

As Amended by House Committee

Session of 2012

HOUSE BILL No. 2591

By Committee on Taxation

2-1

1 AN ACT concerning income taxation; relating to credits; amending K.S.A.
2 79-32,141 and K.S.A. 2011 Supp. 79-32,160a and repealing the
3 existing sections; also repealing K.S.A. 2011 Supp. 79-32,160f.

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, credits,
8 or allowances between two or more organizations, trades or businesses
9 (whether or not incorporated, or organized in the United States or
10 affiliated) owned or controlled directly or indirectly by the same interests,
11 if the director determines such allocation is necessary to prevent evasion of
12 taxes or to clearly reflect income of the organizations, trades or businesses.

13 (b) *Commencing with the tax year which commences after December*
14 *31, 2011, and all taxable years thereafter, credits claimed by a corporation*
15 *that is a member of a unitary group filing a combined report that has*
16 *earned credits pursuant to subsection (e) of K.S.A. 79-32,160a, and*
17 *amendments thereto, that has filed a certificate of intent on or after*
18 *October 1, 2011, and prior to June 30, 2013, to place in service a*
19 *qualified business facility investment of at least \$10,000,000 and create a*
20 *minimum of 50 new jobs that satisfy the average wage requirements set*
21 *forth in K.S.A. 74-50,131, and amendments thereto, at a qualified business*
22 *facility after October 1, 2011, and that has entered into an agreement with*
23 *the secretary of commerce, may apply such tax credits, including any*
24 *carryforward credits, earned pursuant to subsection (e) of K.S.A. 79-*
25 *32,160a, and amendments thereto, against the tax liability of any member*
26 *or members of such group in such combined report in the following*
27 *manner:*

28 (1) *Credits earned prior to January 1, 2012, and claimed in taxable*
29 *years commencing after December 31, 2011, shall be subject to the*
30 *following limitations:*

31 (A) *The amount of carryforward credits applied against the tax*
32 *liability of any member or members of a unitary group shall not exceed in*
33 *the aggregate 15% of the carryforward credits available during the*
34 *taxable year in which the carryforward credits are first applied against*
35 *the tax liability of any member or members of any such group. Such*
36 *limitation shall be effective for the taxable year in which the carryforward*

1 *credits are first applied against a member or members of the group and*
2 *the six immediately succeeding taxable years. Any carryforward credits*
3 *not applied during the seven-year period set forth herein may be applied*
4 *without limitation against the tax liability of any member or members of*
5 *such group for the remainder of the credit ~~carryforward~~ carryforward*
6 *period under ~~subsection~~ subsection (e) of K.S.A. 79-32,160a, and*
7 *amendments thereto.*

8 (B) *In the event the remainder of the credit carryforward period*
9 *under subsection (e) of K.S.A. 79-32,160a, and amendments thereto, at the*
10 *time the carryforward credits are first applied against the tax liability of*
11 *any member or members of such group is less than seven years, then the*
12 *carryforward credits applied against the liability of any member or*
13 *members of such group shall not in the aggregate exceed the percentage of*
14 *carryforward credits determined by dividing the total carryforward credits*
15 *by the number of years remaining in the carryforward period under*
16 *subsection (e) of K.S.A. 79-32,160a, and amendments thereto.*

17 (2) *Credits earned after January 1, 2012, may be applied against the*
18 *tax liability of any member or members of such group in such combined*
19 *report in such manner as may be determined by the corporation.*

20 (3) *Failure to comply with the capital investment and job creation*
21 *requirements set forth in subsection (b) of K.S.A. 79-32,141, and*
22 *amendments thereto, **within 36 months of the date of the agreement***
23 ***with the secretary of commerce, shall result in the corporation remitting***
24 ***to the state an amount equal to the amount of credits applied against the***
25 ***tax liability of the other members of the unitary group. A corporation that***
26 ***has entered into a separate agreement with the secretary of commerce***
27 ***shall have 54 months to comply with the capital investment and job***
28 ***creation requirements set forth in subsection (b) of K.S.A. 79-32,141,***
29 ***and amendments thereto.***

30 Sec. 2. K.S.A. 2011 Supp. 79-32,160a is hereby amended to read as
31 follows: 79-32,160a. (a) For taxable years commencing after December
32 31, 1999, and before January 1, 2012, any taxpayer who shall invest in a
33 qualified business facility, as defined in subsection (b) of K.S.A. 79-
34 32,154, and amendments thereto, and effective for tax years commencing
35 after December 31, 2010, and before January 1, 2012, located in an area
36 other than a metropolitan county as defined in either K.S.A. 2011 Supp.
37 74-50,114 or 74-50,211, and amendments thereto, and also meets the
38 definition of a business in subsection (b) of K.S.A. 74-50,114, and
39 amendments thereto, shall be allowed a credit for such investment, in an
40 amount determined under subsection (b) or (c), as the case requires,
41 against the tax imposed by the Kansas income tax act or where the
42 qualified business facility is the principal place from which the trade or
43 business of the taxpayer is directed or managed and the facility has

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

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

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

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

8 (c) The credit allowed by subsection (a) for any taxpayer who invests
9 in a qualified business facility, which is not located in a nonmetropolitan
10 region established under K.S.A. 74-50,116, and amendments thereto, and
11 effective for tax years commencing after December 31, 2010, *and before*
12 *January 1, 2012*, located in an area other than a metropolitan county as
13 defined in either K.S.A. 2011 Supp. 74-50,114 or 74-50,211, and
14 amendments thereto, and which also meets the definition of business in
15 subsection (b) of K.S.A. 74-50,114, and amendments thereto, on or after
16 the effective date of this act, shall be a portion of the income tax imposed
17 by the Kansas income tax act on the taxpayer's Kansas taxable income, the
18 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and
19 amendments thereto, or the privilege tax as measured by the net income of
20 financial institutions imposed pursuant to article 11 of chapter 79 of the
21 Kansas Statutes Annotated, *and amendments thereto*, for the taxable year
22 for which such credit is allowed, but in the case where the qualified
23 business facility investment was made prior to January 1, 1996, not in
24 excess of 50% of such tax. Such portion shall be an amount equal to the
25 sum of the following:

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

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

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

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

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

1 tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments
2 thereto, or the privilege tax as measured by net income of financial
3 institutions imposed pursuant to article 11 of chapter 79 of the Kansas
4 Statutes Annotated, *and amendments thereto*, for the taxable year, the
5 amount thereof which exceeds such tax liability may be carried forward
6 for credit in the succeeding taxable year or years until the total amount of
7 the tax credit is used, except that no such tax credit shall be carried
8 forward for deduction after the 16th taxable year succeeding the taxable
9 year in which such credit initially was claimed, and no carryforward shall
10 be allowed for deduction in any succeeding taxable year unless the
11 taxpayer certifies under oath that the taxpayer continues to meet the
12 requirements of K.S.A. 74-50,131, and amendments thereto, and this act.
13 In no event shall any credit allowed under this section that expired during
14 any taxable year prior to the taxable year commencing January 1, 2011, be
15 revived under the provisions of this act.

16 (f) For tax years commencing after December 31, 2005, any taxpayer
17 claiming credits pursuant to this section, as a condition for claiming and
18 qualifying for such credits, shall provide information pursuant to K.S.A.
19 2011 Supp. 79-32,243, and amendments thereto, as part of the tax return in
20 which such credits are claimed. Such credits shall not be denied solely on
21 the basis of the contents of the information provided by the taxpayer
22 pursuant to K.S.A. 2011 Supp. 79-32,243, and amendments thereto.

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

26 Sec. 3. K.S.A. 2011 Supp. 79-32,141, 79-32,160a and 79-32,160f are
27 hereby repealed.

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