

HOUSE BILL No. 2762

By Committee on Taxation

3-13

1 AN ACT concerning taxation; relating to credits and benefits for
2 employment of persons who have intellectual or developmental
3 disabilities; enacting the Kansas tax weight-loss act.
4

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

6 Section 1. (a) The provisions of sections 1 through 11, and
7 amendments thereto, shall be known and may be cited as the Kansas tax
8 weight-loss act.

9 (b) It shall be the intent of this act to measurably decrease the reliance
10 upon medicaid and other sources of governmental funding by people who
11 have intellectual or developmental disabilities and by social service
12 organizations that provide services to such persons through incentivizing
13 the creation of new jobs and opportunities for such persons in Kansas.

14 Sec. 2. As used in this act, unless the context otherwise requires:

15 (a) "Community services provider" means a community
16 developmental disabilities organization or affiliate thereof as defined in
17 K.S.A. 39-1803, and amendments thereto, where such organization was
18 established and operating as of July 1, 1996.

19 (b) "Competitive employment" means work:

20 (1) In the competitive labor market that is performed on a full-time or
21 part-time basis in an integrated setting; and

22 (2) for which a person is compensated at or above the minimum
23 wage, but not less than the customary wage and level of benefits paid by
24 the employer for the same or similar work performed by persons who are
25 not disabled.

26 (c) "Developmental disability" has the meaning provided in K.S.A.
27 39-1803, and amendments thereto.

28 (d) "Eligible individual" means an individual who has a
29 developmental disability, who is receiving targeted case management
30 services in conjunction with a community services provider, who is
31 recommended for employment by a business firm, by a community
32 services provider, or by any business entity which any community services
33 provider has contracted with to provide services for such individual, and
34 who has voluntarily agreed to provide information on a confidential basis
35 to the community services provider or the department of revenue if such
36 information is necessary to enable the calculation of the credits or benefits

1 provided a taxpayer or certified business pursuant to the provisions of this
2 act.

3 (e) "Integrated setting" means, with respect to employment, a setting
4 typically found in the community in which tax weight-loss program
5 applicants or eligible disabled individuals interact with non-disabled
6 individuals, other than non-disabled individuals who are providing
7 services to those applicants or eligible individuals, to the same extent that
8 non-disabled individuals in comparable positions interact with other non-
9 disabled individuals.

10 (f) "Sub-contract" means components of work that are outsourced by
11 manufacturing or other business enterprises to sheltered workshops in
12 order to reduce costs for the business enterprise that outsources the work.

13 (g) "Sheltered workshops" are work centers that provide vocational
14 training and paid work opportunities for people who have intellectual or
15 development disabilities.

16 (h) "Targeted case management services" means services which will
17 assist an individual eligible under the tax weight-loss program to identify,
18 select, obtain, coordinate and use paid services and natural supports to
19 enhance the individual's independence, integration and productivity
20 consistent with their capabilities and preferences as outlined in their
21 person-centered support plan. Targeted case management services include:
22 (1) Assessment of the person's needs and preferred lifestyle and available
23 resources; (2) support planning including development, updating and
24 reviewing of the person-centered support plan, building upon assessment
25 information to meet the person's needs and preferred lifestyle; (3)
26 coordination of supports by arranging and securing supports outlined in
27 the person-centered support plan and developing access to natural and
28 generic community support systems including public assistance and
29 entitlements; (4) monitoring and follow-up of implementation of personal
30 supports to ensure consistency with the plan and effectiveness; and (5)
31 assisting transition and portability when moving from school to the adult
32 world, from an institution to community alternatives, from one kind of
33 service setting to another, from one provider to another, or from one
34 service area to another.

35 (i) "Tax weight" of an eligible individual means the sum of the
36 following:

37 (1) The home and community based services (medicaid-waiver
38 dollars) funding received per person served by the community services
39 provider serving the individual to pay for staffing and overhead costs;

40 (2) the amount of social security disability or supplemental security
41 income received by the individual;

42 (3) dollar amount of food stamps received by the individual;

43 (4) the subsidy cost of subsidized housing provided the individual;

1 and

2 (5) an average cost figure for medical costs for the individual.

3 (j) "New eligible employee" means an eligible individual employed
4 by a certified business operating in Kansas during the taxable year for
5 which benefits are sought under sections 3 or 4, and amendments thereto.
6 An individual shall be deemed to be so engaged if such person performs
7 duties in Kansas in connection with the operation of the Kansas business
8 on: (1) A regular, full-time basis; or (2) a part-time basis, provided such
9 person is customarily performing such duties at least 20 hours per week
10 throughout the taxable year.

11 (k) "Certified business" means any for-profit corporation, partnership
12 or other business entity authorized to do business in Kansas and making
13 available to its full-time employees adequate health insurance coverage
14 and paying at least 70% of the premium for such health insurance, and
15 which submits an application for credits or benefits meeting requirements
16 established by this act and the secretary of revenue.

17 (l) "Taxpayer" means any certified business authorized to do business
18 in the state of Kansas which is subject to the state income tax imposed by
19 the provisions of the Kansas income tax act on its business income; any
20 national banking association, state bank, trust company or savings and
21 loan association paying an annual tax on its net income pursuant to article
22 11 of chapter 79 of the Kansas Statutes Annotated; or any insurance
23 company paying the premium tax and privilege fees imposed pursuant to
24 K.S.A. 40-252, and amendments thereto.

25 Sec. 3. (a) A taxpayer who employs an eligible individual shall be
26 entitled to a credit against the tax imposed against such taxpayer as
27 provided herein.

28 (b) No credit shall be provided for:

29 (1) The employment of an eligible individual who displaces any other
30 individual from employment, except persons discharged for cause; or

31 (2) employment of an eligible individual for less than one year, unless
32 the person voluntarily leaves the employment, becomes disabled such that
33 the individual can no longer meet the requirements of the position with
34 accommodation as provided by state or federal law, or is terminated for
35 cause.

36 (c) if the eligible individual leaves the employment of the taxpayer
37 voluntarily, becomes disabled or is terminated for cause in less than one
38 year, the credit shall be reduced by the proportion of the year not worked.

39 (d) To be eligible to receive the credit, the taxpayer shall:

40 (1) Enter into an agreement with a community services provider for
41 competitive employment of eligible individuals in a sheltered workshop
42 setting via a contract or subcontract with a community services provider
43 for work with a minimum term of at least one year; or

1 (2) provide competitive employment in an integrated setting to one or
2 more eligible individuals.

3 (e) The tax credit shall be calculated by the department of revenue in
4 cooperation with the community services provider providing services to
5 the new eligible employee or employees. The credit shall be the amount of
6 tax weight that is reduced on an annual basis as a result of income received
7 by the new eligible employee or employees from employment directly
8 with the taxpayer or through a contract or subcontract by the taxpayer with
9 a community services provider. The community services provider
10 providing services for the eligible new employee or employees shall
11 provide the department of revenue with appropriate information, as
12 necessary and the department of revenue shall determine the credit or
13 credits to be permitted the taxpayer in accordance with this act.

14 Sec. 4. (a) In lieu of the tax credit pursuant to section 3, and
15 amendments thereto, any certified business approved by the secretary of
16 revenue for benefits pursuant to section 5, and amendments thereto, that
17 will hire at least five new eligible individuals into competitive
18 employment in an integrated setting, or will enter into a subcontract or
19 contract with a community services provider that will result in competitive
20 employment for at least five eligible individuals in a sheltered workshop,
21 within two years from the date the certified business enters into an
22 agreement with the secretary pursuant to section 5, and amendments
23 thereto, shall:

24 (1) Be eligible to retain 30% of the certified business's Kansas payroll
25 withholding taxes for such new employees for the first year of competitive
26 employment; and

27 (2) for each succeeding year of competitive employment, be eligible
28 to retain the amount of payroll withholding taxes each payroll period
29 equivalent to the tax weight-loss of the new eligible employees as such tax
30 weight-loss resulting from the employment income has been determined
31 for the next preceding year and divided by the number of payroll periods.

32 (b) A certified business may utilize or contract with a third-party
33 community services provider to perform services whereby the third-party
34 community services provider serves as the legal employer of the new
35 employees providing services to the certified business and such services
36 are performed in a sheltered workshop in Kansas and the new employees
37 are subject to the Kansas withholding and declaration of estimated tax act.

38 Sec. 5. (a) Any certified business meeting the requirements of this act
39 may apply to the secretary of revenue for benefits under section 4, and
40 amendments thereto. The application shall be submitted on a form and in a
41 manner prescribed by the secretary. The application shall include evidence:
42 1) That the business is a certified business and eligible to receive benefits
43 under this act; (2) the number of new eligible individuals to be hired by the

1 certified business; and (3) the amount of gross wages being paid to such
2 new eligible employees.

3 (b) The secretary may either approve or disapprove the application.
4 Any certified business whose application is approved shall be eligible to
5 receive benefits under this act as of the date such certified business enters
6 into an agreement with the secretary in accordance with this section.

7 (c) Upon approval of an application for benefits under this act, the
8 secretary may enter into an agreement with the certified business for
9 benefits under this act. The secretary may also enter into an agreement
10 with a third party community services provider providing services to the
11 eligible disabled individual. The community services provider providing
12 services to the eligible disabled individual or individuals shall provide the
13 secretary with tax weight-loss information to enable the secretary to
14 determine the appropriate amount of payroll tax to be retained by a
15 certified business.

16 (d) The agreement between the certified business and the secretary
17 shall be entered into before any benefits may be provided under this act,
18 and shall specify that should the certified business fail to comply with the
19 terms and conditions set forth in the agreement, or fail to comply with the
20 provisions set forth in this act, the secretary may terminate the agreement,
21 and the certified business shall not be entitled to any further benefits
22 provided under this act and shall be required to remit to the state an
23 amount equal to the aggregate Kansas payroll withholding taxes retained
24 by the certified business, or remitted to the certified business by a third
25 party, pursuant to this act as of the date the agreement is terminated.

26 (e) A certified business that is already receiving benefits pursuant to
27 this act may apply to the secretary for additional benefits if the certified
28 business meets the requirements of this act.

29 Sec. 6. (a) Any certified business eligible to receive benefits pursuant
30 to section 5, and amendments thereto, shall complete and submit to the
31 department of revenue:

32 (1) The amount of Kansas payroll withholding tax being retained by
33 the certified business pursuant to this act in a manner prescribed by the
34 director of taxation; and

35 (2) such other information as may be required by the secretary of
36 revenue on a form designed by the secretary of revenue.

37 (b) The completed form shall be submitted electronically or in the
38 manner prescribed by the secretary of revenue. The contents of the
39 completed form shall be confidential except as provided in K.S.A. 79-
40 3234, and amendments thereto.

41 Sec. 7. The secretary of revenue shall conduct an annual review of the
42 activities undertaken by a taxpayer or certified business pursuant to this act
43 to ensure that the taxpayer or certified business is in compliance with the

1 provisions of this act, any rules and regulations adopted by the secretary
2 with respect to this act and the agreement described in section 5, and
3 amendments thereto. The books and records concerning employment and
4 wages of any new eligible employee for which the certified business or
5 taxpayer has received a credit or retained any Kansas payroll withholding
6 taxes shall be available for inspection by the secretary of revenue or the
7 secretary's duly authorized agents or employees at all times during
8 business hours. The department of revenue may audit the certified business
9 or third party community services provider for compliance with the
10 provisions of this act.

11 Sec. 8. The secretary of revenue shall transmit annually to the
12 governor and to the legislature a report, based on information received
13 from each certified business or taxpayer receiving credits or benefits
14 pursuant to this act and from community service providers providing
15 services in accordance with this act, describing the following:

- 16 (a) The number of new eligible disabled individuals hired;
- 17 (b) the wages paid for such new employees;
- 18 (c) the annual amount of credits and payroll tax benefits provided
19 under this act; and
- 20 (d) the aggregate tax weight loss achieved.

21 Sec. 9. (a) In addition to the credit pursuant to section 3 or the
22 benefits pursuant to section 4, and amendments thereto, there may be
23 credited against the tax imposed by the Kansas income tax act, the tax on
24 net income of national banking associations, state banks, trust companies
25 or savings and loan associations imposed under article 11 of chapter 79 of
26 the Kansas Statutes Annotated, or the premium tax or privilege fees
27 imposed pursuant to K.S.A. 40-252, and amendments thereto:

28 (1) The value of employer-provided or sponsored job training
29 services designed to facilitate and enhance the job-related performance of
30 new eligible employees, for those businesses eligible for benefits under the
31 provisions of this act. Such services shall be developed in consultation
32 with the community services provider providing services to the new
33 eligible employee. The value of the job training services provided by the
34 employer to the new eligible employee, without charge, shall be
35 determined by the allocation of the cost method using generally accepted
36 accounting standards. The credit allowed under this paragraph shall be
37 limited to an amount equal to 20% of the value of the job training services
38 determined as provided by this paragraph; or

39 (2) The cost of day care services for the children of a new eligible
40 employee that enables the eligible employee to work provided by or paid
41 by the employer; or the cost of transportation services provided by or paid
42 by the employer enabling the new eligible employee to travel to and from
43 work. The credit allowed under this paragraph shall be the expenses

1 incurred by the taxpayer for the services provided pursuant to this
2 paragraph, but in no case shall the credit for such services exceed \$800
3 during the first year of employment, \$600 during the second year of
4 employment or \$400 during the third and subsequent years of
5 employment.

6 (d) Such tax credits shall be deducted from the taxpayer's tax liability
7 for the taxable year in which the expenditures are made by the taxpayer. If
8 the amount of such tax credit exceeds the taxpayer's income tax liability
9 for such taxable year, the amount thereof which exceeds such tax liability
10 may be carried over for deduction from the taxpayer's tax liability in the
11 next succeeding taxable year or years until the total amount of the tax
12 credit has been deducted from the tax liability, except that no such tax
13 credit shall be carried over for deduction after the fourth taxable year
14 succeeding the taxable year in which the expenditures are made.

15 Sec. 10. (a) The tax weight, tax weight-loss and underlying
16 information utilized to make such determinations, where identifiable to an
17 eligible individual, shall be confidential and not subject to disclosure under
18 the Kansas open records act. It shall be unlawful for any person to disclose
19 such information, except for purposes of carrying out the requirements of
20 this act to persons who have been authorized to receive such information
21 by the community services provider or the department of revenue.
22 Disclosure of such information to a person not authorized to receive such
23 information shall constitute a class A nonperson misdemeanor, punishable
24 upon conviction in accordance with K.S.A. 21-6602 or 21-6611, and
25 amendments thereto.

26 (b) Aggregate tax weight and tax weight-loss data and aggregate
27 underlying financial information utilized to make such determinations may
28 be disclosed where no personal identifying information is included in such
29 data and the identification of an eligible individual or new eligible
30 employee based on such data or the association of such data with an
31 eligible disabled individual or new eligible employee would not
32 reasonably be possible.

33 (c) Nothing in this act shall be construed to allow disclosure of the
34 amount of income or any particulars set forth or disclosed in any report,
35 return, federal return or federal return information, where such disclosure
36 is prohibited by the federal internal revenue code as in effect on September
37 1, 1996, and amendments thereto, related federal internal revenue rules or
38 regulations, or other federal law, or the disclosure of information
39 pertaining to an eligible individual where such disclosure is otherwise
40 prohibited by federal law.

41 Sec. 11. The secretary of revenue is hereby authorized to adopt such
42 rules and regulations as necessary to carry out the provisions of this act.

43 Sec. 12. This act shall take effect and be in force from and after its

- 1 publication in the statute book.