HOUSE BILL No. 2702

By Committee on Commerce, Labor and Economic Development

AN ACT concerning economic development; relating to the high performance incentive fund; workforce training program participation requirements; workforce training tax credit; amending K.S.A. 74-50,133 and 79-32,160a and repealing the existing sections.

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

Section 1. K.S.A. 74-50,133 is hereby amended to read as follows:

74-50,133. There is hereby created within the department of commerce the "high performance incentive fund" to provide matching funds for business assistance and consulting services to qualified firms under the provisions of K.S.A. 74-50,131, and amendments thereto, or that are entitled to a workforce training tax credit under the provisions of K.S.A. 74-50,132, and amendments thereto, or have received written approval for and are participating, at the time the funds are sought, in the Kansas industrial training, Kansas industrial retraining or state of Kansas investments in lifelong learning program, subject to appropriation of funds and program criteria, as hereinafter provided in this section. The department of commerce may provide funds to qualified firms, on a matching basis, to pay up to 50% of such firm's costs of acquiring consulting services provided by the mid-America manufacturing technology center, or approved private consultants to assist in improving the firm's management, production processes or product or service quality. Qualified firms also shall receive priority consideration for any other business assistance programs administered by the department of commerce.

Sec. 2. K.S.A. 79-32,160a is hereby amended to read as follows:

79-32,160a. (a) For taxable years commencing after December 31, 1999, and before January 1, 2012, any taxpayer who shall invest in a qualified business facility, as defined in subsection (b) of K.S.A. 79-32,154(b), and amendments thereto, and effective for tax years commencing after December 31, 2010, and before January 1, 2012, located in an area other than a metropolitan county as defined in either K.S.A.: 74-50,114 or 74-50,211, and amendments thereto, and also meets the definition of a business in subsection (b) of K.S.A. 74-50,114(b), and amendments thereto, shall be allowed a credit for such investment, in an amount determined under subsection (b) or (c), as the case requires, against the tax imposed by the Kansas income tax act or where the qualified business
facility is the principal place from which the trade or business of the
taxpayer is directed or managed and the facility has facilitated the creation
of at least 20 new full-time positions, against the premium tax or privilege
fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or as
measured by the net income of financial institutions imposed pursuant to
article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
thereto, for the taxable year during which commencement of commercial
operations, as defined in subsection (f) of K.S.A. 79-32,154(f), and
amendments thereto, occurs at such qualified business facility. In the case
of a taxpayer who meets the definition of a manufacturing business in
subsection (d) of K.S.A. 74-50,114(d), and amendments thereto, no credit
shall be allowed under this section unless the number of qualified business
facility employees, as determined under subsection (d) of K.S.A. 79-
32,154(d), and amendments thereto, engaged or maintained in employment
at the qualified business facility as a direct result of the investment by the
taxpayer for the taxable year for which the credit is claimed equals or
exceeds two. In the case of a taxpayer who meets the definition of a
nonmanufacturing business in subsection (f) of K.S.A. 74-50,114(f), and
amendments thereto, no credit shall be allowed under this section unless
the number of qualified business facility employees, as determined under
subsection (d) of K.S.A. 79-32,154(d), and amendments thereto, engaged
or maintained in employment at the qualified business facility as a direct
result of the investment by the taxpayer for the taxable year for which the
credit is claimed equals or exceeds five. Where an employee performs
services for the taxpayer outside the qualified business facility, the
employee shall be considered engaged or maintained in employment at the
qualified business facility if: (1) The employee's service performed outside
the qualified business facility is incidental to the employee's service inside
the qualified business facility; or (2) the base of operations or, the place
from which the service is directed or controlled, is at the qualified business
facility.

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

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

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

(c) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility, which is not located in a nonmetropolitan region established under K.S.A. 74-50,116, and thereto, and effective for tax years commencing after December 31, 2010, and before January 1, 2012, located in an area other than a metropolitan county as defined in either K.S.A. 74-50,114 or 74-50,211, and amendments thereto, and which also meets the definition of business in subsection (b) of K.S.A. 74-50,114(b), and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year for which such credit is allowed, but in the case where the qualified business facility investment was made prior to January 1, 1996, not in excess of 50% of such tax. Such portion shall be an amount equal to the sum of the following:

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

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

(d) The credit allowed by subsection (a) for each qualified business facility employee and for qualified business facility investment shall be a one-time credit. If the amount of the credit allowed under subsection (a) exceeds the tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the taxable year, or in the case where the qualified business
facility investment was made prior to January 1, 1996, 50% of such tax
imposed upon the amount which exceeds such tax liability or such portion
thereof may be carried over for credit in the same manner in the
succeeding taxable years until the total amount of such credit is used.
Except that, before the credit is allowed, a taxpayer, who meets the
definition of a manufacturing business in subsection (d) of K.S.A. 74-
50,114(d), and amendments thereto, shall recertify annually that the net
increase of a minimum of two qualified business facility employees has
continued to be maintained and a taxpayer, who meets the definition of a
nonmanufacturing business in subsection (f) of K.S.A. 74-50,114(f), and
amendments thereto, shall recertify annually that the net increase of a
minimum of five qualified business employees has continued to be
maintained.
(e) Notwithstanding the foregoing provisions of this section, and
except as otherwise provided in this subsection, any taxpayer qualified and
certified under the provisions of K.S.A. 74-50,131, and amendments
thereto, which, that prior to making a commitment to invest in a qualified
Kansas business, has filed a certificate of intent to invest in a qualified
business facility in a form satisfactory to the secretary of commerce; and
that has received written approval from the secretary of commerce for
participation and has participated, during the tax year for which the
exemption is claimed, in the Kansas industrial training, Kansas industrial
retraining or the state of Kansas investments in lifelong learning program
or is eligible for the tax credit established in K.S.A. 74-50,132, and
amendments thereto, shall be entitled to a credit in an amount equal to
10% of that portion of the qualified business facility investment which
exceeds $50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2)
without regard to the number of qualified business facility employees
engaged or maintained in employment at the qualified business facility.
For tax years beginning on or after January 1, 2012, for a qualified
business facility investment in Douglas, Johnson, Sedgwick, Shawnee or
Wyandotte counties county, such credit shall be in an amount equal to 10%
of that portion of the qualified business facility investment which exceeds
$1,000,000. Any taxpayer who has filed a certificate of intent to invest in a
qualified business facility pursuant to this subsection in Douglas, Johnson,
Sedgwick, Shawnee or Wyandotte county prior to December 31, 2011, and
commences investments in a qualified business facility prior to December
31, 2013, may claim credits under K.S.A. 74-50,131, 74-50,132 and
subsection (e) of 79-32,160a(e), and amendments thereto, in an amount
equal to 10% of that portion of the qualified business facility investment
which exceeds $50,000. Timing modifications may be authorized at the
discretion of the secretary of commerce and the secretary of revenue
during the transition period. The credit allowed by this subsection shall be
a one-time credit. If the amount thereof exceeds the tax imposed by the
Kansas income tax act on the taxpayer's Kansas taxable income or the
premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and
amendments thereto, or the privilege tax as measured by net income of
financial institutions imposed pursuant to article 11 of chapter 79 of the
Kansas Statutes Annotated, and amendments thereto, for the taxable year,
the amount thereof which exceeds such tax liability may be carried
forward for credit in the succeeding taxable year or years until the total
amount of the tax credit is used, except that no such tax credit shall be
carried forward for deduction after the 16th taxable year succeeding the
taxable year in which such credit initially was claimed, and no
carryforward shall be allowed for deduction 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. In no event shall any credit allowed under this section that expired
during any taxable year prior to the taxable year commencing January 1,
2011, be revived under the provisions of this act.

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

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

Sec. 3. K.S.A. 74-50,133 and 79-32,160a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its
publication in the statute book Kansas register.