

**Kansas Restaurant and Hospitality Association
Supporting Testimony
Senate Bill 33
Hugh O'Reilly, KRHA
Tuesday March 14, 2023**



Chair and Members of the committee, I am Hugh O'Reilly. I am here today representing the Kansas Restaurant and Hospitality Association. I own two McDonalds stores in eastern Kansas. When we were shut down during Covid the federal government created a Employee Retention Tax Credit (ERTC) and we support this bill because it aligns Kansas policy more closely with federal policy. Basically, Kansas taxes these wages twice, at the employer level because KDOR is disallowing the modification to restore the wage deduction, and at the employee level as the wages are taxable income to the employee. We think this is inconsistent with other programs and deserves to be corrected to not cause additional liabilities largely within an industry that has been decimated by other government decisions.

The Employee Retention Credit (ERTC) was introduced in the CARES Act and first became effective on March 31, 2020. It was enhanced in subsequent Covid related legislation. It expired September 30, 2021, and so was only in effect for 2020 and 2021.

The federal ERTC (Employee Retention Tax Credit) was available to small and midsize business during 2020 and 2021 to encourage employers whose businesses were impacted by the pandemic to retain employees. In 2020, it was available to qualifying small employers (100 full time employee threshold) for wages paid after March 7, 2020. In 2021, it was available to qualifying small and mid-size employers (500 full time employee threshold) for wages paid from January 1-September 30, 2021.

The CARES Act references the tax treatment of IRC Section 280C(a). Under IRC 280C(a), the taxpayer does not include the credit received as income but is disallowed the deduction from wages by the amount of the credit. This is consistent with the federal tax treatment of other hiring credits such as the Work Opportunity Tax Credit (WOTC). The amount of the credit offsets the amount of wages the employer can deduct.

Kansas statutes provide for a modification to taxable income to restore the deduction for wages disallowed at the federal level for hiring credits. See the highlighted language in the attached Kansas Statutes Section 79-32,117. Kansas adjusted gross income of an individual: addition and subtraction modification. This is logical as no Kansas tax benefit was received.

KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION 3500 N ROCK ROAD BUILDING 1300
WICHITA, KANSAS 67226

TELEPHONE: 800.369.6787 IN WICHITA: 316.267.8383 FACSIMILE: 316.267.8400 E-MAIL:

KSREST@KRHA.ORG WEB SITE: WWW.KRHA.ORG

KRHA MEMBER SERVICES



KRHA EDUCATION FOUNDATION



KRHA INSURANCE SERVICES



KRHA WORKERS' COMP FUND



Hugh O'Reilly Testimony
SB 33
Page 2

KDOR has taken the position that there will not be a modification allowed to restore the deduction for wages for which the employer received the federal Employee Retention Tax Credit. This position has been adopted even though the federal CARES Act and the IRS treat the ERTC as a jobs credit under Section 280C and Kansas Statute 79-32,117 provides for the modification to reduce Kansas taxable income by the amount of the targeted jobs tax credit and work incentive credit disallowed at the federal level under Section 280C.

The result is that Kansas taxes these wages twice, at the employer level because KDOR is disallowing the modification to restore the wage deduction, and at the employee level as the wages are taxable income to the employee. It would be appropriate to pass this bill updating the language of 79-332,117 (c) (x) to include the Employee Retention Credit. The effective dates for the change should be tax years 2020 and 2021.

Thank you and I will stand for questions at the appropriate time.

KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION 3500 N ROCK ROAD BUILDING 1300
WICHITA, KANSAS 67226
TELEPHONE: 800.369.6787 IN WICHITA: 316.267.8383 FACSIMILE: 316.267.8400 E-MAIL:
KSREST@KRHA.ORG WEB SITE: WWW.KRHA.ORG

KRHA MEMBER SERVICES



KRHA EDUCATION FOUNDATION



KRHA INSURANCE SERVICES



KRHA WORKERS' COMP FUND