

SENATE BILL No. 230

By Committee on Assessment and Taxation

3-15

1 AN ACT concerning taxation; relating to the high performance incentive
2 program; moratorium on income tax credits, sales tax exemptions;
3 amending K.S.A. 2016 Supp. 74-50,115, 74-50,131, 74-50,132 and 79-
4 32,160a and repealing the existing sections.

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

7 Section 1. K.S.A. 2016 Supp. 74-50,115 is hereby amended to read as
8 follows: 74-50,115. (a) A manufacturing business may be eligible for a
9 sales tax exemption under the provisions of ~~subsection (cc)~~ of K.S.A. 79-
10 3606(cc), and amendments thereto, if the manufacturing business complies
11 with the following requirements:

12 (1) A manufacturing business shall provide documented evidence of
13 job expansion involving the employment of at least two additional full-
14 time employees; and

15 (2) a manufacturing business located within the state of Kansas that
16 has documented evidence of job expansion as provided in paragraph (1),
17 which relocates in another city or county within the state of Kansas must
18 receive approval from the secretary prior to qualifying for the sales tax
19 exemption in ~~subsection (cc)~~ of K.S.A. 79-3606(cc), and amendments
20 thereto, except that approval by the secretary shall not be required if the
21 manufacturing business relocates within the same city.

22 (b) A nonmanufacturing business may be eligible for a sales tax
23 exemption under the provisions of ~~subsection (cc)~~ of K.S.A. 79-3606(cc),
24 and amendments thereto, if the nonmanufacturing business complies with
25 the following requirements:

26 (1) A nonmanufacturing business shall provide documented evidence
27 of job expansion involving the employment of at least five additional full-
28 time employees; and

29 (2) a nonmanufacturing business located within the state of Kansas
30 that has documented evidence of job expansion as provided in paragraph
31 (1), which relocates in another city or county within the state of Kansas
32 must receive approval from the secretary prior to qualifying for the sales
33 tax exemption in ~~subsection (cc)~~ of K.S.A. 79-3606(cc), and amendments
34 thereto, except that approval by the secretary shall not be required if the
35 nonmanufacturing business relocates within the same city.

36 (c) A retail business may qualify for the sales tax exemption under

1 ~~subsection (ee) of K.S.A. 79-3606(cc)~~, and amendments thereto, if the
2 retail business complies with the following requirements:

3 (1) A retail business shall provide documented evidence of job
4 expansion involving the employment of at least two additional full-time
5 employees; and

6 (2) (A) such retail business locates or expands to a city having a
7 population of 2,500 or less, as determined by the latest Kansas division of
8 budget revised population numbers that are certified to the secretary of
9 state, or (B) such retail business locates or expands to a location outside a
10 city in a county having a population of 10,000 or less, as determined by
11 the latest Kansas division of budget revised population numbers that are
12 certified to the secretary of state.

13 (d) Any person constructing, reconstructing, remodeling or enlarging
14 a facility which will be leased in whole or in part for a period of five years
15 or more, or commencing on the effective date of this act and ending on
16 April 1, 2007, any person constructing, reconstructing, remodeling or
17 enlarging a facility located within Saline county which title of such facility
18 will be conveyed, to a business that would be eligible for a sales tax
19 exemption hereunder if such business had constructed, reconstructed,
20 enlarged or remodeled such facility or portion thereof itself shall be
21 entitled to the sales tax exemption under the provisions of ~~subsection (ee)~~
22 ~~of K.S.A. 79-3606(cc)~~, and amendments thereto. When such person leases
23 less than the total facility to an eligible business, a project exemption
24 certificate may be granted on: (1) The total cost of constructing,
25 reconstructing, remodeling or enlarging, the facility multiplied by a
26 fraction given by dividing the number of leased square feet eligible for the
27 sales tax exemption by the total square feet being constructed,
28 reconstructed, remodeled or enlarged; or (2) the actual cost of
29 constructing, reconstructing, remodeling or enlarging that portion of the
30 facility to be occupied by the eligible business, as the person may elect.

31 (e) A business may qualify for a sales tax exemption under ~~subsection~~
32 ~~(ee) of K.S.A. 79-3606(cc)~~, and amendments thereto, without regard to
33 any of the foregoing requirements of this section if it is certified as a
34 qualified firm by the secretary of commerce pursuant to K.S.A. 74-50,131,
35 and amendments thereto, and is entitled to the corporate tax credit
36 established in K.S.A. 74-50,132, and amendments thereto, or has received
37 written approval for participation and has participated, during the tax year
38 in which the exemption is claimed, in training assistance by the
39 department of commerce under the Kansas industrial training, Kansas
40 industrial retraining or state of Kansas investments in lifelong learning
41 program. *For tax years 2018 through 2020, the secretary of commerce*
42 *shall not initially certify a business under this section as a qualified firm*
43 *that qualifies for a sales tax exemption certificate.*

1 (f) The secretary may adopt rules and regulations to implement and
2 administer the provisions of this section.

3 Sec. 2. K.S.A. 2016 Supp. 74-50,131 is hereby amended to read as
4 follows: 74-50,131. Commencing after December 31, 1999: (a) As used in
5 this act: "Qualified firm" means a for-profit business establishment,
6 subject to state income, sales or property taxes, identified under the North
7 American industry classification system (NAICS) subsectors 221, 311 to
8 339, 423 to 425, 481 to 519, 521 to 721 and 811 to 928 or is identified as a
9 corporate or regional headquarters or back-office operation of a national or
10 multi-national corporation regardless of NAICS designation. The secretary
11 of commerce shall determine eligibility when a difference exists between a
12 firm's primary business activity and NAICS designation. A business
13 establishment may be assigned a NAICS designation according to the
14 primary business activity at a single physical location in the state.

15 (b) In the case of firms in NAICS subsectors 221, 423 to 425, 481 to
16 519, 521 to 721 and 811 to 928, the business establishment must also
17 demonstrate the following:

18 (1) More than $\frac{1}{2}$ of its gross revenues are a result of sales to
19 commercial or governmental customers outside the state of Kansas; or

20 (2) more than $\frac{1}{2}$ of its gross revenues are a result of sales to Kansas
21 manufacturing firms within NAICS subsectors 311 to 339; or

22 (3) more than $\frac{1}{2}$ of its gross revenues are a result of a combination of
23 sales described in (1) and (2).

24 (c) For purposes of determining whether one of the average wage
25 options described in subsection (d) below is satisfied, business
26 establishments located within a metropolitan county, as defined in K.S.A.
27 74-50,114, and amendments thereto, will be compared only to other
28 businesses within that metropolitan county, and business establishments
29 located outside of a metropolitan county will be compared to businesses
30 within an aggregation of counties representing the business establishment's
31 region of the state, which regional aggregation will exclude metropolitan
32 counties. Such aggregation shall be determined by the department of
33 commerce.

34 (d) Additionally, a business establishment having met the criteria as
35 established in subsection (a) or (b), and using the comparison method
36 described in subsection (c), must meet one of the following criteria:

37 (1) The establishment with 500 or fewer full-time equivalent
38 employees will provide an average wage that is above the average wage
39 paid by all firms with 500 or fewer full-time equivalent employees which
40 share the appropriate NAICS designation.

41 (2) The establishment with 500 or fewer full-time equivalent
42 employees is the sole firm within its appropriate NAICS designation
43 which has 500 or fewer full-time equivalent employees.

1 (3) The establishment with more than 500 full-time equivalent
2 employees will provide an average wage that is above the average wage
3 paid by firms with more than 500 full-time equivalent employees which
4 share the appropriate NAICS designation.

5 (4) The establishment with more than 500 full-time equivalent
6 employees is the sole firm within its appropriate NAICS designation
7 which has more than 500 full-time equivalent employees, in which event it
8 shall either provide an average wage that is above the average wage paid
9 by all firms with 500 or fewer full-time equivalent employees which share
10 the appropriate NAICS designation, or be the sole firm within its
11 appropriate NAICS designation.

12 (e) As an alternative to the requirements of subsections (c) and (d), a
13 firm having met the requirements of subsections (a) or (b), may qualify, if
14 excluding taxable disbursements to company owners, the business
15 establishment's annual average wage must be greater than or equal to 1.5
16 times the aggregate average wage paid by industries covered by the
17 employment security law based on data maintained by the secretary of
18 labor.

19 (f) For the purposes of this section, the number of full-time
20 equivalent employees shall be determined by dividing the number of hours
21 worked by part-time employees during the pertinent measurement interval
22 by an amount equal to the corresponding multiple of a 40-hour work week
23 and adding the quotient to the number of full-time employees.

24 (g) The secretary of commerce shall certify annually to the secretary
25 of revenue that a firm meets the criteria for a qualified firm and that the
26 firm is eligible for the benefits and assistance provided under this act. *The*
27 *secretary of commerce shall not certify the initial eligibility for any firm*
28 *on and after January 1, 2018, and before January 1, 2021.* The secretary
29 of commerce is hereby authorized to obtain any and all information
30 necessary to determine such eligibility. Information obtained under this
31 section shall not be subject to disclosure pursuant to K.S.A. 45-215 et seq.,
32 and amendments thereto, but shall upon request be made available to the
33 legislative post audit division. The secretary of commerce shall publish
34 rules and regulations for the implementation of this act. Such rules and
35 regulations shall include, but not be limited to:

36 (1) A definition of "training and education" for purposes of K.S.A.
37 74-50,132, and amendments thereto.

38 (2) Establishment of eligibility requirements and application
39 procedures for expenditures from the high performance incentive fund
40 created in K.S.A. 74-50,133, and amendments thereto.

41 (3) Establishment of approval guidelines for private consultants
42 authorized pursuant to K.S.A. 74-50,133, and amendments thereto.

43 (4) Establishment of guidelines for prioritizing business assistance

1 programs pursuant to K.S.A. 74-50,133, and amendments thereto.

2 (5) A definition of "commercial customer" for the purpose of K.S.A.
3 74-50,133, and amendments thereto.

4 (6) A definition of "headquarters" for the purpose of K.S.A. 74-
5 50,133, and amendments thereto.

6 (7) Establishment of guidelines concerning the use and disclosure of
7 any information obtained to determine the eligibility of a firm for the
8 assistance and benefits provided for by this act.

9 Sec. 3. K.S.A. 2016 Supp. 74-50,132 is hereby amended to read as
10 follows: 74-50,132. (a) ~~For taxable years commencing after December 31,~~
11 ~~1997,~~A qualified firm shall be entitled to a credit against the tax imposed
12 by the Kansas income tax act, the premium tax or privilege fee imposed
13 pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as
14 measured by net income of financial institutions imposed pursuant to
15 ~~chapter 79,~~ article 11 *of chapter 79* of the Kansas Statutes Annotated, *and*
16 *amendments thereto*, in an amount equal to the portion of the qualified
17 business facility cash investment in the training and education of the firm's
18 employees that exceeds 2% of the firm's total payroll costs. The maximum
19 amount of the credit that may be claimed by a single corporate taxpayer in
20 any single tax year under this section shall not exceed \$50,000. Tax credits
21 earned by a qualified business under this section must be claimed in their
22 entirety in the tax year eligible. *No tax credits shall be allowed pursuant to*
23 *this section for tax years 2018 through 2020.*

24 (b) For tax years commencing after December 31, 2005, any taxpayer
25 claiming credits pursuant to this section, as a condition for claiming and
26 qualifying for such credits, shall provide information pursuant to K.S.A.
27 2016 Supp. 79-32,243, and amendments thereto, as part of the tax return in
28 which such credits are claimed. Such credits shall not be denied solely on
29 the basis of the contents of the information provided by the taxpayer
30 pursuant to K.S.A. 2016 Supp. 79-32,243, and amendments thereto.

31 Sec. 4. K.S.A. 2016 Supp. 79-32,160a is hereby amended to read as
32 follows: 79-32,160a. (a) For taxable years commencing after December
33 31, 1999, and before January 1, 2012, any taxpayer who shall invest in a
34 qualified business facility, as defined in ~~subsection (b)~~ of K.S.A. 79-
35 32,154(b), and amendments thereto, and effective for tax years
36 commencing after December 31, 2010, and before January 1, 2012,
37 located in an area other than a metropolitan county as defined in either
38 K.S.A. 2016 Supp. 74-50,114 or 74-50,211, and amendments thereto, and
39 also meets the definition of a business in ~~subsection (b)~~ of K.S.A. 74-
40 50,114(b), and amendments thereto, shall be allowed a credit for such
41 investment, in an amount determined under subsection (b) or (c), as the
42 case requires, against the tax imposed by the Kansas income tax act or
43 where the qualified business facility is the principal place from which the

1 trade or business of the taxpayer is directed or managed and the facility
2 has facilitated the creation of at least 20 new full-time positions, against
3 the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and
4 amendments thereto, or as measured by the net income of financial
5 institutions imposed pursuant to article 11 of chapter 79 of the Kansas
6 Statutes Annotated, and amendments thereto, for the taxable year during
7 which commencement of commercial operations, as defined in ~~subsection~~
8 ~~(f)~~ of K.S.A. 79-32,154(f), and amendments thereto, occurs at such
9 qualified business facility. In the case of a taxpayer who meets the
10 definition of a manufacturing business in ~~subsection (d)~~ of K.S.A. 74-
11 50,114(d), and amendments thereto, no credit shall be allowed under this
12 section unless the number of qualified business facility employees, as
13 determined under ~~subsection (d)~~ of K.S.A. 79-32,154(d), and amendments
14 thereto, engaged or maintained in employment at the qualified business
15 facility as a direct result of the investment by the taxpayer for the taxable
16 year for which the credit is claimed equals or exceeds two. In the case of a
17 taxpayer who meets the definition of a nonmanufacturing business in
18 ~~subsection (f)~~ of K.S.A. 74-50,114(f), and amendments thereto, no credit
19 shall be allowed under this section unless the number of qualified business
20 facility employees, as determined under ~~subsection (d)~~ of K.S.A. 79-
21 32,154(d), and amendments thereto, engaged or maintained in employment
22 at the qualified business facility as a direct result of the investment by the
23 taxpayer for the taxable year for which the credit is claimed equals or
24 exceeds five. Where an employee performs services for the taxpayer
25 outside the qualified business facility, the employee shall be considered
26 engaged or maintained in employment at the qualified business facility if:
27 (1) The employee's service performed outside the qualified business
28 facility is incidental to the employee's service inside the qualified business
29 facility; or (2) the base of operations or, the place from which the service is
30 directed or controlled, is at the qualified business facility.

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

1 following:

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

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

9 (c) The credit allowed by subsection (a) for any taxpayer who invests
10 in a qualified business facility, which is not located in a nonmetropolitan
11 region established under K.S.A. 74-50,116, and amendments thereto, and
12 effective for tax years commencing after December 31, 2010, and before
13 January 1, 2012, located in an area other than a metropolitan county as
14 defined in either K.S.A. 2016 Supp. 74-50,114 or 74-50,211, and
15 amendments thereto, and which also meets the definition of business in
16 ~~subsection (b) of K.S.A. 74-50,114(b)~~, and amendments thereto, on or
17 after the effective date of this act, shall be a portion of the income tax
18 imposed by the Kansas income tax act on the taxpayer's Kansas taxable
19 income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-
20 252, and amendments thereto, or the privilege tax as measured by the net
21 income of financial institutions imposed pursuant to article 11 of chapter
22 79 of the Kansas Statutes Annotated, and amendments thereto, for the
23 taxable year for which such credit is allowed, but in the case where the
24 qualified business facility investment was made prior to January 1, 1996,
25 not in excess of 50% of such tax. Such portion shall be an amount equal to
26 the sum of the following:

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

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

34 (d) The credit allowed by subsection (a) for each qualified business
35 facility employee and for qualified business facility investment shall be a
36 one-time credit. If the amount of the credit allowed under subsection (a)
37 exceeds the tax imposed by the Kansas income tax act on the taxpayer's
38 Kansas taxable income, the premium tax and privilege fees imposed
39 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as
40 measured by the net income of financial institutions imposed pursuant to
41 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
42 thereto, for the taxable year, or in the case where the qualified business
43 facility investment was made prior to January 1, 1996, 50% of such tax

1 imposed upon the amount which exceeds such tax liability or such portion
2 thereof may be carried over for credit in the same manner in the
3 succeeding taxable years until the total amount of such credit is used.
4 Except that, before the credit is allowed, a taxpayer, who meets the
5 definition of a manufacturing business in ~~subsection (d)~~ of K.S.A. 74-
6 50,114(d), and amendments thereto, shall recertify annually that the net
7 increase of a minimum of two qualified business facility employees has
8 continued to be maintained and a taxpayer, who meets the definition of a
9 nonmanufacturing business in ~~subsection (f)~~ of K.S.A. 74-50,114(f), and
10 amendments thereto, shall recertify annually that the net increase of a
11 minimum of five qualified business employees has continued to be
12 maintained.

13 (e) Notwithstanding the foregoing provisions of this section, and
14 except as otherwise provided in this subsection, any taxpayer qualified and
15 certified under the provisions of K.S.A. 74-50,131, and amendments
16 thereto; which, prior to making a commitment to invest in a qualified
17 Kansas business, has filed a certificate of intent to invest in a qualified
18 business facility in a form satisfactory to the secretary of commerce; and
19 that has received written approval from the secretary of commerce for
20 participation and has participated, during the tax year for which the
21 exemption is claimed, in the Kansas industrial training, Kansas industrial
22 retraining or the state of Kansas investments in lifelong learning program
23 or is eligible for the tax credit established in K.S.A. 74-50,132, and
24 amendments thereto, shall be entitled to a credit in an amount equal to
25 10% of that portion of the qualified business facility investment which
26 exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2)
27 without regard to the number of qualified business facility employees
28 engaged or maintained in employment at the qualified business facility.
29 For tax years beginning on or after January 1, 2012, for a qualified
30 business facility investment in Douglas, Johnson, Sedgwick, Shawnee or
31 Wyandotte counties, such credit shall be in an amount equal to 10% of that
32 portion of the qualified business facility investment which exceeds
33 \$1,000,000. Any taxpayer who has filed a certificate of intent to invest in a
34 qualified business facility pursuant to this subsection in Douglas, Johnson,
35 Sedgwick, Shawnee or Wyandotte county prior to December 31, 2011, and
36 commences investments in a qualified business facility prior to December
37 31, 2013, may claim credits under K.S.A. 74-50,131, 74-50,132 and
38 ~~subsection (e) of 79-32,160a(e)~~, and amendments thereto, in an amount
39 equal to 10% of that portion of the qualified business facility investment
40 which exceeds \$50,000. Timing modifications may be authorized at the
41 discretion of the secretary of commerce and the secretary of revenue
42 during the transition period. The credit allowed by this subsection shall be
43 a one-time credit. If the amount thereof exceeds the tax imposed by the

1 Kansas income tax act on the taxpayer's Kansas taxable income or the
2 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and
3 amendments thereto, or the privilege tax as measured by net income of
4 financial institutions imposed pursuant to article 11 of chapter 79 of the
5 Kansas Statutes Annotated, and amendments thereto, for the taxable year,
6 the amount thereof which exceeds such tax liability may be carried
7 forward for credit in the succeeding taxable year or years until the total
8 amount of the tax credit is used, except that no such tax credit shall be
9 carried forward for deduction after the 16th taxable year succeeding the
10 taxable year in which such credit initially was claimed, and no
11 carryforward shall be allowed for deduction in any succeeding taxable
12 year unless the taxpayer certifies under oath that the taxpayer continues to
13 meet the requirements of K.S.A. 74-50,131, and amendments thereto, and
14 this act. In no event shall any credit allowed under this section that expired
15 during any taxable year prior to the taxable year commencing January 1,
16 2011, be revived under the provisions of this act. *The secretary of*
17 *commerce shall not approve any certificates of intent to invest in a*
18 *qualified business facility on and after January 1, 2018, and before*
19 *January 1, 2021.*

20 (f) For tax years commencing after December 31, 2005, any taxpayer
21 claiming credits pursuant to this section, as a condition for claiming and
22 qualifying for such credits, shall provide information pursuant to K.S.A.
23 2016 Supp. 79-32,243, and amendments thereto, as part of the tax return in
24 which such credits are claimed. Such credits shall not be denied solely on
25 the basis of the contents of the information provided by the taxpayer
26 pursuant to K.S.A. 2016 Supp. 79-32,243, and amendments thereto.

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

30 Sec. 5. K.S.A. 2016 Supp. 74-50,115, 74-50,131, 74-50,132 and 79-
31 32,160a are hereby repealed.

32 Sec. 6. This act shall take effect and be in force from and after its
33 publication in the statute book.