

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.

74-50,131, 74-50,132.

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

21
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 pro-
30 cessing 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 enues are generated from primary business activities.

2 (e) "Kansas business facility" means any factory, mill, plant, refinery,
3 warehouse, feedlot, building or complex of buildings that operate as a
4 single unit on a contiguous piece of property, located within the state,
5 including the land on which such facility is located and all machinery,
6 equipment and other real and tangible personal property located at or
7 within such facility used in connection with the operation of such facility.

8 The term "Kansas business facility" includes only structures within which
9 individuals are customarily employed or which are customarily used to
10 house machinery, equipment or other property and that are not designed
11 with the capability of being transported, moved or relocated. Such Kansas
12 business facility shall satisfy the following requirements: (1) Such facility
13 must be employed by the eligible taxpayer in the operation of a revenue
14 producing enterprise. Such facility shall not be considered a Kansas busi-
15 ness facility in the hands of the taxpayer if the taxpayer's only activity with
16 respect to such facility is to lease it to another person or persons. If the
17 taxpayer employs only a portion of such facility in the operation of a
18 revenue producing enterprise, and leases another portion of such facility
19 to another person or persons or does not otherwise use such other por-
20 tions in the operation of a revenue producing enterprise, the portion
21 employed by the taxpayer in the operation of a revenue producing en-
22 terprise shall be considered a Kansas business facility, if the requirements
23 of subsection (e)(2) are satisfied; and

24 (2) if such facility was acquired by the taxpayer from another person
25 or persons, such facility was not employed, immediately prior to the trans-
26 fer of title to such facility to the taxpayer, or to the commencement of
27 the term of the lease of such facility to the taxpayer, by any other person
28 or persons in the operation of a revenue producing enterprise and the
29 taxpayer continues the operation of the same or substantially identical
30 revenue producing enterprise at such facility;

31 (f) "opportunity zone" shall be established by the secretary of com-
32 merce through rules and regulations. ~~In addition to other opportunity~~
33 ~~zone designation criteria established by the secretary, such criteria shall~~
34 ~~include: (1) An opportunity zone, which shall be comprised of at least~~
35 ~~one county; (2) shall be economically disadvantaged; and (3) shall not~~
36 ~~include any counties in a metropolitan statistical area or micropolitan~~
37 ~~statistical area;~~

38 (g) "qualified investment" means the value of the real and tangible
39 personal property permanently and physically located at the Kansas busi-
40 ness facility, except that "qualified investment" does not include inven-
41 tory, construction in progress, or property held for sale to customers in
42 the ordinary course of the taxpayer's business, which constitutes the Kan-
43 sas business facility, or which is used by the taxpayer in the operation of

means a zone

which shall: (1) Be

and (4) meet any other criteria established by the secretary through rules and regulations;

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 or (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 means a revenue producing enterprise in which the products produced
2 or sold, services performed or activities conducted are the same in char-
3 acter and use, are produced, sold, performed or conducted in the same
4 manner and to or for the same type of customers as the products, services
5 or activities produced, sold, performed or conducted in another revenue
6 producing enterprise.

7 New Sec. 3. (a) An eligible taxpayer may qualify for the investment
8 credit if all of the following criteria are met: (1) The taxpayer's Kansas
9 business facility must be:

10 (A) Identified under the North American industry classification sys-
11 tem (NAICS) subsector of 221, 311-425, 481-624, 812-813, or 922-928,
12 as assigned by the secretary of the department of labor; or

13 (B) identified as a headquarters or ancillary support operation by the
14 secretary of commerce for purposes of this act, regardless of NAICS
15 classification;

16 (2) the qualified investment for the project must equal or exceed
17 ~~\$100,000~~ for those Kansas business facilities that are located in an op-
18 portunity zone and ~~\$1,000,000~~ for those Kansas business facilities that
19 are not located in an opportunity zone;

20 (3) the taxpayer shall satisfy payment of a higher-than-average wage
21 within a wage region at the Kansas business facility at which qualified
22 investment occurs by performing one of the options described below: (A)

23 The taxpayer's Kansas business facility with 500 or fewer full-time equiv-
24 alent employees will provide an average wage that is above the average
25 wage paid by all Kansas business facilities that share the same assigned
26 NAICS category used to develop wage thresholds and that have reported
27 500 or fewer employees to the Kansas department of labor on the quar-
28 terly wage reports;

29 (B) the taxpayer's Kansas business facility with 500 or fewer full-time
30 equivalent employees is the sole facility within its assigned NAICS cate-
31 gory that has reported wages for 500 or fewer employees to the Kansas
32 department of labor on the quarterly wage reports;

33 (C) the taxpayer's Kansas business facility with more than 500 full-
34 time equivalent employees will provide an average wage that is above the
35 average wage paid by all Kansas business facilities that share the same
36 assigned NAICS category used to develop wage thresholds and that have
37 reported more than 500 employees to the Kansas department of labor on
38 the quarterly wage reports;

39 (D) the taxpayer's Kansas business facility with more than 500 full-
40 time equivalent employees is the sole facility within its assigned NAICS
41 category that has reported wages for more than 500 employees to the
42 Kansas department of labor on the quarterly wage reports, in which event
43 it shall either provide an average wage that is above the average wage

236-238,

811-813

\$50,000

\$150,000

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; and

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 ~~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 _____

(5) For taxpayers not covered by the Kansas employment security law pursuant to K.S.A. 44-703(i)(4)(B), the wage data required to compute the average wage calculated for the taxpayer's Kansas business facility will be based upon the taxpayer's wage level documentation approved by the secretary of commerce.

2007

or on an amended return

as long as the amended return filed is within the statute of limitations

1 credit amount thereof which exceeds the eligible taxpayer's tax liability
2 may be carried forward for credit in the succeeding taxable year or years
3 until the total amount of the tax credit is used, except that no such tax
4 credit shall be carried forward for deduction after the tenth taxable year
5 succeeding the taxable year in which such credit initially was claimed and
6 no carry forward shall be allowed for deduction in any succeeding taxable
7 year unless the taxpayer continues to satisfy the eligibility criteria in section
8 3, and amendments thereto, for such succeeding taxable year.

9 \$150,000
10 (d) A qualified investment of at least ~~\$1,000,000~~, made by the eligible
11 taxpayer in a Kansas business facility that is not located in a designated
12 opportunity zone, may qualify for the investment credit. \$50,000

13 (e) A qualified investment, of at least ~~\$100,000~~, made by the eligible
14 taxpayer in a Kansas business facility that is located in a designated opportunity
15 zone, may qualify for the investment credit.

16 (f) If the eligible taxpayer is a corporation having an election in effect
17 under subchapter S of the federal internal revenue code, a partnership
18 or limited liability company, the credit provided by this section shall be
19 claimed by the shareholders of such corporation, the partners of such
20 partnership or the members of such limited liability company in the same
21 manner as such shareholders, partners, or members account for their
22 proportionate shares of income or loss of the corporation, partnership or
23 limited liability company.

24 New Sec. 5. (a) The secretary of revenue and the secretary of commerce
25 shall work together to coordinate a set of procedures to implement
26 the provisions of this act.

27 (b) Any taxpayer claiming credits pursuant to this act, as a condition
28 for claiming and qualifying for such credits, shall provide information
29 pursuant to K.S.A. 2006 Supp. 79-32,243, and amendments thereto, as
30 part of the tax return in which such credits are claimed. Such credits shall
31 not be denied solely on the basis of the contents of the information provided
32 by the taxpayer pursuant to K.S.A. 2006 Supp. 79-32,243, and
33 amendments thereto.

34 (c) The secretary of revenue shall submit an annual report to the
35 legislature regarding utilization of the credits claimed pursuant to this act,
36 for purposes of evaluation. Such report shall be due during the legislative
37 session, commencing with the ~~2009~~ legislative session.

38 New Sec. 6. The secretary of revenue and secretary of commerce
39 may adopt such rules and regulations as necessary to carry out the purposes
40 of this act.

41 New Sec. 7. (a) Except as otherwise provided, for tax years commencing
42 on or after December 31, ~~2006~~, no additional credits may be
43 earned through the Kansas enterprise zone act, K.S.A. 79-32,160a; or the
44 job expansion and investment tax credit act, K.S.A. 79-32,153. Any carry

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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 2007
 6 in recomputing the credit after December 31, ~~2006~~, may continue for the
 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 2007
 10 after December 31, ~~2006~~, no additional credits may be earned through
 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 2007
 14 (e) of K.S.A. 79-32,160a and is remaining after December 31, ~~2006~~, may
 15 be carried forward to succeeding taxable years, providing all requirements
 16 continue to be met and subject to the applicable carryforward limitations.
 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- 2008
 19 formance incentive act, subsection (e) of K.S.A. 79-32,160a, ~~K.S.A. 74-~~ and
 20 50,131 ~~and K.S.A. 74-50,132~~ during the certification period in tax years 2008 and 2009
 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- 2008
 24 commodate unusual timing situations during the ~~2007~~ transition period,
 25 timing modifications may be authorized at the discretion of the secretary
 26 of commerce and the secretary of revenue.

27 New Sec. 8. The provisions of this act shall be applicable to all tax- 2007
 28 able years commencing after December 31, ~~2006~~, and prior to January 2013
 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

(b) "agreement" means an agreement entered into between an opportunity zone
 job credit taxpayer and the secretary for benefits under section 12, and
 amendments thereto.
 renumber remaining subsections in section 10.

1 banking association, state bank, trust company or savings and loan asso-
2 ciation paying an annual tax on its net income pursuant to article 11 of
3 chapter 79 of the Kansas Statutes Annotated, or any insurance company
4 paying the premium tax and privilege fees imposed pursuant to K.S.A.
5 40-252, and amendments thereto, is current in payment of Kansas taxes,
6 and has a Kansas business facility as defined in the investment credit act:

7 (1) Identified under the North American industry classification system 236-238,
8 (NAICS) subsector of 221, ~~311-425, 481-624, 812-813,~~ or 922-928, as 811-813
9 assigned by the secretary of the department of labor; or

10 (2) identified as a headquarters or ancillary support operation, re-
11 gardless of NAICS classification;

12 (d) "new employee" means a person newly employed by the taxpayer
13 in the taxpayer's business operating in Kansas during the taxable year for
14 which the credit allowed by section (11), and amendments thereto, is
15 claimed. A person shall be deemed to be so engaged if such person per-
16 forms duties in Kansas in connection with the operation of the Kansas
17 business on: (A) A regular, full-time basis; (B) a part-time basis, provided
18 such person is customarily performing such duties at least 20 hours per
19 week throughout the taxable year; or (C) a seasonal basis, provided such
20 person performs such duties for substantially all of the season customary
21 for the position in which such person is employed. For a Kansas business
22 that becomes operational during the current tax year, new employees shall
23 be the number of employees employed at the taxpayer's Kansas business
24 on the last business day of the taxpayer's tax year. In the case of employees
25 hired, in which the Kansas business existed and was operated by the
26 taxpayer prior to such hiring, the number of new employees employed in
27 the operation of the Kansas business shall be reduced by the number of
28 employees employed at such Kansas business on the last business day of
29 the taxpayer's previous tax year. Employees acquired through an acqui-
30 sition or merger of a business operating in Kansas shall not be considered
31 as new employees;

32 (e) "opportunity zone" means a zone
33 merce through rules and regulations. ~~In addition to other criteria estab-~~
34 ~~lished by the secretary, such criteria shall include: (1) An opportunity~~
35 ~~zone which shall be comprised of at least one county;~~ which shall: (1) Be

36 (2) shall be economically disadvantaged; and
37 (3) shall not include any counties in a metropolitan statistical area or
38 metropolitan statistical area: and (4) meet any other criteria established by the secretary of commerce through
39 (f) "opportunity zone job credit taxpayer" means any business entity
40 with a Kansas business facility as defined in the Kansas investment credit
41 act authorized to do business in the state of Kansas which is subject to
42 the state income tax imposed by the provisions of the Kansas income tax
43 act, any national banking association, state bank, trust company or savings

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.

(i) "secretary" means the secretary of the department of commerce.

19 New Sec. 11. (a) For taxable years commencing after December 31,

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20 ~~2006~~, any opportunity zone job credit taxpayer who engages in new em-
21 ployment at least ~~five~~ new employees in the taxpayer's business operating

two

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
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.

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

five

(c) Any Kansas job credit taxpayer, as defined in subsection (c)(2) of section 10, and
amendments thereto, located in the state of Kansas who engages in new employment at
least 20 new employees in the taxpayer's business operating in Kansas shall be allowed
a credit of \$1,500 per new employee, against the tax imposed by the Kansas income tax
act, 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 of the Kansas Statutes
Annotated, for the taxable year during which the employees were hired.

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

or an amended return

as long as the amended return filed is within the statute of limitations

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.

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,
35 2012.

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 32,153, 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-

Insert Sec. 12 and renumber sections accordingly (see attachment)

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Insert Sec. 16 and Sec. 17 and renumber sections accordingly (see attachment)

74-50,132

1 shall be guilty of a misdemeanor and, upon conviction therefor, shall be
2 subject to the penalties provided for in subsection (g) of K.S.A. 79-3615,
3 and amendments thereto.

4 Sec. 20. K.S.A. 40-253a, 74-50,113, 74-50,116, 74-50,117, 74-50,118,
5 74-50,119, 74-50,135, 74-50,135a, 74-8945, 79-32,155, 79-32,156, 79-
6 32,157, 79-32,158, 79-32,159, 79-32,159a, 79-32,159b, 79-32,159c, 79-
7 32,160, 79-32,160b and 79-32,160c and K.S.A. 2006 Supp. 74-50,114, 74-
8 50,115, 74-50,131, 74-50,132, ~~74-50,133~~, 74-50,134, 79-3269, 79-32,111,
9 79-32,153, 79-32,154, 79-32,160a, 79-32,243 and 79-3606 are hereby
10 repealed.

11 Sec. 21. This act shall take effect and be in force from and after its
12 publication in the statute book.

New Sec. 12. (a) Any opportunity zone job credit taxpayer who engages in new employment at least two new employees in the taxpayer's business operating in a designated opportunity zone in Kansas may be eligible for a period of no more than three calendar years to receive an amount not to exceed that opportunity zone job credit taxpayer's Kansas payroll withholding taxes for the three year period set forth in the agreement from the opportunity zone job credit taxpayer fund.

(b) An opportunity zone job credit taxpayer may apply to the secretary to enter into an agreement for benefits under this section. The application shall include: (1) Evidence that the applicant is an opportunity zone job credit taxpayer as defined in section 10, and amendments thereto, and (2) that the opportunity zone job credit taxpayer agrees to ~~continuously employ the new employees described in subsection (a)~~ *not reduce the total number of employees employed at such taxpayer's business operating in a designated opportunity zone in Kansas* for a period of at least three calendar years following the hiring of the new employees.

(c) Upon receipt of an application described in subsection (b), if the secretary finds that the application is from an opportunity zone job credit taxpayer, the secretary may enter into an agreement with the opportunity zone job credit taxpayer for benefits under this section. The agreement shall commit the secretary to request that for a period of no longer than three years, at the discretion of the secretary, from the date of the executed agreement, funds from the opportunity zone job credit taxpayer fund created in subsection (d) shall be transferred by the state treasurer to the opportunity zone job credit taxpayer. The agreement shall set forth the terms and conditions under which the secretary shall direct the state treasurer to transfer revenues in the opportunity zone job credit taxpayer fund to the opportunity zone job credit taxpayer. All of the opportunity zone job credit taxpayer's Kansas payroll withholding taxes shall be paid out. In the event the opportunity zone job credit taxpayer fails to comply with the terms and conditions set forth in the agreement, the agreement shall provide that the secretary may terminate the agreement, and the opportunity zone job credit taxpayer shall not be entitled to further distributions from the opportunity zone job credit taxpayer fund.

(d) The state treasurer shall credit all revenue collected or received from withholding upon Kansas wages paid by an opportunity zone job credit taxpayer, as certified by the secretary, to the opportunity zone job credit taxpayer fund, which fund is hereby created in the custody of the state treasurer, but which fund shall not be a part of the state treasury or the state general fund. Distributions from the fund shall not be subject to appropriation. Moneys credited to the opportunity zone job credit taxpayer fund in accordance with the foregoing provisions shall be distributed on the order of the secretary. The state treasurer shall make such distributions on such dates as mutually agreed to by the secretary and the state treasurer, serving as paying agent pursuant to the terms of the agreement. The total of all distributions under this section to an opportunity zone job credit taxpayer shall not exceed that opportunity zone job credit taxpayer's Kansas payroll withholding taxes for the three year period set forth in the agreement.

(e) The agreement between the opportunity zone job credit taxpayer and the secretary shall be entered into before any benefits may be provided under this section, and shall specify that should the opportunity zone job credit taxpayer fail to comply with the terms set forth in the agreement, the secretary may terminate the agreement, and the opportunity zone job credit taxpayer shall not be entitled to further distributions from the opportunity zone job credit taxpayer fund.

(f) Each opportunity zone job credit taxpayer, for which benefits have been issued during

the preceding year, shall submit to the secretary information required by the secretary regarding such taxpayer's compliance with this section. The secretary shall conduct an annual review of the activities undertaken pursuant to this section to ensure that benefits issued pursuant to this section are issued in compliance with the provisions of this section or rules and regulations adopted by the secretary with respect to this section.

(g) Notwithstanding any other provision of this act, the agreement entered into between the secretary and the opportunity zone job credit taxpayer may be assignable to any other opportunity zone job credit taxpayer upon the written consent of the secretary, provided, such assignment is made as part of the sale of the opportunity zone job credit taxpayer's Kansas business to such other opportunity zone job credit taxpayer.

Sec. 16. K.S.A. 2006 Supp. 74-50,131 is hereby amended to read as follows: 74-50,131. Commencing after December 31, 1999: (a) As used in ~~[this act]~~ K.S.A. 74-50,132 and 74-50,133, and amendments thereto: (1) "Qualified firm" means a for-profit business establishment, subject to state income, sales or property taxes, identified under the standard industrial classification (SIC) codes as in effect July 1, 1993, major groups 20 through 39, major groups 40 through 51, and major groups 60 through 89; identified under the North American industry classification system (NAICS) as in effect on October 1, 2000, or is identified as a corporate or regional headquarters or back-office operation of a national or multi-national corporation regardless of SIC code or NAICS designation. The secretary of commerce shall determine eligibility when a difference exists between a firm's SIC code and NAICS designation. A business establishment may be assigned a standard industrial classification code or NAICS designation according to the primary business activity at a single physical location in the state.

(2) "Metropolitan county" means the county of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee or Wyandotte.

(b) ~~[In the case of firms in major groups 40 through 51, and major groups 60 through 89 or the appropriate NAICS designation the business establishment must also demonstrate the following:~~

~~———— (1) More than 1/2 of its gross revenues are a result of sales to commercial or governmental customers outside the state of Kansas; or~~

~~———— (2) more than 1/2 of its gross revenues are a result of sales to Kansas manufacturing firms within major groups 20 through 39 or the appropriate NAICS designation; or~~

~~———— (3) more than 1/2 of its gross revenues are a result of a combination of sales described in (1) and (2).~~

(c) For purposes of determining whether one of the average wage options described in subsection (d) below is satisfied, business establishments located within a metropolitan county ~~[, as defined in K.S.A. 74-50,114, and amendments thereto,]~~ will be compared only to other businesses within that metropolitan county, and business establishments located outside of a metropolitan county will be compared to businesses within an aggregation of counties representing the business establishment's region of the state, which regional aggregation will exclude metropolitan counties. Such aggregation shall be determined by the department of commerce.

~~(c)~~ (c) Additionally, a business establishment having met the criteria as established in subsection (a) ~~[or (b)]~~, and using the comparison method described in subsection (c) (b), must meet one of the following criteria:

(1) The establishment with 500 or fewer full-time equivalent employees will provide an average wage that is above the average wage paid by all firms with 500 or fewer full-time equivalent employees which share the same two-digit standard industrial classification code or appropriate NAICS designation.

(2) The establishment with 500 or fewer full-time equivalent employees is the sole firm within its two-digit standard industrial classification code or appropriate NAICS designation which has 500 or fewer full-time equivalent employees.

(3) The establishment with more than 500 full-time equivalent employees will provide an average wage that is above the average wage paid by firms with more than 500 full-time equivalent employees which share the same two-digit standard industrial classification code or appropriate NAICS designation.

(4) The establishment with more than 500 full-time equivalent employees is the sole firm within its two-digit standard industrial classification code or appropriate NAICS designation which

has 500 or more full-time equivalent employees, in which event it shall either provide an average wage that is above the average wage paid by all firms with 500 or fewer full-time equivalent employees which share the same two-digit standard industrial classification code or appropriate NAICS designation, or be the sole firm within its two-digit standard industrial classification code or appropriate NAICS designation.

(e) (d) As an alternative to the requirements of subsections [~~(c) and (d)~~] (b) and (c), a firm having met the requirements of [~~subsections (a) or (b)~~] subsection (a), may qualify, if excluding taxable disbursements to company owners, the business establishment's annual average wage must be greater than or equal to 1.5 times the aggregate average wage paid by industries covered by the employment security law based on data maintained by the secretary of labor.

(f) (e) For the purposes of this section, the number of full-time equivalent employees shall be determined by dividing the number of hours worked by part-time employees during the pertinent measurement interval by an amount equal to the corresponding multiple of a 40-hour work week and adding the quotient to the number of full-time employees.

(g) (f) The secretary of commerce shall certify annually to the secretary of revenue that a firm meets the criteria for a qualified firm and that the firm is eligible for the benefits and assistance provided under [~~this act~~] K.S.A. 74-50,132 and 74-50,133, and amendments thereto. The secretary of commerce is hereby authorized to obtain any and all information necessary to determine such eligibility. Information obtained under this section shall not be subject to disclosure pursuant to K.S.A. 45-215 *et seq.*, and amendments thereto, but shall upon request be made available to the legislative post audit division. The secretary of commerce shall publish rules and regulations for the implementation of this act. Such rules and regulations shall include, but not be limited to:

(1) A definition of "training and education" for purposes of K.S.A. 74-50,132 and amendments thereto.

(2) Establishment of eligibility requirements and application procedures for expenditures from the high performance incentive fund created in K.S.A. 74-50,133 and amendments thereto.

(3) Establishment of approval guidelines for private consultants authorized pursuant to K.S.A. 74-50,133 and amendments thereto.

(4) Establishment of guidelines for prioritizing business assistance programs pursuant to K.S.A. 74-50,133 and amendments thereto.

(5) A definition of "commercial customer" for the purpose of K.S.A. 74-50,133 and amendments thereto.

(6) A definition of "headquarters" for the purpose of K.S.A. 74-50,133 and amendments thereto.

(7) Establishment of guidelines concerning the use and disclosure of any information obtained to determine the eligibility of a firm for the assistance and benefits provided for by [~~this act~~] K.S.A. 74-50,132 and 74-50,133, and amendments thereto.

Sec. 17. K.S.A. 2006 Supp. 74-50,132 is hereby amended to read as follows: 74-50,132

(a) For taxable years commencing after December 31, 1997, a qualified firm shall be entitled to a credit against the tax imposed by the Kansas income tax act, the premium tax or privilege fee 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 chapter 79, article 11 of the Kansas Statutes Annotated in an amount equal to the portion of the qualified business facility cash investment in the training and education of the firm's employees that exceeds 2% of the firm's total payroll costs. The maximum amount of the credit that may be claimed by a single corporate taxpayer in any single tax year under this section shall not exceed \$50,000. Tax credits earned by a qualified business under this section must be claimed in their entirety in the tax year eligible.

(b) 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. 2006 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. 2006 Supp. 79-32,243, and amendments thereto.

(c) For purposes of this section, training and education shall include verifiable computer based training.