information;

sections

75-5133, 79-3234 and

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

Sec. 1. KSA 2017 Supp. 75-5133. Attached.  
Sec. 2. KSA 2017 Supp. 79-3234. Attached.

5 Section 1. K.S.A. 2017 Supp. 79-32,160a is hereby amended to read  
6 as follows: 79-32,160a. (a) For taxable years commencing after December  
7 31, 1999, and before January 1, 2012, any taxpayer who shall invest in a  
8 qualified business facility, as defined in ~~subsection (b) of~~ K.S.A. 79-  
9 32,154(b), and amendments thereto, and effective for tax years  
10 commencing after December 31, 2010, and before January 1, 2012,  
11 located in an area other than a metropolitan county as defined in either  
12 K.S.A. 2017 Supp. 74-50,114 or 74-50,211, and amendments thereto, and  
13 also meets the definition of a business in ~~subsection (b) of~~ K.S.A. 74-  
14 50,114(b), and amendments thereto, shall be allowed a credit for ~~such~~ the  
15 investment, in an amount determined under subsection (b) or (c), as the  
16 case requires, against the tax imposed by the Kansas income tax act or  
17 where the qualified business facility is the principal place from which the  
18 trade or business of the taxpayer is directed or managed and the facility  
19 has facilitated the creation of at least 20 new full-time positions, against  
20 the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and  
21 amendments thereto, or as measured by the net income of financial  
22 institutions imposed pursuant to article 11 of chapter 79 of the Kansas  
23 Statutes Annotated, and amendments thereto, for the taxable year during  
24 which commencement of commercial operations, as defined in ~~subsection~~  
25 ~~(b) of~~ K.S.A. 79-32,154(d), and amendments thereto, occurs at ~~such~~ the  
26 qualified business facility. In the case of a taxpayer who meets the  
27 definition of a manufacturing business in ~~subsection (d) of~~ K.S.A. 74-  
28 50,114(d), and amendments thereto, no credit shall be allowed under this  
29 section unless the number of qualified business facility employees, as  
30 determined under ~~subsection (d) of~~ K.S.A. 79-32,154(d), and amendments  
31 thereto, engaged or maintained in employment at the qualified business  
32 facility as a direct result of the investment by the taxpayer for the taxable  
33 year for which the credit is claimed equals or exceeds two. In the case of a  
34 taxpayer who meets the definition of a nonmanufacturing business in  
35 ~~subsection (d) of~~ K.S.A. 74-50,114(d), and amendments thereto, no credit  
36

1 permitted by subsection (e) remains unused, 75% of the amount of the tax  
 2 credit that remains unused at the end of the 16<sup>th</sup> taxable year succeeding  
 3 the taxable year in which the credit initially was claimed may be carried  
 4 forward for credit against the taxpayer's tax liability in the succeeding tax  
 5 year or years until the total amount of the tax credit is used. In any one tax  
 6 year, the amount of the tax credit allowable against the taxpayer's tax  
 7 liability shall not exceed 25% of the total tax credit amount that remained  
 8 unused as reduced and initially made available for use by the taxpayer  
 9 pursuant to this subsection. No credit carryforward shall be allowed in  
 10 any succeeding taxable year unless the taxpayer certifies under oath that  
 11 the taxpayer continues to meet the requirements of K.S.A. 74-50,131, and  
 12 amendments thereto, and this act. In no event shall any tax credit that  
 13 expired prior to January 1, 2018, be revived under the provisions of this  
 14 subsection.

15 (g) For tax years commencing after December 31, 2005, any taxpayer  
 16 claiming credits pursuant to this section, as a condition for claiming and  
 17 qualifying for ~~such~~ the credits, shall provide information pursuant to  
 18 K.S.A. 2017 Supp. 79-32,243, and amendments thereto, as part of the tax  
 19 return in which ~~such~~ the credits are claimed. ~~Such~~ The credits shall not be  
 20 denied solely on the basis of the contents of the information provided by  
 21 the taxpayer pursuant to K.S.A. 2017 Supp. 79-32,243, and amendments  
 22 thereto.

23 ~~(h)~~ This section and K.S.A. 79-32,160b, and amendments thereto,  
 24 shall be part of and supplemental to the job expansion and investment  
 25 credit act of 1976, and amendments thereto. are

26 Sec. 2. K.S.A. 2017 Supp. 79-32,160a is hereby ~~repealed~~.

27 Sec. 3. This act shall take effect and be in force from and after its  
 28 publication in the statute book 75-5133, 79-3234 and

K.S.A. 75-5133 is hereby amended to read as follows:

75-5133. (a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions, shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax, in accordance with proper judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

(b) The secretary of revenue or the secretary's designee may:

(1) Publish statistics, so classified as to prevent identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or the attorney general's designee;

(3) provide the post auditor access to all such excise tax reports or returns in accordance with and subject to the provisions of K.S.A. 46-1106(g), and amendments thereto;

(4) disclose taxpayer information from excise tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) provide information from returns and reports filed under article 42 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, to county appraisers as is necessary to ensure proper valuations of property. Information from such returns and reports may also be exchanged with any other state agency administering and collecting conservation or other taxes and fees imposed on or measured by mineral production;

(6) provide, upon request by a city or county clerk or treasurer or finance officer of any city or county receiving distributions from a local excise tax, monthly reports identifying each retailer doing business in such

city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month, and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number;

(7) provide information from returns and applications for registration filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-3601, and amendments thereto, to a city or county treasurer or clerk or finance officer to explain the basis of statistics contained in reports provided by subsection (b)(6);

(8) disclose the following oil and gas production statistics received by the department of revenue in accordance with K.S.A. 79-4216 et seq. and amendments thereto: Volumes of production by well name, well number, operator's name and identification number assigned by the state corporation commission, lease name, leasehold property description, county of production or zone of production, name of purchaser and purchaser's tax identification number assigned by the department of revenue, name of transporter, field code number or lease code, tax period,

exempt production volumes by well name or lease, or any combination of this information;

(9) release or publish liquor brand registration information provided by suppliers, farm wineries, microdistilleries and microbreweries in accordance with the liquor control act. The information to be released is limited to: Item number, universal numeric code, type status, product description, alcohol percentage, selling units, unit size, unit of measurement, supplier number, supplier name, distributor number and distributor name;

(10) release or publish liquor license information provided by liquor licensees, distributors, suppliers, farm wineries, microdistilleries and microbreweries in accordance with the liquor control act. The information to be released is limited to: County name, owner, business name, address, license type, license number, license expiration date and the process agent contact information;

(11) release or publish cigarette and tobacco license information obtained from cigarette and tobacco licensees in accordance with the Kansas cigarette and tobacco products act. The information to be released

is limited to: County name, owner, business name, address, license type and license number;

(12) provide environmental surcharge or solvent fee, or both, information from returns and applications for registration filed pursuant to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary of health and environment or the secretary's designee for the sole purpose of ensuring that retailers collect the environmental surcharge tax or solvent fee, or both;

(13) provide water protection fee information from returns and applications for registration filed pursuant to K.S.A. 82a-954, and amendments thereto, to the secretary of the state board of agriculture or the secretary's designee and the secretary of the Kansas water office or the secretary's designee for the sole purpose of verifying revenues deposited to the state water plan fund;

(14) provide to the secretary of commerce copies of applications for project exemption certificates sought by any taxpayer under the enterprise zone sales tax exemption pursuant to K.S.A. 79-3606(cc), and amendments thereto;

(15) disclose information received pursuant to the Kansas cigarette and tobacco act and subject to the confidentiality provisions of this act to any criminal justice agency, as defined in K.S.A. 22-4701(c), and amendments thereto, or to any law enforcement officer, as defined in K.S.A. 2017 Supp. 21-5111, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation;

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department;

(17) provide information concerning remittance by sellers, as defined in K.S.A. 2017 Supp. 12-5363, and amendments thereto, of prepaid wireless 911 fees from returns to the local collection point administrator, as defined in K.S.A. 2017 Supp. 12-5363, and amendments thereto, for purposes of verifying seller compliance with collection and remittance of such fees;

(18) release or publish charitable gaming information obtained in charitable gaming licensee and registration applications and renewals in



accordance with the Kansas charitable gaming act, K.S.A. 2017 Supp. 75-5171 et seq., and amendments thereto. The information to be released is limited to: The name, address, phone number, license registration number and email address of the organization, distributor or of premises; ~~and~~

(19) provide to the attorney general confidential information for purposes of determining compliance with or enforcing K.S.A. 50-6a01 et seq., and amendments thereto, the master settlement agreement referred to therein and all agreements regarding disputes under the master settlement agreement. The secretary and the attorney general may share the information specified under this subsection with any of the following:

(A) Federal, state or local agencies for the purposes of enforcement of corresponding laws of other states; and

(B) a court, arbitrator, data clearinghouse or similar entity for the purpose of assessing compliance with or making calculations required by the master settlement agreement or agreements regarding disputes under the master settlement agreement, and with counsel for the parties or expert witnesses in any such proceeding, if the information otherwise remains confidential.

; and  
(20) disclose the following information of a taxpayer claiming credits pursuant to K.S.A. 79-32,160a(e), and amendments thereto: (A) The recipient's name; (B) the total amount of credits earned by the recipient pursuant to K.S.A. 79-32,160a(e), and amendments thereto, and the number of years remaining those credits can be carried forward; (C) the total amount of credits claimed pursuant to K.S.A. 79-32,160a(e) and amendments thereto, by the recipient in the tax year; and (D) information that was required to be included in the recipient's tax return pursuant to K.S.A. 2017 Supp. 79-32,243, and amendments thereto

(c) Any person receiving any information under the provisions of subsection (b) shall be subject to the confidentiality provisions of subsection (a) and to the penalty provisions of subsection (d).

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general.

The district attorney or county attorney and the attorney general shall have authority to prosecute any violation of this section if the offender is a city or county clerk or treasurer or finance officer of a city or county.

K.S.A. 79-3234 is hereby amended to read as follows:  
79-3234. (a) All reports and returns required by this act shall be preserved for three years and thereafter until the director orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c) or in K.S.A. 17-7511, ~~subsection (g) of~~ K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, (g) it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act; and it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer or employee engaged in the administration of this act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required

by the laws of the state of Kansas, by any other state or by the United States government, or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Kansas, any other state or by the United States government.

(c) The secretary or the secretary's designee may: (1) Publish statistics, so classified as to prevent the identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or other legal representatives of the state;

(3) provide the post auditor access to all income tax reports or returns in accordance with and subject to the provisions of ~~subsection (g)~~

~~of~~ K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto; (g)

(4) disclose taxpayer information from income tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve

confidentiality;

(5) disclose to the secretary of commerce the following: (A) Specific taxpayer information related to financial information previously submitted by the taxpayer to the secretary of commerce concerning or relevant to any income tax credits, for purposes of verification of such information or evaluating the effectiveness of any tax credit or economic incentive program administered by the secretary of commerce; (B) the amount of payroll withholding taxes an employer is retaining pursuant to K.S.A. 2017 Supp. 74-50,212, and amendments thereto; (C) information received from businesses completing the form required by K.S.A. 2017 Supp. 74-50,217, and amendments thereto; and (D) findings related to a compliance audit conducted by the department of revenue upon the request of the secretary of commerce pursuant to K.S.A. 2017 Supp. 74-50,215, and amendments thereto;

(6) disclose income tax returns to the state gaming agency to be used solely for the purpose of determining qualifications of licensees of and applicants for licensure in tribal gaming. Any information received by the state gaming agency shall be confidential and shall not be disclosed

except to the executive director, employees of the state gaming agency and members and employees of the tribal gaming commission;

(7) disclose the taxpayer's name, last known address and residency status to the Kansas department of wildlife, parks and tourism to be used solely in its license fraud investigations;

(8) disclose the name, residence address, employer or Kansas adjusted gross income of a taxpayer who may have a duty of support in a title IV-D case to the secretary of the Kansas department for children and families for use solely in administrative or judicial proceedings to establish, modify or enforce such support obligation in a title IV-D case. In addition to any other limits on use, such use shall be allowed only where subject to a protective order which prohibits disclosure outside of the title IV-D proceeding. As used in this section, "title IV-D case" means a case being administered pursuant to part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e);

(9) permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an income tax, or the authorized representative of either, to inspect the income tax returns made under this act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in income tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the income tax laws, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of tax laws of such state, the state of Kansas or of the United States;

(10) communicate to the executive director of the Kansas lottery information as to whether a person, partnership or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer;

(11) communicate to the executive director of the Kansas racing commission as to whether a person, partnership or corporation has failed to meet any tax obligation to the state of Kansas for the purpose of determining whether such person, partnership or corporation is eligible for a facility owner license or facility manager license pursuant to the Kansas pari-mutuel racing act;

(12) provide such information to the executive director of the Kansas public employees retirement system for the purpose of determining that certain individuals' reported compensation is in compliance with the Kansas public employees retirement act, K.S.A. 74-4901 et seq., and amendments thereto;

(13) (i) provide taxpayer information of persons suspected of violating K.S.A. 2017 Supp. 44-766, and amendments thereto, to the secretary of labor or such secretary's designee for the purpose of determining compliance by any person with the provisions of ~~subsection~~

~~(i)(3)(D)~~ of K.S.A. 44-703 and K.S.A. 2017 Supp. 44-766, and (i)(3)(D) amendments thereto. The information to be provided shall include all relevant information in the possession of the department of revenue



necessary for the secretary of labor to make a proper determination of compliance with the provisions of ~~subsection (i)(3)(D)~~ of K.S.A. 44-703 (i)(3)(D) and K.S.A. 2017 Supp. 44-766, and amendments thereto, and to calculate any unemployment contribution taxes due. Such information to be provided by the department of revenue shall include, but not be limited to, withholding tax and payroll information, the identity of any person that has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq., and amendments thereto, and the results or status of such audit or investigation;

(ii) any person receiving tax information under the provisions of this paragraph shall be subject to the same duty of confidentiality imposed by law upon the personnel of the department of revenue and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality; and

(iii) each of the secretary of labor and the secretary of revenue may adopt rules and regulations necessary to effect the provisions of this paragraph;

(14) provide such information to the state treasurer for the sole purpose of carrying out the provisions of K.S.A. 58-3934, and amendments thereto. Such information shall be limited to current and prior addresses of taxpayers or associated persons who may have knowledge as to the location of an owner of unclaimed property. For the purposes of this paragraph, "associated persons" includes spouses or dependents listed on income tax returns;~~and~~

(15) after receipt of information pursuant to subsection (f), forward such information and provide the following reported Kansas individual income tax information for each listed defendant, if available, to the state board of indigents' defense services in an electronic format and in the manner determined by the secretary: (A) The defendant's name; (B) social security number; (C) Kansas adjusted gross income; (D) number of exemptions claimed; and (E) the relevant tax year of such records. Any social security number provided to the secretary and the state board of indigents' defense services pursuant to this section shall remain confidential.

(d) Any person receiving information under the provisions of

; and (16) disclose the following information of a taxpayer claiming credits pursuant to K.S.A. 79-32,160a(e), and amendments thereto: (A) The recipient's name; (B) the total amount of credits earned by the recipient pursuant to K.S.A. 79-32,160a(e), and amendments thereto, and the number of years remaining those credits can be carried forward; (C) the total amount of credits claimed pursuant to K.S.A. 79-32,160a(e), and amendments thereto, by the recipient in the tax year; and (D) information that was required to be included in the recipient's tax return pursuant to K.S.A. 2017 Supp. 79-32,243, and amendments thereto

subsection (c) shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e).

(e) Any violation of subsection (b) or (c) is a class A nonperson misdemeanor and, if the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(f) For the purpose of determining whether a defendant is financially able to employ legal counsel under the provisions of K.S.A. 22-4504, and amendments thereto, in all felony cases with appointed counsel where the defendant's social security number is accessible from the records of the district court, the court shall electronically provide the defendant's name, social security number, district court case number and county to the secretary of revenue in the manner and format agreed to by the office of judicial administration and the secretary.

(g) Nothing in this section shall be construed to allow disclosure of the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information, where such disclosure is prohibited by the federal internal revenue code as in effect on September 1, 1996, and amendments thereto, related federal internal

revenue rules or regulations, or other federal law.