

*As Amended by Senate Committee*

*Session of 2018*

**SENATE BILL No. 430**

By Committee on Ways and Means

2-21

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

5  
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 ~~(f) of~~ K.S.A. 79-32,154(f), 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 (d)~~ 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 16<sup>th</sup> 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.

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

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

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

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

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