

(Corrected)
As Amended by House Committee

Session of 2011

SENATE BILL No. 61

By Committee on Assessment and Taxation

1-26

1 AN ACT concerning income taxation; relating to credits; individual
2 development accounts, contribution amounts; **allocation of credits,**
3 **unitary group; high performance incentive program;** amending
4 **K.S.A. 79-32,141 and K.S.A. 2010 Supp. 74-50,208 and 79-32,160a**
5 and repealing the existing ~~section~~ **sections.**
6

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

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

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

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

26 (d) The provisions of this section shall be applicable to all taxable
27 years commencing after December 31, ~~2004~~ **2010.**

28 **Sec. 2. K.S.A. 79-32,141 is hereby amended to read as follows: 79-**
29 **32,141. (a) The director may allocate gross income, deductions, credits,**
30 **or allowances between two or more organizations, trades or businesses**
31 **(whether or not incorporated, or organized in the United States or**
32 **affiliated) which are owned or controlled directly or indirectly by the**
33 **same interests, if the director determines such allocation is necessary**
34 **to prevent evasion of taxes or to clearly reflect income of the**
35 **organizations, trades or businesses.**

36 (b) *Commencing with the taxable year which commences after*

1 *December 31, 2012, and all taxable years thereafter, subject to the*
2 *limitations provided in this subsection, credits claimed by a corporation*
3 *that is a member of a unitary group filing a combined report pursuant to*
4 *the provisions of subsection (e) of K.S.A. 79-32,160a, and amendments*
5 *thereto, including any carryforward credits, may be applied against the*
6 *tax liability of any member or members of such group in such combined*
7 *report. For the following tax years, limits on the credits then available to a*
8 *company that is a member of a unitary group under this subsection are as*
9 *follows: (1) For the taxable year which commences after December 31,*
10 *2012, not more than 20% of such credits subject to unitary treatments; (2)*
11 *for the taxable year which commences after December 31, 2013, not more*
12 *than 25% of such credits subject to unitary treatment; (3) for the taxable*
13 *year which commences after December 31, 2014, not more than 33% of*
14 *such credits subject to unitary treatment; and (4) for the taxable year*
15 *which commences after December 31, 2015, not more than 50% of such*
16 *credits subject to unitary treatment.*

17 **Sec. 3. K.S.A. 2010 Supp. 79-32,160a is hereby amended to read**
18 **as follows: 79-32,160a. (a) For taxable years commencing after**
19 **December 31, 1999, any taxpayer who shall invest in a qualified**
20 **business facility, as defined in subsection (b) of K.S.A. 79-32,154, and**
21 **amendments thereto, and effective for tax years commencing after**
22 **December 31, 2010, located in an area other than a metropolitan**
23 **county as defined in either K.S.A. 2010 Supp. 74-50,114 or 74-50,211,**
24 **and amendments thereto, and also meets the definition of a business in**
25 **subsection (b) of K.S.A. 74-50,114, and amendments thereto, shall be**
26 **allowed a credit for such investment, in an amount determined under**
27 **subsection (b) or (c), as the case requires, against the tax imposed by**
28 **the Kansas income tax act or where the qualified business facility is**
29 **the principal place from which the trade or business of the taxpayer is**
30 **directed or managed and the facility has facilitated the creation of at**
31 **least 20 new full-time positions, against the premium tax or privilege**
32 **fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or**
33 **as measured by the net income of financial institutions imposed**
34 **pursuant to ~~article 11 of chapter 79, article 11~~ of the Kansas Statutes**
35 **Annotated, for the taxable year during which commencement of**
36 **commercial operations, as defined in subsection (f) of K.S.A. 79-**
37 **32,154, and amendments thereto, occurs at such qualified business**
38 **facility. In the case of a taxpayer who meets the definition of a**
39 **manufacturing business in subsection (d) of K.S.A. 74-50,114, and**
40 **amendments thereto, no credit shall be allowed under this section**
41 **unless the number of qualified business facility employees, as**
42 **determined under subsection (d) of K.S.A. 79-32,154, and**
43 **amendments thereto, engaged or maintained in employment at the**

1 qualified business facility as a direct result of the investment by the
2 taxpayer for the taxable year for which the credit is claimed equals or
3 exceeds two. In the case of a taxpayer who meets the definition of a
4 nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and
5 amendments thereto, no credit shall be allowed under this section
6 unless the number of qualified business facility employees, as
7 determined under subsection (d) of K.S.A. 79-32,154, and
8 amendments thereto, engaged or maintained in employment at the
9 qualified business facility as a direct result of the investment by the
10 taxpayer for the taxable year for which the credit is claimed equals or
11 exceeds five. Where an employee performs services for the taxpayer
12 outside the qualified business facility, the employee shall be considered
13 engaged or maintained in employment at the qualified business facility
14 if: (1) The employee's service performed outside the qualified business
15 facility is incidental to the employee's service inside the qualified
16 business facility; or (2) the base of operations or, the place from which
17 the service is directed or controlled, is at the qualified business facility.

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

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

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

39 (c) The credit allowed by subsection (a) for any taxpayer who
40 invests in a qualified business facility, which is not located in a
41 nonmetropolitan region established under K.S.A. 74-50,116, and
42 amendments thereto, and effective for tax years commencing after
43 December 31, 2010, located in an area other than a metropolitan

1 county as defined in either K.S.A. 2010 Supp. 74-50,114 or 74-50,211,
2 and amendments thereto, and which also meets the definition of
3 business in subsection (b) of K.S.A. 74-50,114, and amendments
4 thereto, on or after the effective date of this act, shall be a portion of
5 the income tax imposed by the Kansas income tax act on the
6 taxpayer's Kansas taxable income, the premium tax or privilege fees
7 imposed pursuant to K.S.A. 40-252, and amendments thereto, or the
8 privilege tax as measured by the net income of financial institutions
9 imposed pursuant to *article 11 of chapter 79*, ~~article 11~~ of the Kansas
10 Statutes Annotated, for the taxable year for which such credit is
11 allowed, but in the case where the qualified business facility
12 investment was made prior to January 1, 1996, not in excess of 50% of
13 such tax. Such portion shall be an amount equal to the sum of the
14 following:

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

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

22 (d) The credit allowed by subsection (a) for each qualified
23 business facility employee and for qualified business facility
24 investment shall be a one-time credit. If the amount of the credit
25 allowed under subsection (a) exceeds the tax imposed by the Kansas
26 income tax act on the taxpayer's Kansas taxable income, the premium
27 tax and privilege fees imposed pursuant to K.S.A. 40-252, and
28 amendments thereto, or the privilege tax as measured by the net
29 income of financial institutions imposed pursuant to *article 11 of*
30 *chapter 79*, ~~article 11~~ of the Kansas Statutes Annotated for the taxable
31 year, or in the case where the qualified business facility investment
32 was made prior to January 1, 1996, 50% of such tax imposed upon the
33 amount which exceeds such tax liability or such portion thereof may
34 be carried over for credit in the same manner in the succeeding
35 taxable years until the total amount of such credit is used. Except that,
36 before the credit is allowed, a taxpayer, who meets the definition of a
37 manufacturing business in subsection (d) of K.S.A. 74-50,114, and
38 amendments thereto, shall recertify annually that the net increase of a
39 minimum of two qualified business facility employees has continued to
40 be maintained and a taxpayer, who meets the definition of a
41 nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and
42 amendments thereto, shall recertify annually that the net increase of a
43 minimum of five qualified business employees has continued to be

1 maintained.

2 (e) Notwithstanding the foregoing provisions of this section, any
3 taxpayer qualified and certified under the provisions of K.S.A. 74-
4 50,131, and amendments thereto; which, prior to making a
5 commitment to invest in a qualified Kansas business, has filed a
6 certificate of intent to invest in a qualified business facility in a form
7 satisfactory to the secretary of commerce; and that has received
8 written approval from the secretary of commerce for participation
9 and has participated, during the tax year for which the exemption is
10 claimed, in the Kansas industrial training, Kansas industrial
11 retraining or the state of Kansas investments in lifelong learning
12 program or is eligible for the tax credit established in K.S.A. 74-
13 50,132, and amendments thereto, shall be entitled to a credit in an
14 amount equal to 10% of that portion of the qualified business facility
15 investment which exceeds \$50,000 in lieu of the credit provided in
16 subsection (b)(2) or (c)(2) without regard to the number of qualified
17 business facility employees engaged or maintained in employment at
18 the qualified business facility. The credit allowed by this subsection
19 shall be a one-time credit. If the amount thereof exceeds the tax
20 imposed by the Kansas income tax act on the taxpayer's Kansas
21 taxable income or the premium tax or privilege fees imposed pursuant
22 to K.S.A. 40-252, and amendments thereto, or the privilege tax as
23 measured by net income of financial institutions imposed pursuant to
24 ~~article 11 of chapter 79, article 11~~ of the Kansas Statutes Annotated for
25 the taxable year, the amount thereof which exceeds such tax liability
26 may be carried forward for credit in the succeeding taxable year or
27 years until the total amount of the tax credit is used, except that no
28 such tax credit shall be carried forward for deduction after the ~~10th~~
29 *16th* taxable year succeeding the taxable year in which such credit
30 initially was claimed ~~and no carry forward shall be allowed for deduction~~
31 ~~in any succeeding taxable year unless the taxpayer continued to be~~
32 ~~qualified and was recertified for such succeeding taxable year pursuant to~~
33 ~~K.S.A. 74-50,131, and amendments thereto, and no carryforward shall be~~
34 ~~allowed for deduction in any succeeding taxable year unless the taxpayer~~
35 ~~certifies under oath that the taxpayer continues to meet the requirements~~
36 ~~of K.S.A. 74-50,131, and amendments thereto, and this act. In no event~~
37 ~~shall any credit allowed under this section that expired during any taxable~~
38 ~~year prior to the taxable year commencing January 1, 2011, be revived~~
39 ~~under the provisions of this act.~~

40 (f) For tax years commencing after December 31, 2005, any
41 taxpayer claiming credits pursuant to this section, as a condition for
42 claiming and qualifying for such credits, shall provide information
43 pursuant to K.S.A. 2010 Supp. 79-32,243, and amendments thereto, as

1 **part of the tax return in which such credits are claimed. Such credits**
2 **shall not be denied solely on the basis of the contents of the**
3 **information provided by the taxpayer pursuant to K.S.A. 2010 Supp.**
4 **79-32,243, and amendments thereto.**

5 **(g) This section and K.S.A. 79-32,160b, and amendments thereto,**
6 **shall be part of and supplemental to the job expansion and investment**
7 **credit act of 1976** ~~and acts amendatory thereof and supplemental thereto~~
8 ~~and amendments thereto.~~

9 ~~Sec. 4.~~ **K.S.A. 79-32,141 and K.S.A. 2010 Supp. 74-50,208 and**
10 **79-32,160a** ~~is~~ **are** hereby repealed.

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

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