

As Amended by Senate Committee

Session of 2018

SENATE BILL No. 334

By Committee on Commerce

1-26

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.
4

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

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

1 shall be allowed under this section unless the number of qualified business
2 facility employees, as determined under ~~subsection (d) of~~ K.S.A. 79-
3 32,154(d), and amendments thereto, engaged or maintained in employment
4 at the qualified business facility as a direct result of the investment by the
5 taxpayer for the taxable year for which the credit is claimed equals or
6 exceeds five. Where an employee performs services for the taxpayer
7 outside the qualified business facility, the employee shall be considered
8 engaged or maintained in employment at the qualified business facility if:
9 (1) The employee's service performed outside the qualified business
10 facility is incidental to the employee's service inside the qualified business
11 facility; or (2) the base of operations or, the place from which the service is
12 directed or controlled, is at the qualified business facility.

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

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

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

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

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

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

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

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

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

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

43 (f) *On and after January 1, 2018, for taxpayers whose tax credit as*

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

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

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

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

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