

SENATE BILL No. 430

By Committee on Ways and Means

2-21

Proposed Amendment for SB 430
Senate Committee on Commerce
March 15, 2018
Chuck Reimer
Office of Revisor of Statutes

1 AN ACT concerning economic development; relating to the high
2 performance incentive program; tax credit availability extended to 25
3 years; amending K.S.A. 2017 Supp. 79-32,160a and repealing the
4 existing section.
5

for certain qualified companies

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

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

1 ~~subsection (f) of K.S.A. 74-50,114(f)~~, and amendments thereto, no credit
2 shall be allowed under this section unless the number of qualified business
3 facility employees, as determined under ~~subsection (f) of K.S.A. 79-~~
4 ~~32,154(d)~~, and amendments thereto, engaged or maintained in employment
5 at the 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 five. Where an employee performs services for the taxpayer
8 outside the qualified business facility, the employee shall be considered
9 engaged or maintained in employment at the qualified business facility if:
10 (1) The employee's service performed outside the qualified business
11 facility is incidental to the employee's service inside the qualified business
12 facility; or (2) the base of operations or the place from which the service is
13 directed or controlled, is at the qualified business facility.

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

28 (1) Two thousand five hundred dollars for each qualified business
29 facility employee determined under K.S.A. 79-32,154, and amendments
30 thereto; plus
31 (2) one thousand dollars for each \$100,000, or major fraction thereof,
32 which shall be deemed to be 51% or more, in qualified business facility
33 investment, as determined under K.S.A. 79-32,154, and amendments
34 thereto.

35 (c) The credit allowed by subsection (a) for any taxpayer who invests
36 in a qualified business facility, which is not located in a nonmetropolitan
37 region established under K.S.A. 74-50,116, and amendments thereto, and
38 effective for tax years commencing after December 31, 2010, and before
39 January 1, 2012, located in an area other than a metropolitan county as
40 defined in either K.S.A. 2017 Supp. 74-50,114 or 74-50,211, and
41 amendments thereto, and which also meets the definition of business in
42 ~~subsection (b) of K.S.A. 74-50,114(b)~~, and amendments thereto, on or
43 after the effective date of this act, shall be a portion of the income tax

1 imposed by the Kansas income tax act on the taxpayer's Kansas taxable
2 income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-
3 252, and amendments thereto, or the privilege tax as measured by the net
4 income of financial institutions imposed pursuant to article 11 of chapter
5 79 of the Kansas Statutes Annotated, and amendments thereto, for the
6 taxable year for which ~~such~~ the credit is allowed, but in the case where the
7 qualified business facility investment was made prior to January 1, 1996,
8 not in excess of 50% of ~~such~~ the tax. ~~Such~~ The portion shall be an amount
9 equal to the sum of the following:

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

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

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

39 (e) Notwithstanding the foregoing provisions of this section, and
40 except as otherwise provided in this subsection, any taxpayer qualified and
41 certified under the provisions of K.S.A. 74-50,131, and amendments
42 thereto; which, prior to making a commitment to invest in a qualified
43 Kansas business, has filed a certificate of intent to invest in a qualified

1 business facility in a form satisfactory to the secretary of commerce; and
2 that has received written approval from the secretary of commerce for
3 participation and has participated, during the tax year for which the
4 exemption is claimed, in the Kansas industrial training, Kansas industrial
5 retraining or the state of Kansas investments in lifelong learning program
6 or is eligible for the tax credit established in K.S.A. 74-50,132, and
7 amendments thereto, shall be entitled to a credit in an amount equal to
8 10% of that portion of the qualified business facility investment which
9 exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2)
10 without regard to the number of qualified business facility employees
11 engaged or maintained in employment at the qualified business facility.
12 For tax years beginning on or after January 1, 2012, for a qualified
13 business facility investment in Douglas, Johnson, Sedgwick, Shawnee or
14 Wyandotte counties, ~~such~~ *the* credit shall be in an amount equal to 10% of
15 that portion of the qualified business facility investment which exceeds
16 \$1,000,000. Any taxpayer who has filed a certificate of intent to invest in a
17 qualified business facility pursuant to this subsection in Douglas, Johnson,
18 Sedgwick, Shawnee or Wyandotte county prior to December 31, 2011, and
19 commences investments in a qualified business facility prior to December
20 31, 2013, may claim credits under K.S.A. 74-50,131, 74-50,132 and
21 ~~subsection (e) of 79-32, 160a(e)~~, and amendments thereto, in an amount
22 equal to 10% of that portion of the qualified business facility investment
23 which exceeds \$50,000. Timing modifications may be authorized at the
24 discretion of the secretary of commerce and the secretary of revenue
25 during the transition period. The credit allowed by this subsection shall be
26 a one-time credit. If the amount thereof exceeds the tax imposed by the
27 Kansas income tax act on the taxpayer's Kansas taxable income or the
28 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and
29 amendments thereto, or the privilege tax as measured by net income of
30 financial institutions imposed pursuant to article 11 of chapter 79 of the
31 Kansas Statutes Annotated, and amendments thereto, for the taxable year,
32 the amount thereof which exceeds ~~such~~ *the* tax liability may be carried
33 forward for credit in the succeeding taxable year or years until the total
34 amount of the tax credit is used, except that no ~~such~~ tax credit shall be
35 carried forward for deduction after the 16th taxable year succeeding the
36 taxable year in which ~~such~~ *the* credit initially was claimed, *except as*
37 *provided by subsection (f)*, and no carryforward shall be allowed for
38 deduction in any succeeding taxable year unless the taxpayer certifies
39 under oath that the taxpayer continues to meet the requirements of K.S.A.
40 74-50,131, and amendments thereto, and this act. In no event shall any
41 credit allowed under this section that expired during any taxable year prior
42 to the taxable year commencing January 1, 2011, be revived under the
43 provisions of this act.

(f) On and after January 1, 2018, for taxpayers whose tax credit as permitted by subsection (e) remains unused, ~~75%~~ of the amount of the tax credit that remains unused at the end of the 16th taxable year succeeding the taxable year in which the credit initially was claimed may be carried forward for credit against the taxpayer's tax liability in the succeeding tax year or years until the 25th taxable year succeeding the taxable year in which the credit initially was claimed. In any one tax year, the amount of the tax credit allowable against the taxpayer's tax liability shall not exceed ~~25%~~ of the total tax credit amount that remained unused as reduced and initially made available for use by the taxpayer pursuant to this subsection. No credit carryforward shall be allowed 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. No credit carryforward shall be allowed after the 25th taxable year succeeding the taxable year in which the credit was initially claimed. In no event shall any tax credit that expired prior to January 1, 2018 be revived under the provisions of this subsection.

50%

10%

who have initially claimed a credit as permitted by subsection (e) prior to January 1, 2018, and

(g) 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~~ the credits, shall provide information pursuant to K.S.A. 2017 Supp. 79-32,243, and amendments thereto, as part of the tax return in which ~~such~~ the credits are claimed. ~~Such~~ The credits shall not be denied solely on the basis of the contents of the information provided by the taxpayer pursuant to K.S.A. 2017 Supp. 79-32,243, and amendments thereto.

~~(h)~~ 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.

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

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