

SENATE BILL No. 342

By Committee on Commerce

2-8

9 AN ACT concerning taxation; relating to credits; enacting the Kansas
10 investment credit act and the Kansas jobs credit act; relating to qual-
11 ifications and procedures; eliminating certain existing credits related
12 thereto; amending K.S.A. 40-253a and 74-8945 and K.S.A. 2006 Supp.
13 79-32,111, 79-32,243 and 79-3606 and repealing the existing sections;
14 also repealing K.S.A. 74-50,113, 74-50,116, 74-50,117, 74-50,118, 74-
15 50,119, 74-50,135, 74-50,135a, 79-32,155, 79-32,156, 79-32,157, 79-
16 32,158, 79-32,159, 79-32,159a, 79-32,159b, 79-32,159c, 79-32,160, 79-
17 32,160b and 79-32,160c and K.S.A. 2006 Supp. 74-50,114, 74-50,115,
18 74-50,131, 74-50,132, 74-50,133, 74-50,134, 79-3269, 79-32,153, 79-
19 32,154 and 79-32,160a.

20

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

22 New Section 1. The provisions of sections 1 through 8, and amend-
23 ments thereto, shall be known and may be cited as the Kansas investment
24 credit act.

25 New Sec. 2. As used in the Kansas investment credit act, unless oth-
26 erwise provided: (a) "Act" means the Kansas investment credit act;

27 (b) "ancillary support operation" means a Kansas business facility at
28 which the business activities are ancillary processing functions and from
29 which no or de minimis primary business activities occur. Ancillary proc-
30 essing functions shall support and improve operating efficiencies of the
31 primary focus of the business, but are not of themselves, integral and
32 necessary to performing the primary business activities;

33 (c) "eligible taxpayer" means a for-profit business establishment sub-
34 ject to the Kansas income tax act, the premium tax or privilege fees im-
35 posed pursuant to K.S.A. 40-252, and amendments thereto, the privilege
36 tax as measured by the net income of financial institutions imposed pur-
37 suant to chapter 79, article 11 of the Kansas Statutes Annotated, sales or
38 property taxes and that meets the eligibility criteria in section 3, and
39 amendments thereto and is current in payment of Kansas taxes;

40 (d) "headquarters" means a Kansas business facility where principal
41 officers of the business are housed and from which direction, manage-
42 ment, or administrative support of transactions is provided for a business
43 or division of a business and from which no more than de minimis rev-

1 the Kansas business facility, during the taxable year for which the credit
2 is claimed. The value of such property during such taxable year shall be:
3 (1) The original cost of such property, if owned by the eligible taxpayer;
4 or (2) eight times the net annual rental rate, if leased by the eligible
5 taxpayer. Original cost is deemed to be the basis of the property for fed-
6 eral income tax purposes, prior to any federal adjustments, at the time of
7 acquisition by the taxpayer and adjusted by subsequent capital additions
8 or improvements thereto and partial disposition thereof, by reason of sale,
9 exchange or abandonment. The net annual rental rate shall be the annual
10 rental rate paid by the taxpayer less any annual rental rate received by
11 the taxpayer from subrentals. "Qualified investment" shall be determined
12 by calculating the value of the qualified investment that has been newly
13 placed into service at the eligible taxpayer's Kansas business facility during
14 the taxpayer's tax year. In order to remain eligible the investment must
15 continue to be used during the tax year and remain in service on the last
16 business day of the taxpayer's tax year for which the credit is claimed. For
17 plans that show a project shall extend beyond one tax period in which the
18 minimum investment is not met at the end of the first tax period that the
19 qualified investment is placed in service, the qualified investment can be
20 accumulated into the next consecutive tax period for computation of the
21 investment credit until the minimum investment has been met as long as
22 the qualified investment remains in service and is identified as part of the
23 same project. Once the minimum investment has been initially met on a
24 project, subsequent qualified investment may be claimed in the tax period
25 that it is placed in service;

26 (h) "revenue producing enterprise" means: (1) The assembly, fabri-
27 cation, manufacture or processing of any agricultural, mineral or manu-
28 factured product;

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

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

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

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

36 (6) the feeding of aquatic plants and animals at an aquaculture
37 operation;

38 (7) the administrative management of any of the foregoing activities;

39 or

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

41 "Revenue producing enterprise" shall not mean a swine production
42 facility as defined in K.S.A. 17-5903, and amendments thereto; and

43 (i) "same or substantially identical revenue producing enterprise"

1 paid by all Kansas business facilities that share the same assigned NAICS
2 category and that have reported wages for 500 or fewer employees to the
3 Kansas department of labor on the quarterly wage reports, or be the sole
4 Kansas business facility within its assigned NAICS category that has re-
5 ported wages to the Kansas department of labor on the quarterly wage
6 reports;

7 (E) the number of NAICS digits to use in developing each set of
8 wage thresholds for comparison purposes shall be determined by the
9 secretary of commerce; or

10 (F) the composition of wage regions used in connection with each set
11 of wage thresholds shall be determined by the secretary of commerce;
12 and

13 (4) as an alternative to the requirements of subsection (a)(3), a tax-
14 payer having met the requirements of subsections (a)(1) and (2) may
15 wage-qualify its Kansas business facility if, after excluding the headcount
16 and wages reported on the quarterly wage reports to the Kansas depart-
17 ment of labor for employees at that Kansas business facility who own five
18 percent or more equity in the taxpayer, the average wage calculated for
19 the taxpayer's Kansas business facility is greater than or equal to 1.5 times
20 the aggregate state-wide average wage paid by industries covered by the
21 employment security law based on data maintained by the secretary of
22 labor.

23 (b) For the purposes of this section, the number of full-time equiv-
24 alent employees shall be determined by dividing the number of hours
25 worked by part-time employees during the pertinent measurement in-
26 terval by an amount equal to the corresponding multiple of a 40-hour
27 work week and adding the quotient to the average number of full-time
28 employees.

29 New Sec. 4. (a) For taxable years commencing after December 31,
30 2007 ~~2006~~, an eligible taxpayer that makes a qualified investment in a Kansas
31 business facility shall be entitled to a credit in an amount equal to 10%
32 of the qualified investment. Qualified investment must be identified and
33 submitted to the secretary of commerce prior to making a commitment
34 to invest. The credit allowed by this subsection shall be a one-time credit.
35 The credit shall be allowed against the tax imposed by the Kansas income
36 tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-
37 252, and amendments thereto, or the privilege tax as measured by the
38 net income of financial institutions imposed pursuant to article 11 of
39 chapter 79 of the Kansas Statutes Annotated, for the taxable year during
40 which the qualified investment is placed into service.

41 (b) The eligible taxpayer shall claim the credit on the original return
42 for the tax year in which the qualified investment is placed into service.

43 (c) If the tax credit amount thereof exceeds the tax imposed, the tax

1 forward credit that has been earned through the Kansas enterprise zone
 2 act, K.S.A. 79-32,160a and is remaining after December 31, 2006, may 2007
 3 be carried forward to succeeding taxable years as long as all requirements
 4 continue to be met. Any credit that has been earned through the job
 5 expansion and investment tax credit act, K.S.A. 79-32,153, with years left
 6 in recomputing the credit after December 31, 2006, may continue for the 2007
 7 remainder of the 10-year period as long as all requirements continue to
 8 be met.

9 (b) Except as otherwise provided, for tax years commencing on or
 10 after December 31, 2006, no additional credits may be earned through 2007
 11 the high performance incentive act, K.S.A. 74-50,115, K.S.A. 74-50,132,
 12 and subsection (e) of K.S.A. 79-32,160a. Any carry forward credit that
 13 has been earned through the high performance incentive act, subsection
 14 (e) of K.S.A. 79-32,160a and is remaining after December 31, 2006, may 2007
 15 be carried forward to succeeding taxable years, providing all requirements
 16 continue to be met and subject to the applicable carryforward limitations.

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bracketed
text*

17 Any taxpayer who has filed an application to be certified under K.S.A.
 18 74-50,131, prior to July 1, 2007, may claim credits under the high per-
 19 formance incentive act, subsection (e) of K.S.A. 79-32,160a, K.S.A. 74-
 20 50,131 and K.S.A. 74-50,132 during the certification period in tax years
 21 2007 and 2008, which credits may be carried forward until used or for a
 22 maximum of ten years, as long as such taxpayer does not claim any credits
 23 for the same investment under the Kansas investment credit act. To ac-
 24 commodate unusual timing situations during the 2007 transition period, 2008
 25 timing modifications may be authorized at the discretion of the secretary
 26 of commerce and the secretary of revenue.

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27 New Sec. 8. The provisions of this act shall be applicable to all tax-
 28 able years commencing after December 31, 2006, and prior to January 2007
 29 1, 2012

30 New Sec. 9. The provisions of sections 9 through 14 may be cited
 31 and shall be known as the Kansas jobs credit act.

32 New Sec. 10. As used in the Kansas jobs credit act, unless otherwise
 33 provided: (a) "Act" means the Kansas jobs credit act;

34 (b) "employed" means that an employer-employee relationship ex-
 35 ists. A person who performs services for the taxpayer shall be considered
 36 as an employee if the taxpayer has the right to direct and control when,
 37 where, and how work will be done. In addition the taxpayer shall pay for
 38 the employee's wages directly, or indirectly through inter-company trans-
 39 fers. Independent contractors shall not be considered as employed for
 40 purposes of the Kansas jobs credit;

41 (c) "Kansas job credit taxpayer" means any business entity authorized
 42 to do business in the state of Kansas which is subject to the state income
 43 tax imposed by the provisions of the Kansas income tax act, any national

1 and loan association paying an annual tax on its net income pursuant to
2 article 11 of chapter 79 of the Kansas Statutes Annotated, or any insurance
3 company paying the premium tax and privilege fees imposed pursuant to
4 K.S.A. 40-252, and amendments thereto, and that is current in payment
5 of Kansas taxes; and

6 (g) "related taxpayer" means: (1) A corporation, partnership, trust or
7 association controlled by the taxpayer; (2) an individual, corporation, part-
8 nership, trust or association in control of the taxpayer; or (3) a corporation,
9 partnership, trust or association controlled by an individual, corporation,
10 partnership, trust or association in control of the taxpayer. "Control of a
11 corporation" means ownership, directly or indirectly, of stock possessing
12 at least 80% of the total combined voting power of all classes of stock
13 entitled to vote and at least 80% of all other classes of stock of the cor-
14 poration. "Control of a partnership or association" means ownership of
15 at least 80% of the capital or profits interest in such partnership or as-
16 sociation. "Control of a trust" means ownership, directly or indirectly, of
17 at least 80% of the beneficial interest in the principal or income of such
18 trust.

2007
two

19 New Sec. 11. (a) For taxable years commencing after December 31,
20 ~~2007~~, any opportunity zone job credit taxpayer who engages in new em-
21 ployment at least ~~five~~ new employees in the taxpayer's business operating
22 in a designated opportunity zone in Kansas shall be allowed a credit of
23 \$3,500 per new employee, against the tax imposed by the Kansas income
24 tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-
25 252, and amendments thereto, or the privilege tax as measured by the
26 net income of financial institutions imposed pursuant to article 11 of
27 chapter 79 of the Kansas Statutes Annotated, for the taxable year during
28 which the employees were hired. To be considered employed in an op-
29 portunity zone, the employee must perform the majority of the services
30 for the opportunity zone job credit taxpayer in the opportunity zone. Any
31 Kansas job credit taxpayer, located in the state of Kansas who engages in

as defined in
subsection (c)(1) of
section 10, and
amendments
thereto,

10

32 new employment at least ~~20~~ new employees in the taxpayer's business
33 operating in Kansas shall be allowed a credit of \$1,500 per new employee,
34 against the tax imposed by the Kansas income tax act, the premium tax
35 or privilege fees imposed pursuant to K.S.A. 40-252, and amendments
36 thereto, or the privilege tax as measured by the net income of financial
37 institutions imposed pursuant to article 11 of chapter 79 of the Kansas
38 Statutes Annotated, for the taxable year during which the employees were
39 hired.

within two
consecutive
years

Insert A
(attached)

40 (b) The taxpayer shall claim any credits pursuant to this act on the
41 original return for the tax year in which the employees were hired.

42 (c) If the amount of the tax credit exceeds the tax imposed, the
43 amount thereof which exceeds such tax liability may be carried forward

1 for credit in the succeeding taxable year or years until the total amount
2 of the tax credit is used. In the event the taxpayer does not continue to
3 employ the required minimum number of employees, any credit remain-
4 ing will be forfeited and no longer available for carry forward.

5 (d) If the taxpayer is a corporation having an election in effect under
6 subchapter S of the federal internal revenue code, a partnership or limited
7 liability company, the credit provided by this section shall be claimed by
8 the shareholders of such corporation, the partners of such partnership or
9 the members of such limited liability company in the same manner as
10 such shareholders, partners, or members account for their proportionate
11 shares of income or loss of the corporation, partnership or limited liability
12 company.

13 (e) A taxpayer that qualifies for the opportunity zone job credit for
14 an employee may not also qualify for the Kansas job credit for the same
15 employee.

16 (f) Only one taxpayer may claim a specific employee for purposes of
17 the opportunity zone job credit or the Kansas job credit. Employees trans-
18 ferred or reassigned within Kansas between related taxpayers will not
19 qualify for the credit.

20 New Sec. 12. (a) Any taxpayer claiming credits pursuant to this act,
21 as a condition for claiming and qualifying for such credits, shall provide
22 information pursuant to K.S.A. 2006 Supp. 79-32,243, and amendments
23 thereto, as part of the tax return in which such credits are claimed. Such
24 credits shall not be denied solely on the basis of the contents of the
25 information provided by the taxpayer pursuant to K.S.A. 2006 Supp. 79-
26 32,243, and amendments thereto.

27 (b) The secretary of revenue shall submit an annual report to the
28 legislature regarding utilization of the credits claimed pursuant to this act,
29 for purposes of evaluation. Such report shall be due during the legislative
30 session, commencing with the 2009 legislative session. 2010

31 New Sec. 13. The secretary of revenue may adopt such rules and
32 regulations as necessary to carry out the purposes of this act.

33 New Sec. 14. The provisions of this act shall be applicable to all tax-
34 able years commencing after December 31, 2006 and prior to January 1, 2007

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36 Sec. 15. K.S.A. 40-253a is hereby amended to read as follows: 40-
37 253a. For purposes of calculating any tax due under K.S.A. 40-253, and
38 amendments thereto, from a taxpayer not organized under the laws of
39 this state, the credits allowed pursuant to K.S.A. 40-2813, ~~74-50,132, 79-~~
40 ~~32,152, 79-32,160~~ and 79-32,196, *and the Kansas investment credit act*
41 *and the Kansas jobs credit act*, and amendments thereto, shall be treated
42 as tax paid under K.S.A. 40-252, and amendments thereto.

43 Sec. 16. K.S.A. 74-8945 is hereby amended to read as follows: 74-