Corrected

Session of 2012

SENATE BILL No. 467

By Committee on Ways and Means


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

Section 1. K.S.A. 79-32,141 is hereby amended to read as follows:

79-32,141. (a) The director may allocate gross income, deductions, credits, or allowances between two or more organizations, trades or businesses (whether or not incorporated, or organized in the United States or affiliated) owned or controlled directly or indirectly by the same interests, if the director determines such allocation is necessary to prevent evasion of taxes or to clearly reflect income of the organizations, trades or businesses.

(b) Commencing with the tax year which commences after December 31, 2011, and all taxable years thereafter, credits claimed by a corporation that is a member of a unitary group filing a combined report that has earned credits pursuant to subsection (e) of K.S.A. 79-32,160a, and amendments thereto, that has filed a certificate of intent on or after October 1, 2011, and prior to June 30, 2013, to place in service a qualified business facility investment of at least $10,000,000 and create a minimum of 50 new jobs that satisfy the average wage requirements set forth in K.S.A. 74-50,131, and amendments thereto, at a qualified business facility after October 1, 2011, and that has entered into an agreement with the secretary of commerce, may apply such tax credits, including any carryforward credits, earned pursuant to subsection (e) of K.S.A. 79-32,160a, and amendments thereto, against the tax liability of any member or members of such group in such combined report in the following manner:

(1) Credits earned prior to January 1, 2012, and claimed in taxable years commencing after December 31, 2011, shall be subject to the following limitations:

(A) The amount of carryforward credits applied against the tax liability of any member or members of a unitary group shall not exceed in the aggregate 15% of the carryforward credits available during the taxable year in which the carryforward credits are first applied against the tax liability of any member or members of any such group. Such limitation shall be effective for the taxable year in which the carryforward

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credits are first applied against a member or members of the group and
the six immediately succeeding taxable years. Any carryforward credits
not applied during the seven-year period set forth herein may be applied
without limitation against the tax liability of any member or members of
such group for the remainder of the credit carryforward period under
subsection (e) of K.S.A. 79-32,160a, and amendments thereto.

(B) In the event the remainder of the credit carryforward period
under subsection (e) of K.S.A. 79-32,160a, and amendments thereto, at the
time the carryforward credits are first applied against the tax liability of
any member or members of such group is less than seven years, then the
carryforward credits applied against the liability of any member or
members of such group shall not in the aggregate exceed the percentage of
carryforward credits determined by dividing the total carryforward credits
by the number of years remaining in the carryforward period under
subsection (e) of K.S.A. 79-32,160a, and amendments thereto.

(2) Credits earned after January 1, 2012, may be applied against the
tax liability of any member or members of such group in such combined
report in such manner as may be determined by the corporation.

(3) Failure to comply with the capital investment and job creation
requirements set forth in subsection (b) of K.S.A. 79-32,141, and
amendments thereto, within 36 months of the date of the agreement with
the secretary of commerce, shall result in the corporation remitting to the
state an amount equal to the amount of credits applied against the tax
liability of the other members of the unitary group. A corporation that has
entered into a separate agreement with the secretary of commerce shall
have 54 months to comply with the capital investment and job creation
requirements set forth in subsection (b) of K.S.A. 79-32,141, and
amendments thereto.

Sec. 2. K.S.A. 2011 Supp. 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, 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. 2011 Supp.
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, 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
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, 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, 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, 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, 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, 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 which 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 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. 2011 Supp. 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, 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, 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, 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, any taxpayer qualified and certified under the provisions of K.S.A. 74-50,131, and amendments thereto; which, 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. 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. 2011 Supp. 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. 2011 Supp. 79-32,243, and amendments thereto.

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


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