

HOUSE BILL No. 2051

By Committee on Taxation

1-20

1 AN ACT concerning income taxation; relating to credits; amending
2 K.S.A. 79-32,141 and K.S.A. 2010 Supp. 79-32,160a and repealing
3 the existing sections.
4

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

6 Section 1. K.S.A. 79-32,141 is hereby amended to read as follows:
7 79-32,141. (a) The director may allocate gross income, deductions,
8 credits, or allowances between two or more organizations, trades or
9 businesses, {whether or not incorporated, or organized in the United
10 States or affiliated}, *which are* owned or controlled directly or indirectly
11 by the same interests, if the director determines such allocation is
12 necessary to prevent evasion of taxes or to clearly reflect income of the
13 organizations, trades or businesses.

14 (b) *Commencing with the taxable year which commences after*
15 *December 31, 2010, and all taxable years thereafter, credits claimed by a*
16 *corporation that is a member of a unitary group filing a combined report*
17 *pursuant to the provisions of subsection (e) of K.S.A. 79-32,160a, and*
18 *amendments thereto, including any carryforward credits, may be applied*
19 *against the tax liability of any member or members of such group in such*
20 *combined report.*

21 Sec. 2. K.S.A. 2010 Supp. 79-32,160a is hereby amended to read as
22 follows: 79-32,160a. (a) For taxable years commencing after December
23 31, 1999, any taxpayer who shall invest in a qualified business facility, as
24 defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto,
25 and effective for tax years commencing after December 31, 2010, located
26 in an area other than a metropolitan county as defined in either K.S.A.
27 2010 Supp. 74-50,114 or 74-50,211, and amendments thereto, and also
28 meets the definition of a business in subsection (b) of K.S.A. 74-50,114,
29 and amendments thereto, shall be allowed a credit for such investment, in
30 an amount determined under subsection (b) or (c), as the case requires,
31 against the tax imposed by the Kansas income tax act or where the
32 qualified business facility is the principal place from which the trade or
33 business of the taxpayer is directed or managed and the facility has
34 facilitated the creation of at least 20 new full-time positions, against the
35 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and
36 amendments thereto, or as measured by the net income of financial

1 institutions imposed pursuant to *article 11 of chapter 79, article 11* of the
2 Kansas Statutes Annotated, for the taxable year during which
3 commencement of commercial operations, as defined in subsection (f) of
4 K.S.A. 79-32,154, and amendments thereto, occurs at such qualified
5 business facility. In the case of a taxpayer who meets the definition of a
6 manufacturing business in subsection (d) of K.S.A. 74-50,114, and
7 amendments thereto, no credit shall be allowed under this section unless
8 the number of qualified business facility employees, as determined under
9 subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or
10 maintained in employment at the qualified business facility as a direct
11 result of the investment by the taxpayer for the taxable year for which the
12 credit is claimed equals or exceeds two. In the case of a taxpayer who
13 meets the definition of a nonmanufacturing business in subsection (f) of
14 K.S.A. 74-50,114, and amendments thereto, no credit shall be allowed
15 under this section unless the number of qualified business facility
16 employees, as determined under subsection (d) of K.S.A. 79-32,154, and
17 amendments thereto, engaged or maintained in employment at the
18 qualified business facility as a direct result of the investment by the
19 taxpayer for the taxable year for which the credit is claimed equals or
20 exceeds five. Where an employee performs services for the taxpayer
21 outside the qualified business facility, the employee shall be considered
22 engaged or maintained in employment at the qualified business facility if:
23 (1) The employee's service performed outside the qualified business
24 facility is incidental to the employee's service inside the qualified
25 business facility; or (2) the base of operations or, the place from which
26 the service is directed or controlled, is at the qualified business facility.

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

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

43 (2) one thousand dollars for each \$100,000, or major fraction

1 thereof, which shall be deemed to be 51% or more, in qualified business
2 facility investment, as determined under K.S.A. 79-32,154, and
3 amendments thereto.

4 (c) The credit allowed by subsection (a) for any taxpayer who
5 invests in a qualified business facility, which is not located in a
6 nonmetropolitan region established under K.S.A. 74-50,116, and
7 amendments thereto, and effective for tax years commencing after
8 December 31, 2010, located in an area other than a metropolitan county
9 as defined in either K.S.A. 2010 Supp. 74-50,114 or 74-50,211, and
10 amendments thereto, and which also meets the definition of business in
11 subsection (b) of K.S.A. 74-50,114, and amendments thereto, on or after
12 the effective date of this act, shall be a portion of the income tax imposed
13 by the Kansas income tax act on the taxpayer's Kansas taxable income,
14 the premium tax or privilege fees imposed pursuant to K.S.A. 40-252,
15 and amendments thereto, or the privilege tax as measured by the net
16 income of financial institutions imposed pursuant to *article 11 of* chapter
17 ~~79, article 11~~ of the Kansas Statutes Annotated, for the taxable year for
18 which such credit is allowed, but in the case where the qualified business
19 facility investment was made prior to January 1, 1996, not in excess of
20 50% of such tax. Such portion shall be an amount equal to the sum of the
21 following:

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

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

29 (d) The credit allowed by subsection (a) for each qualified business
30 facility employee and for qualified business facility investment shall be a
31 one-time credit. If the amount of the credit allowed under subsection (a)
32 exceeds the tax imposed by the Kansas income tax act on the taxpayer's
33 Kansas taxable income, the premium tax and privilege fees imposed
34 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax
35 as measured by the net income of financial institutions imposed pursuant
36 to *article 11 of* chapter ~~79, article 11~~ of the Kansas Statutes Annotated for
37 the taxable year, or in the case where the qualified business facility
38 investment was made prior to January 1, 1996, 50% of such tax imposed
39 upon the amount which exceeds such tax liability or such portion thereof
40 may be carried over for credit in the same manner in the succeeding
41 taxable years until the total amount of such credit is used. Except that,
42 before the credit is allowed, a taxpayer, who meets the definition of a
43 manufacturing business in subsection (d) of K.S.A. 74-50,114, and

1 amendments thereto, shall recertify annually that the net increase of a
2 minimum of two qualified business facility employees has continued to
3 be maintained and a taxpayer, who meets the definition of a
4 nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and
5 amendments thereto, shall recertify annually that the net increase of a
6 minimum of five qualified business employees has continued to be
7 maintained.

8 (e) Notwithstanding the foregoing provisions of this section, any
9 taxpayer qualified and certified under the provisions of K.S.A. 74-50,131,
10 and amendments thereto; which, prior to making a commitment to invest
11 in a qualified Kansas business, has filed a certificate of intent to invest in
12 a qualified business facility in a form satisfactory to the secretary of
13 commerce; and that has received written approval from the secretary of
14 commerce for participation and has participated, during the tax year for
15 which the exemption is claimed, in the Kansas industrial training, Kansas
16 industrial retraining or the state of Kansas investments in lifelong
17 learning program or is eligible for the tax credit established in K.S.A. 74-
18 50,132, and amendments thereto, shall be entitled to a credit in an amount
19 equal to 10% of that portion of the qualified business facility investment
20 which exceeds \$50,000 in lieu of the credit provided in subsection (b)(2)
21 or (c)(2) without regard to the number of qualified business facility
22 employees engaged or maintained in employment at the qualified
23 business facility. The credit allowed by this subsection shall be a one-time
24 credit. If the amount thereof exceeds the tax imposed by the Kansas
25 income tax act on the taxpayer's Kansas taxable income or the premium
26 tax or privilege fees imposed pursuant to K.S.A. 40-252, and
27 amendments thereto, or the privilege tax as measured by net income of
28 financial institutions imposed pursuant to *article 11 of chapter 79*, ~~article~~
29 ~~H~~ of the Kansas Statutes Annotated for the taxable year, the amount
30 thereof which exceeds such tax liability may be carried forward for credit
31 in the succeeding taxable year or years until the total amount of the tax
32 credit is used, except that no such tax credit shall be carried forward for
33 deduction after the ~~10th~~ *20th* taxable year succeeding the taxable year in
34 which such credit initially was claimed ~~and no carry forward shall be~~
35 ~~allowed for deduction in any succeeding taxable year unless the taxpayer~~
36 ~~continued to be qualified and was recertified for such succeeding taxable~~
37 ~~year pursuant to K.S.A. 74-50,131, and amendments thereto. In no event~~
38 *shall any credit allowed under this section that expired during any*
39 *taxable year prior to the taxable year commencing January 1, 2011, be*
40 *revived under the provisions of this act.*

41 (f) For tax years commencing after December 31, 2005, any
42 taxpayer claiming credits pursuant to this section, as a condition for
43 claiming and qualifying for such credits, shall provide information

1 pursuant to K.S.A. 2010 Supp. 79-32,243, and amendments thereto, as
2 part of the tax return in which such credits are claimed. Such credits shall
3 not be denied solely on the basis of the contents of the information
4 provided by the taxpayer pursuant to K.S.A. 2010 Supp. 79-32,243, and
5 amendments thereto.

6 (g) This section and K.S.A. 79-32,160b, and amendments thereto,
7 shall be part of and supplemental to the job expansion and investment
8 credit act of 1976 ~~and acts amendatory thereof and supplemental thereto,~~
9 *and amendments thereto.*

10 Sec. 3. K.S.A. 79-32,141 and K.S.A. 2010 Supp. 79-32,160a are
11 hereby repealed.

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