

HOUSE BILL No. 2516

By Committee on Taxation

3-8

9 AN ACT concerning income taxation; relating to credits for investment
10 in qualified business facility; assignment thereof; amending K.S.A.
11 2004 Supp. 79-32,160a and repealing the existing section.
12

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

14 Section 1. K.S.A. 2004 Supp. 79-32,160a is hereby amended to read
15 as follows: 79-32,160a. (a) For taxable years commencing after December
16 31, 1999, any taxpayer who shall invest in a qualified business facility, as
17 defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto,
18 and also meets the definition of a business in subsection (b) of K.S.A. 74-
19 50,114, and amendments thereto, shall be allowed a credit for such in-
20 vestment, in an amount determined under subsection (b) or (c), as the
21 case requires, against the tax imposed by the Kansas income tax act or
22 where the qualified business facility is the principal place from which the
23 trade or business of the taxpayer is directed or managed and the facility
24 has facilitated the creation of at least 20 new full-time positions, against
25 the premium tax or privilege fees imposed pursuant to K.S.A. 40-252,
26 and amendments thereto, or as measured by the net income of financial
27 institutions imposed pursuant to chapter 79, article 11 of the Kansas Stat-
28 utes Annotated, for the taxable year during which commencement of
29 commercial operations, as defined in subsection (f) of K.S.A. 79-32,154,
30 and amendments thereto, occurs at such qualified business facility. In the
31 case of a taxpayer who meets the definition of a manufacturing business
32 in subsection (d) of K.S.A. 74-50,114, and amendments thereto, no credit
33 shall be allowed under this section unless the number of qualified busi-
34 ness facility employees, as determined under subsection (d) of K.S.A. 79-
35 32,154, and amendments thereto, engaged or maintained in employment
36 at the qualified business facility as a direct result of the investment by the
37 taxpayer for the taxable year for which the credit is claimed equals or
38 exceeds two. In the case of a taxpayer who meets the definition of a
39 nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and
40 amendments thereto, no credit shall be allowed under this section unless
41 the number of qualified business facility employees, as determined under
42 subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or
43 maintained in employment at the qualified business facility as a direct

1 result of the investment by the taxpayer for the taxable year for which the
2 credit is claimed equals or exceeds five. Where an employee performs
3 services for the taxpayer outside the qualified business facility, the em-
4 ployee shall be considered engaged or maintained in employment at the
5 qualified business facility if (1) the employee's service performed outside
6 the qualified business facility is incidental to the employee's service inside
7 the qualified business facility, or (2) the base of operations or, the place
8 from which the service is directed or controlled, is at the qualified busi-
9 ness facility.

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

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

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

30 (c) The credit allowed by subsection (a) for any taxpayer who invests
31 in a qualified business facility, which is not located in a nonmetropolitan
32 region established under K.S.A. 74-50,116, and amendments thereto, and
33 which also meets the definition of business in subsection (b) of K.S.A.
34 74-50,114, and amendments thereto, on or after the effective date of this
35 act, shall be a portion of the income tax imposed by the Kansas income
36 tax act on the taxpayer's Kansas taxable income, the premium tax or priv-
37 ilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto,
38 or the privilege tax as measured by the net income of financial institutions
39 imposed pursuant to chapter 79, article 11 of the Kansas Statutes An-
40 notated, for the taxable year for which such credit is allowed, but in the
41 case where the qualified business facility investment was made prior to
42 January 1, 1996, not in excess of 50% of such tax. Such portion shall be
43 an amount equal to the sum of the following:

- 1 (1) One thousand five hundred dollars for each qualified business
2 facility employee as determined under K.S.A. 79-32,154, and amend-
3 ments thereto; and
- 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 (d) The credit allowed by subsection (a) for each qualified business
9 facility employee and for qualified business facility investment shall be a
10 one-time credit. *If the amount of the credit allowed under subsection (a)*
11 *exceeds the taxpayer's income tax liability imposed under the Kansas in-*
12 *come tax act, such excess amount shall be refunded to the taxpayer, except*
13 *that the amount of any such refund shall not exceed \$50,000; or such*
14 *excess amounts shall be refunded to the taxpayer in an amount equal to*
15 *the taxpayer's income tax liability and the taxpayer may sell, assign, con-*
16 *vey or otherwise transfer as provided pursuant to subsection (f) such tax*
17 *credits in an amount equal to the difference between the \$50,000 limita-*
18 *tion contained in this subsection and the amount refunded to the taxpayer.*
19 If the amount of the credit allowed under subsection (a) exceeds the tax
20 imposed by the Kansas income tax act on the taxpayer's Kansas taxable
21 income, the premium tax and privilege fees imposed pursuant to K.S.A.
22 40-252, and amendments thereto, or the privilege tax as measured by the
23 net income of financial institutions imposed pursuant to chapter 79, ar-
24 ticle 11 of the Kansas Statutes Annotated for the taxable year, or in the
25 case where the qualified business facility investment was made prior to
26 January 1, 1996, 50% of such tax imposed upon the amount which exceeds
27 such tax liability or such portion thereof may be carried over for credit in
28 the same manner in the succeeding taxable years until the total amount
29 of such credit is used. Except that, before the credit is allowed, a taxpayer,
30 who meets the definition of a manufacturing business in subsection (d)
31 of K.S.A. 74-50,114, and amendments thereto, shall recertify annually
32 that the net increase of a minimum of two qualified business facility em-
33 ployees has continued to be maintained and a taxpayer, who meets the
34 definition of a nonmanufacturing business in subsection (f) of K.S.A. 74-
35 50,114, and amendments thereto, shall recertify annually that the net
36 increase of a minimum of five qualified business employees has continued
37 to be maintained.
- 38 (e) Notwithstanding the foregoing provisions of this section, any tax-
39 payer qualified and certified under the provisions of K.S.A. 74-50,131,
40 and amendments thereto; which, prior to making a commitment to invest
41 in a qualified Kansas business, has filed a certificate of intent to invest in
42 a qualified business facility in a form satisfactory to the secretary of com-
43 merce; and that has received written approval from the secretary of com-

1 merce for participation and has participated, during the tax year for which
2 the exemption is claimed, in the Kansas industrial training, Kansas in-
3 dustrial retraining or the state of Kansas investments in lifelong learning
4 program or is eligible for the tax credit established in K.S.A. 74-50,132,
5 and amendments thereto, shall be entitled to a credit in an amount equal
6 to 10% of that portion of the qualified business facility investment which
7 exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2)
8 without regard to the number of qualified business facility employees
9 engaged or maintained in employment at the qualified business facility.
10 The credit allowed by this subsection shall be a one-time credit. *If the*
11 *amount of the credit allowed under subsection (a) exceeds the taxpayer's*
12 *income tax liability imposed under the Kansas income tax act, such excess*
13 *amount shall be refunded to the taxpayer, except that the amount of any*
14 *such refund shall not exceed \$50,000; or such excess amounts shall be*
15 *refunded to the taxpayer in an amount equal to the taxpayer's income tax*
16 *liability and the taxpayer may sell, assign, convey or otherwise transfer*
17 *as provided pursuant to subsection (f) such tax credits in an amount equal*
18 *to the difference between the \$50,000 limitation contained in this subsec-*
19 *tion and the amount refunded to the taxpayer. If the amount thereof*
20 *exceeds the tax imposed by the Kansas income tax act on the taxpayer's*
21 *Kansas taxable income or the premium tax or privilege fees imposed pur-*
22 *suant 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 *chapter 79, article 11 of the Kansas Statutes Annotated for the taxable*
25 *year, the amount thereof which exceeds such tax liability may be carried*
26 *forward for credit in the succeeding taxable year or years until the total*
27 *amount of the tax credit is used, except that no such tax credit shall be*
28 *carried forward for deduction after the 10th taxable year succeeding the*
29 *taxable year in which such credit initially was claimed and no carry for-*
30 *ward shall be allowed for deduction in any succeeding taxable year unless*
31 *the taxpayer continued to be qualified and was recertified for such suc-*
32 *ceeding taxable year pursuant to K.S.A. 74-50,131, and amendments*
33 *thereto.*

34 (f) *Any taxpayer which has made an investment in a qualified busi-*
35 *ness facility and has qualified for tax credits pursuant to this section for*
36 *at least four years and has been issued tax credits pursuant to this section,*
37 *for at least three years, hereinafter designated the assignor, may sell, as-*
38 *sign, convey or otherwise transfer tax credits allowed and earned pur-*
39 *suant to this section for an amount equal to the value of any such credit,*
40 *except that such credit shall not exceed the greater of the amount of the*
41 *tax credit that exceeds any amount refunded to the taxpayer or \$50,000.*
42 *Such credits shall be deemed to be allowed and earned by any such tax-*
43 *payer. The business firm acquiring earned credits, hereinafter designated*

1 *the assignee, may use the amount of the acquired credits to offset up to*
2 *100% of its income, privilege or premiums tax liability for the taxable year*
3 *in which such acquisition was made. Unused credit amounts claimed by*
4 *the assignee may be carried forward for up to five years, except that all*
5 *such amounts shall be claimed within 10 years following the tax year in*
6 *which the contribution was made. The assignor shall enter into a written*
7 *agreement with the assignee establishing the terms and conditions of the*
8 *agreement and shall perfect such transfer by notifying the department of*
9 *commerce in writing within 30 calendar days following the effective date*
10 *of the transfer and shall provide any information as may be required by*
11 *the department of commerce to administer and carry out the provisions*
12 *of this section. The amount received by the assignor of such tax credit*
13 *shall be taxable as income of the assignor, and the excess of the value of*
14 *such credit over the amount paid by the assignee for such credit shall be*
15 *taxable as income of the assignee. This section and K.S.A. 79-32,160b,*
16 *and amendments thereto, shall be part of and supplemental to the job*
17 *expansion and investment credit act of 1976 and acts amendatory thereof*
18 *and supplemental thereto.*

19 Sec. 2. K.S.A. 2004 Supp. 79-32,160a is hereby repealed.

20 Sec. 3. This act shall take effect and be in force from and after its
21 publication in the statute book.