SENATE BILL No. 61

By Committee on Assessment and Taxation

AN ACT concerning income taxation; relating to credits; individual development accounts, contribution amounts; allocation of credits, unitary group; high performance incentive program; amending K.S.A. 79-32,141 and K.S.A. 2010 Supp. 74-50,208 and 79-32,160a and repealing the existing section sections.

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

Section 1. K.S.A. 2010 Supp. 74-50,208 is hereby amended to read as follows: 74-50,208. (a) A program contributor shall be allowed a credit against state income tax imposed under the Kansas income tax act in an amount not to exceed 75% of the contribution amount. If the amount of the credit allowed by this section exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount shall be refunded to the taxpayer. No credit pursuant to this section shall be allowed for any contribution made by a program contributor which also qualified for a community services tax credit pursuant to the provisions of K.S.A. 79-32,195 et seq., and amendments thereto.

(b) The administration of the community-based organization, with the cooperation of the participating financial institutions, shall submit the names of contributors and the total amount each contributor contributes to the individual development account reserve fund for the calendar year. The secretary of revenue shall determine the date by which such information shall be submitted to the department of revenue by the local administrator.

(c) The total tax credits authorized pursuant to this section shall not exceed $500,000 in any fiscal year.

(d) The provisions of this section shall be applicable to all taxable years commencing after December 31, 2010.

Sec. 2. 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) which are 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 taxable year which commences after
December 31, 2012, and all taxable years thereafter, subject to the
limitations provided in this subsection, credits claimed by a corporation
that is a member of a unitary group filing a combined report pursuant to
the provisions of subsection (e) of K.S.A. 79-32,160a, and amendments
thereof, including any carryforward credits, may be applied against the
tax liability of any member or members of such group in such combined
report. For the following tax years, limits on the credits then available to a
company that is a member of a unitary group under this subsection are as
follows: (1) For the taxable year which commences after December 31,
2012, not more than 20% of such credits subject to unitary treatments; (2)
for the taxable year which commences after December 31, 2013, not more
than 25% of such credits subject to unitary treatment; (3) for the taxable
year which commences after December 31, 2014, not more than 33% of
such credits subject to unitary treatment; and (4) for the taxable year
which commences after December 31, 2015, not more than 50% of such
credits subject to unitary treatment.

Sec. 3. K.S.A. 2010 Supp. 79-32,160a is hereby amended to read
as follows: 79-32,160a. (a) For taxable years commencing after
December 31, 1999, 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, located in an area other than a metropolitan
county as defined in either K.S.A. 2010 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 amendments thereto, or
as measured by the net income of financial institutions imposed
pursuant to article 11 of chapter 79, article 11 of the Kansas Statutes
Annotated, 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, article 11 of
the Kansas Statutes Annotated, 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, located in an area other than a metropolitan
county as defined in either K.S.A. 2010 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, article 11 of the Kansas Statutes Annotated, 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, article 11 of the Kansas Statutes Annotated 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, article 11 of the Kansas Statutes Annotated 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 carry forward shall be allowed for deduction in any succeeding taxable year unless the taxpayer continued to be qualified and was recertified for such succeeding taxable year pursuant to K.S.A. 74-50,131, and amendments thereto, 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. 2010 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. 2010 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 acts amendatory thereof and supplemental thereto and amendments thereto.


Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.