

1 **As Amended by House Committee**

2 *Session of 2002*

3  
4 **HOUSE BILL No. 2988**

5  
6 By Committee on New Economy

7  
8 2-15

9  
10 AN ACT concerning the transferability of tax credits; amending K.S.A.  
11 2001 Supp. 79-32,153 and 79-32,154 and repealing the existing  
12 sections.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2001 Supp. 79-32,153 is hereby amended to read  
16 as follows: 79-32,153. (a) For taxable years commencing after December  
17 31, 1997, any taxpayer who shall invest in a qualified business facility, as  
18 defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto,  
19 shall be allowed a credit for such investment, in an amount determined  
20 under subsection (b) against the tax imposed by the Kansas income tax  
21 act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-  
22 252, and amendments thereto or the privilege tax as measured by net  
23 income of financial institutions imposed pursuant to chapter 79, article  
24 11 of the Kansas Statutes Annotated for the taxable year during which  
25 commencement of commercial operations, as defined in subsection (f) of  
26 K.S.A. 79-32,154, and amendments thereto, occurs at such qualified busi-  
27 ness facility, and for each of the nine succeeding taxable years. No credit  
28 shall be allowed under this section unless the number of qualified busi-  
29 ness facility employees, as determined under subsection (d) of K.S.A. 79-  
30 32,154, and amendments thereto, engaged or maintained in employment  
31 at the qualified business facility as a direct result of the investment by the  
32 taxpayer for the taxable year for which the credit is claimed equals or  
33 exceeds two. Where an employee performs services for the taxpayer out-  
34 side the qualified business facility, the employee shall be considered en-  
35 gaged or maintained in employment at the qualified business facility if  
36 (1) the employee's service performed outside the qualified business fa-  
37 cility is incidental to the employee's service inside the qualified business  
38 facility, or (2) the base of operations or, the place from which the service  
39 is directed or controlled, is at the qualified business facility.

40 (b) The credit allowed by subsection (a) for any taxpayer who invests  
41 in a qualified business facility shall be a portion of the tax, but not in  
42 excess of 50% of such tax, otherwise imposed on or measured by the  
43 taxpayer's qualified business facility income, as defined in subsection (g)

1 of K.S.A. 79-32,154, and amendments thereto, for the taxable year for  
2 which such credit is allowed. Such portion shall be an amount equal to  
3 the sum of the following:

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

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

10 (c) No credit shall be allowed under this section for investment in a  
11 public utility, as such term is defined in K.S.A. 66-104, and amendments  
12 thereto.

13 (d) ~~All~~ **Other provisions of law notwithstanding, all credits**  
14 *earned pursuant to this the job expansion and investment credit act*  
15 *shall be deemed vested tax credits.*

16 Sec. 2. K.S.A. 2001 Supp. 79-32,154 is hereby amended to read as  
17 follows: 79-32,154. As used in this act, the following words and phrases  
18 shall have the meanings respectively ascribed to them herein:

19 (a) “Facility” shall mean any factory, mill, plant, refinery, warehouse,  
20 feedlot, building or complex of buildings located within the state, includ-  
21 ing the land on which such facility is located and all machinery, equipment  
22 and other real and tangible personal property located at or within such  
23 facility used in connection with the operation of such facility. The word  
24 “building” shall include only structures within which individuals are cus-  
25 tomarily employed or which are customarily used to house machinery,  
26 equipment or other property.

27 (b) “Qualified business facility” shall mean a facility which satisfies  
28 the requirements of paragraphs (1) and (2) of this subsection.

29 (1) Such facility is employed by the taxpayer in the operation of a  
30 revenue producing enterprise, as defined in subsection (c). Such facility  
31 shall not be considered a qualified business facility in the hands of the  
32 taxpayer if the taxpayer’s only activity with respect to such facility is to  
33 lease it to another person or persons. If the taxpayer employs only a  
34 portion of such facility in the operation of a revenue producing enterprise,  
35 and leases another portion of such facility to another person or persons  
36 or does not otherwise use such other portions in the operation of a rev-  
37 enue producing enterprise, the portion employed by the taxpayer in the  
38 operation of a revenue producing enterprise shall be considered a qual-  
39 ified business facility, if the requirements of paragraph (2) of this sub-  
40 section are satisfied.

41 (2) If such facility was acquired by the taxpayer from another person  
42 or persons, such facility was not employed, immediately prior to the trans-  
43 fer of title to such facility to the taxpayer, or to the commencement of

1 the term of the lease of such facility to the taxpayer, by any other person  
2 or persons in the operation of a revenue producing enterprise and the  
3 taxpayer continues the operation of the same or substantially identical  
4 revenue producing enterprise, as defined in subsection (i), at such facility.

5 (c) “Revenue producing enterprise” shall mean:

6 (1) The assembly, fabrication, manufacture or processing of any ag-  
7 ricultural, mineral or manufactured product;

8 (2) the storage, warehousing, distribution or sale of any products of  
9 agriculture, aquaculture, mining or manufacturing;

10 (3) the feeding of livestock at a feedlot;

11 (4) the operation of laboratories or other facilities for scientific, ag-  
12 ricultural, aquacultural, animal husbandry or industrial research, devel-  
13 opment or testing;

14 (5) the performance of services of any type;

15 (6) the feeding of aquatic plants and animals at an aquaculture  
16 operation;

17 (7) the administrative management of any of the foregoing activities;  
18 or

19 (8) any combination of any of the foregoing activities.

20 “Revenue producing enterprise” shall not mean a swine production  
21 facility as defined in K.S.A. 17-5903, and amendments thereto.

22 (d) “Qualified business facility employee” shall mean a person em-  
23 ployed by the taxpayer in the operation of a qualified business facility  
24 during the taxable year for which the credit allowed by K.S.A. 79-32,153,  
25 and amendments thereto, is claimed:

26 (1) A person shall be deemed to be so engaged if such person per-  
27 forms duties in connection with the operation of the qualified business  
28 facility on: (A) A regular, full-time basis; (B) a part-time basis, provided  
29 such person is customarily performing such duties at least 20 hours per  
30 week throughout the taxable year; or (C) a seasonal basis, provided such  
31 person performs such duties for substantially all of the season customary  
32 for the position in which such person is employed. The number of qual-  
33 ified business facility employees during any taxable year shall be deter-  
34 mined by dividing by 12 the sum of the number of qualified business  
35 facility employees on the last business day of each month of such taxable  
36 year. If the qualified business facility is in operation for less than the entire  
37 taxable year, the number of qualified business facility employees shall be  
38 determined by dividing the sum of the number of qualified business fa-  
39 cility employees on the last business day of each full calendar month  
40 during the portion of such taxable year during which the qualified busi-  
41 ness facility was in operation by the number of full calendar months dur-  
42 ing such period. Notwithstanding the provisions of this subsection, for  
43 the purpose of computing the credit allowed by K.S.A. 79-32,153, and

1 amendments thereto, in the case of an investment in a qualified business  
2 facility, which facility existed and was operated by the taxpayer or related  
3 taxpayer prior to such investment, the number of qualified business fa-  
4 cility employees employed in the operation of such facility shall be re-  
5 duced by the average number, computed as provided in this subsection,  
6 of individuals employed in the operation of the facility during the taxable  
7 year preceding the taxable year in which the qualified business facility  
8 investment was made at the facility.

9 (2) For taxable years commencing after December 31, 1997, in the  
10 case of a taxpayer claiming a credit against the premium tax and privilege  
11 fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the  
12 privilege tax as measured by net income of financial institutions imposed  
13 pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, “qual-  
14 ified business employee” shall not mean any person who is employed in  
15 the operation of a qualified business facility in the state due to the merger,  
16 acquisition or other reconfiguration of the taxpayer unless such em-  
17 ployee’s position represents a net gain of total positions created by the  
18 taxpayer and the employee’s position was not in existence at the time of  
19 the merger acquisition or other reconfiguration of the taxpayer.

20 (e) “Qualified business facility investment” shall mean the value of  
21 the real and tangible personal property, except inventory or property held  
22 for sale to customers in the ordinary course of the taxpayer’s business,  
23 which constitutes the qualified business facility, or which is used by the  
24 taxpayer in the operation of the qualified business facility, during the  
25 taxable year for which the credit allowed by K.S.A. 79-32,153, and amend-  
26 ments thereto, is claimed. The value of such property during such taxable  
27 year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight  
28 times the net annual rental rate, if leased by the taxpayer. The net annual  
29 rental rate shall be the annual rental rate paid by the taxpayer less any  
30 annual rental rate received by the taxpayer from subrentals. The qualified  
31 business facility investment shall be determined by dividing by 12 the  
32 sum of the total value of such property on the last business day of each  
33 calendar month of the taxable year. If the qualified business facility is in  
34 operation for less than an entire taxable year, the qualified business facility  
35 investment shall be determined by dividing the sum of the total value of  
36 such property on the last business day of each full calendar month during  
37 the portion of such taxable year during which the qualified business fa-  
38 cility was in operation by the number of full calendar months during such  
39 period. Notwithstanding the provisions of this subsection, for the purpose  
40 of computing the credit allowed by K.S.A. 79-32,153, and amendments  
41 thereto, in the case of an investment in a qualified business facility, which  
42 facility existed and was operated by the taxpayer or related taxpayer prior  
43 to such investment the amount of the taxpayer’s qualified business facility

1 investment in such facility shall be reduced by the average amount, com-  
2 puted as provided in this subsection, of the investment of the taxpayer or  
3 a related taxpayer in the facility for the taxable year preceding the taxable  
4 year in which the qualified business facility investment was made at the  
5 facility.

6 (f) “Commencement of commercial operations” shall be deemed to  
7 occur during the first taxable year for which the qualified business facility  
8 is first available for use by the taxpayer, or first capable of being used by  
9 the taxpayer, in the revenue producing enterprise in which the taxpayer  
10 intends to use the qualified business facility.

11 (g) “Vested tax credit” means a credit against the tax imposed pur-  
12 suant to the Kansas income tax act, the premium tax imposed on insurance  
13 companies pursuant to K.S.A. 40-252, and amendments thereto, sales and  
14 compensating use tax pursuant to K.S.A. 79-3601 et seq., and amendments  
15 thereto, and the privilege tax as measured by net income of financial  
16 institutions imposed pursuant to article 11 of chapter 79 of the Kansas  
17 Statutes Annotated. Such a credit may be applied against any of these  
18 taxes or sold or otherwise transferred to a third party. Such third party  
19 may apply, subject to the provisions of this paragraph, the credit to any  
20 tax liability incurred in the same manner as the taxpayer that originally  
21 earned the credit. The value of any such credit which is transferred may  
22 be redeemed at only 50% of the original value of the credit. Any amount  
23 paid in excess of the value of the credit shall be taxable income of the  
24 transferor. Any amount paid which is less than the value of the credit  
25 shall be taxable income of the transferee.

26 ~~(g)~~ (h) “Qualified business facility income” shall mean the Kansas  
27 taxable income derived by the taxpayer from the operation of the qualified  
28 business facility. If a taxpayer has income derived from the operation of  
29 a qualified business facility as well as from other activities conducted  
30 within this state, the Kansas taxable income derived by the taxpayer from  
31 the operation of the qualified business facility shall be determined by  
32 multiplying the taxpayer’s Kansas taxable income by a fraction, the nu-  
33 merator of which is the property factor, as defined in paragraph (1), plus  
34 the payroll factor, as defined in paragraph (2), and the denominator of  
35 which is two. In the case of financial institutions, the property and payroll  
36 factors shall be computed utilizing the specific provisions of the appor-  
37 tionment method applicable to financial institutions, if enacted, and the  
38 qualified business facility income shall be based upon net income.

39 (1) The property factor is a fraction, the numerator of which is the  
40 average value of the taxpayer’s real and tangible personal property owned  
41 or rented and used in connection with the operation of the qualified  
42 business facility during the tax period, and the denominator of which is  
43 the average value of all the taxpayer’s real and tangible personal property

1 owned or rented and used in this state during the tax period. The average  
2 value of all such property shall be determined as provided in K.S.A. 79-  
3 3281 and 79-3282, and amendments thereto.

4 (2) The payroll factor is a fraction, the numerator of which is the total  
5 amount paid during the tax period by the taxpayer for compensation to  
6 persons qualifying as qualified business facility employees, as determined  
7 under subsection (d), at the qualified business facility, and the denomi-  
8 nator of which is the total amount paid in this state during the tax period  
9 by the taxpayer for compensation. The compensation paid in this state  
10 shall be determined as provided in K.S.A. 79-3283, and amendments  
11 thereto.

12 The formula set forth in this subsection (g) shall not be used for any  
13 purpose other than determining the qualified business facility income  
14 attributable to a qualified business facility.

15 ~~(h)~~ (i) “Related taxpayer” shall mean (1) a corporation, partnership,  
16 trust or association controlled by the taxpayer; (2) an individual, corpo-  
17 ration, partnership, trust or association in control of the taxpayer; or (3)  
18 a corporation, partnership, trust or association controlled by an individual,  
19 corporation, partnership, trust or association in control of the taxpayer.  
20 For the purposes of this act, “control of a corporation” shall mean own-  
21 ership, directly or indirectly, of stock possessing at least 80% of the total  
22 combined voting power of all classes of stock entitled to vote and at least  
23 80% of all other classes of stock of the corporation; “control of a part-  
24 nership or association” shall mean ownership of at least 80% of the capital  
25 or profits interest in such partnership or association; and “control of a  
26 trust” shall mean ownership, directly or indirectly, of at least 80% of the  
27 beneficial interest in the principal or income of such trust.

28 ~~(h)~~ (j) “Same or substantially identical revenue producing enterprise”  
29 shall mean a revenue producing enterprise in which the products pro-  
30 duced or sold, services performed or activities conducted are the same in  
31 character and use, are produced, sold, performed or conducted in the  
32 same manner and to or for the same type of customers as the products,  
33 services or activities produced, sold, performed or conducted in another  
34 revenue producing enterprise.

35 Sec. 3. K.S.A. 2001 Supp. 79-32,153 and 79-32,154 are hereby  
36 repealed.

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

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