

HOUSE BILL No. 2797

By Committee on Taxation

Requested by Representative Hoheisel on behalf of AMC Theatres

2-13

1 AN ACT concerning income taxation; relating to credits; providing for full
2 transferability of tax credits for investments in certain qualified
3 business facilities; amending K.S.A. 2023 Supp. 79-32,160a and
4 repealing the existing section.
5

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

7 Section 1. K.S.A. 2023 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 K.S.A. 79-32,154(b), and
11 amendments thereto, and effective for tax years commencing after
12 December 31, 2010, and before January 1, 2012, located in an area other
13 than a metropolitan county as defined in either K.S.A. 74-50,114 or 74-
14 50,211, and amendments thereto, and also meets the definition of a
15 business in K.S.A. 74-50,114(b), and amendments thereto, shall be
16 allowed a credit for such investment, in an amount determined under
17 subsection (b) or (c), as the case requires, against the tax imposed by the
18 Kansas income tax act or where the qualified business facility is the
19 principal place from which the trade or business of the taxpayer is directed
20 or managed and the facility has facilitated the creation of at least 20 new
21 full-time positions, against the premium tax or privilege fees imposed
22 pursuant to K.S.A. 40-252, and amendments thereto, or as measured by the
23 net income of financial institutions imposed pursuant to article 11 of
24 chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for
25 the taxable year during which commencement of commercial operations,
26 as defined in K.S.A. 79-32,154(f), and amendments thereto, occurs at such
27 qualified business facility. In the case of a taxpayer who meets the
28 definition of a manufacturing business in K.S.A. 74-50,114(d), and
29 amendments thereto, no credit shall be allowed under this section unless
30 the number of qualified business facility employees, as determined under
31 K.S.A. 79-32,154(d), and amendments thereto, engaged or maintained in
32 employment at the qualified business facility as a direct result of the
33 investment by the taxpayer for the taxable year for which the credit is
34 claimed equals or exceeds two. In the case of a taxpayer who meets the
35 definition of a nonmanufacturing business in K.S.A. 74-50,114(f), and

1 amendments thereto, no credit shall be allowed under this section unless
2 the number of qualified business facility employees, as determined under
3 K.S.A. 79-32,154(d), and amendments thereto, engaged or maintained in
4 employment at the qualified business facility as a direct result of the
5 investment by the taxpayer for the taxable year for which the credit is
6 claimed equals or exceeds five. Where an employee performs services for
7 the taxpayer outside the qualified business facility, the employee shall be
8 considered engaged or maintained in employment at the qualified business
9 facility if: (1) The employee's service performed outside the qualified
10 business facility is incidental to the employee's service inside the qualified
11 business facility; or (2) the base of operations or, the place from which the
12 service is 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 that 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 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 tax. Such portion shall be an amount equal to the sum of the
26 following:

27 (1) \$2,500 for each qualified business facility employee determined
28 under K.S.A. 79-32,154, and amendments thereto; plus

29 (2) \$1,000 for each \$100,000, or major fraction thereof, which shall
30 be deemed to be 51% or more, in qualified business facility investment, as
31 determined under K.S.A. 79-32,154, and amendments thereto.

32 (c) The credit allowed by subsection (a) for any taxpayer who invests
33 in a qualified business facility that is not located in a nonmetropolitan
34 region established under K.S.A. 74-50,116, and amendments thereto, and
35 effective for tax years commencing after December 31, 2010, and before
36 January 1, 2012, located in an area other than a metropolitan county as
37 defined in either K.S.A. 74-50,114 or 74-50,211, and amendments thereto,
38 and that also meets the definition of business in K.S.A. 74-50,114(b), and
39 amendments thereto, on or after the effective date of this act, shall be a
40 portion of the income tax imposed by the Kansas income tax act on the
41 taxpayer's Kansas taxable income, the premium tax or privilege fees
42 imposed pursuant to K.S.A. 40-252, and amendments thereto, or the
43 privilege tax as measured by the net income of financial institutions

1 imposed pursuant to article 11 of chapter 79 of the Kansas Statutes
2 Annotated, and amendments thereto, for the taxable year for which such
3 credit is allowed, but in the case where the qualified business facility
4 investment was made prior to January 1, 1996, not in excess of 50% of
5 such tax. Such portion shall be an amount equal to the sum of the
6 following:

7 (1) \$1,500 for each qualified business facility employee as
8 determined under K.S.A. 79-32,154, and amendments thereto; and

9 (2) \$1,000 for each \$100,000, or major fraction thereof, which shall
10 be deemed to be 51% or more, in qualified business facility investment as
11 determined under K.S.A. 79-32,154, and amendments thereto.

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

33 (e) Notwithstanding the foregoing provisions of this section, and
34 except as otherwise provided in this subsection, any taxpayer qualified and
35 certified under the provisions of K.S.A. 74-50,131, and amendments
36 thereto, that prior to making a commitment to invest in a qualified Kansas
37 business, has filed a certificate of intent to invest in a qualified business
38 facility in a form satisfactory to the secretary of commerce, shall be
39 entitled to a credit in an amount equal to 10% of that portion of the
40 qualified business facility investment that exceeds \$50,000 in lieu of the
41 credit provided in subsection (b)(2) or (c)(2) without regard to the number
42 of qualified business facility employees engaged or maintained in
43 employment at the qualified business facility. For tax years beginning on

1 or after January 1, 2012, for a qualified business facility investment in
2 Douglas, Johnson, Sedgwick, Shawnee or Wyandotte county, such credit
3 shall be in an amount equal to 10% of that portion of the qualified business
4 facility investment that exceeds \$1,000,000. Any taxpayer who has filed a
5 certificate of intent to invest in a qualified business facility pursuant to this
6 subsection in Douglas, Johnson, Sedgwick, Shawnee or Wyandotte county
7 prior to December 31, 2011, and commences investments in a qualified
8 business facility prior to December 31, 2013, may claim credits under
9 K.S.A. 74-50,131, 74-50,132 and 79-32,160a(e), and amendments thereto,
10 in an amount equal to 10% of that portion of the qualified business facility
11 investment that exceeds \$50,000. Timing modifications may be authorized
12 at the discretion of the secretary of commerce and the secretary of revenue
13 during the transition period. The credit allowed by this subsection shall be
14 a one-time credit. If the amount thereof exceeds the tax imposed by the
15 Kansas income tax act on the taxpayer's Kansas taxable income or the
16 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and
17 amendments thereto, or the privilege tax as measured by net income of
18 financial institutions imposed pursuant to article 11 of chapter 79 of the
19 Kansas Statutes Annotated, and amendments thereto, for the taxable year,
20 the amount thereof that exceeds such tax liability may be carried forward
21 for credit in the succeeding taxable year or years until the total amount of
22 the tax credit is used, except that no such tax credit shall be carried
23 forward for deduction after the 16th taxable year succeeding the taxable
24 year in which such credit initially was claimed, and no carryforward shall
25 be allowed for deduction in any succeeding taxable year unless the
26 taxpayer certifies under oath that the taxpayer continues to meet the
27 requirements of K.S.A. 74-50,131, and amendments thereto, and this act.
28 In no event shall any credit allowed under this section that expired during
29 any taxable year prior to the taxable year commencing January 1, 2011, be
30 revived under the provisions of this act.

31 (f) For projects placed into service on and after January 1, 2021, *and*
32 *prior to July 1, 2024*, a taxpayer may transfer up to 50% of the tax credit
33 allowed under subsection (e), as provided in this subsection. *For projects*
34 *placed into service on and after July 1, 2024, a taxpayer may transfer up*
35 *to 100% of the tax credit allowed under subsection (e), as provided in this*
36 *subsection.* The taxpayer may make a transfer to one or more transferees,
37 but the total of all transfers shall not exceed ~~50%~~ *the maximum allowable*
38 *transfer percentage* of the taxpayer's tax credit *as provided in this*
39 *subsection.* The taxpayer shall make the transfer or transfers within a
40 single tax year. The credit may be transferred to any individual or entity
41 and shall be claimed in the year the credit was transferred against the
42 transferee's tax liability for the income tax under the Kansas income tax
43 act or the premium tax or privilege fees imposed pursuant to K.S.A. 40-

1 252, and amendments thereto, or the privilege tax as measured by the net
2 income of financial institutions imposed pursuant to article 11 of chapter
3 79 of the Kansas Statutes Annotated, and amendments thereto. The amount
4 of the credit that exceeds the transferee's tax liability for such year may be
5 carried forward for credit in the succeeding taxable year or years until the
6 total amount of the tax credit is used, except that no such credit shall be
7 carried forward for deduction after the 16th taxable year succeeding the
8 taxable year in which such credit was initially claimed. The taxpayer or
9 transferee shall provide such documentation of the tax credit transfer to the
10 secretary of revenue as may be required by the secretary.

11 (g) In the event the tax credit earned by the taxpayer and transferred
12 to a transferee is later disallowed in whole or in part by the secretary of
13 revenue, the taxpayer that originally earned the tax credit shall be liable for
14 repayment to the state in the amount disallowed.

15 (h) 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 credits, shall provide information pursuant to K.S.A.
18 79-32,243, and amendments thereto, as part of the tax return in which such
19 credits are claimed. Such credits shall not be denied solely on the basis of
20 the contents of the information provided by the taxpayer pursuant to
21 K.S.A. 79-32,243, and amendments thereto.

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

25 Sec. 2. K.S.A. 2023 Supp. 79-32,160a is hereby repealed.

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