

## SENATE BILL No. 597

By Committee on Federal and State Affairs

3-31

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9 AN ACT concerning income taxation; relating to credits; amending  
10 K.S.A. 2005 Supp. 74-50,131 and 79-32,160a and repealing the existing  
11 sections.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 74-50,131 is hereby amended to read  
15 as follows: 74-50,131. Commencing after December 31, ~~1999~~ 2005: (a)  
16 As used in this act: “Qualified firm” means a for-profit business estab-  
17 lishment, subject to state income, sales or property taxes, identified under  
18 the standard industrial classification (SIC) codes as in effect July 1, 1993,  
19 major groups 20 through 39, major groups 40 through 51, and major  
20 groups 60 through 89 *and for the purposes of subsection (e) of K.S.A. 79-*  
21 *32,160a, and amendments thereto, “qualified firm” means a for-profit*  
22 *business establishment, subject to state income, sales or property taxes,*  
23 *identified under the standard industrial classification (SIC) codes as in*  
24 *effect on July 1, 1993, major groups 1 through 17, major groups 20*  
25 *through 39, major groups 40 through 51, major groups 52 through 59*  
26 *and major groups 60 through 89; identified under the North American*  
27 *industry classification system (NAICS) as in effect on October 1, 2000,*  
28 *or is identified as a corporate or regional headquarters or back-office*  
29 *operation of a national or multi-national corporation regardless of SIC*  
30 *code or NAICS designation. The secretary of commerce shall determine*  
31 *eligibility when a difference exists between a firm’s SIC code and NAICS*  
32 *designation. A business establishment may be assigned a standard indus-*  
33 *trial classification code or NAICS designation according to the primary*  
34 *business activity at a single physical location in the state.*

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

38 (1) More than ½ of its gross revenues are a result of sales to com-  
39 mercial or governmental customers outside the state of Kansas; or

40 (2) more than ½ of its gross revenues are a result of sales to Kansas  
41 manufacturing firms within major groups 20 through 39 or the appropri-  
42 ate NAICS designation; or

43 (3) more than ½ of its gross revenues are a result of a combination

1 of sales described in (1) and (2).

2 (c) For purposes of determining whether one of the average wage  
3 options described in subsection (d) below is satisfied, business establish-  
4 ments located within a metropolitan county, as defined in K.S.A. 74-  
5 50,114, and amendments thereto, will be compared only to other busi-  
6 nesses within that metropolitan county, and business establishments  
7 located outside of a metropolitan county will be compared to businesses  
8 within an aggregation of counties representing the business establish-  
9 ment's region of the state, which regional aggregation will exclude met-  
10 ropolitan counties. Such aggregation shall be determined by the depart-  
11 ment of commerce.

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

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

20 (2) The establishment with 500 or fewer full-time equivalent em-  
21 ployees is the sole firm within its two-digit standard industrial classifica-  
22 tion code or appropriate NAICS designation which has 500 or fewer full-  
23 time equivalent employees.

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

29 (4) The establishment with more than 500 full-time equivalent em-  
30 ployees is the sole firm within its two-digit standard industrial classifica-  
31 tion code or appropriate NAICS designation which has 500 or more full-  
32 time equivalent employees, in which event it shall either provide an  
33 average wage that is above the average wage paid by all firms with 500  
34 or fewer full-time equivalent employees which share the same two-digit  
35 standard industrial classification code or appropriate NAICS designation,  
36 or be the sole firm within its two-digit standard industrial classification  
37 code or appropriate NAICS designation.

38 (e) As an alternative to the requirements of subsections (c) and (d),  
39 a firm having met the requirements of subsections (a) or (b), may qualify,  
40 if excluding taxable disbursements to company owners, the business es-  
41 tablishment's annual average wage must be greater than or equal to 1.5  
42 times the aggregate average wage paid by industries covered by the em-  
43 ployment security law based on data maintained by the secretary of labor.

- 1 (f) For the purposes of this section, the number of full-time equiva-  
2 lent employees shall be determined by dividing the number of hours  
3 worked by part-time employees during the pertinent measurement in-  
4 terval by an amount equal to the corresponding multiple of a 40-hour  
5 work week and adding the quotient to the number of full-time employees.
- 6 (g) The secretary of commerce shall certify annually to the secretary  
7 of revenue that a firm meets the criteria for a qualified firm and that the  
8 firm is eligible for the benefits and assistance provided under this act. *For*  
9 *the purposes of subsection (e) of K.S.A. 79-32,160a, and amendments*  
10 *thereto, the secretary of commerce shall certify annually to the secretary*  
11 *of revenue that a firm meets the criteria for a qualified firm pursuant to*  
12 *subsection (a), and that the firm is eligible for the credit provided in*  
13 *subsection (e) of K.S.A. 79-32,160a, and amendments thereto.* The sec-  
14 retary of commerce is hereby authorized to obtain any and all information  
15 necessary to determine such eligibility. Information obtained under this  
16 section shall not be subject to disclosure pursuant to K.S.A. 45-215 et  
17 seq., and amendments thereto, but shall upon request be made available  
18 to the legislative post audit division. The secretary of commerce shall  
19 publish rules and regulations for the implementation of this act. Such  
20 rules and regulations shall include, but not be limited to:
- 21 (1) A definition of “training and education” for purposes of K.S.A.  
22 74-50,132 and amendments thereto.
- 23 (2) Establishment of eligibility requirements and application proce-  
24 dures for expenditures from the high performance incentive fund created  
25 in K.S.A. 74-50,133 and amendments thereto.
- 26 (3) Establishment of approval guidelines for private consultants au-  
27 thorized pursuant to K.S.A. 74-50,133 and amendments thereto.
- 28 (4) Establishment of guidelines for prioritizing business assistance  
29 programs pursuant to K.S.A. 74-50,133 and amendments thereto.
- 30 (5) A definition of “commercial customer” for the purpose of K.S.A.  
31 74-50,133 and amendments thereto.
- 32 (6) A definition of “headquarters” for the purpose of K.S.A. 74-  
33 50,133 and amendments thereto.
- 34 (7) Establishment of guidelines concerning the use and disclosure of  
35 any information obtained to determine the eligibility of a firm for the  
36 assistance and benefits provided for by this act.
- 37 Sec. 2. K.S.A. 2005 Supp. 79-32,160a is hereby amended to read as  
38 follows: 79-32,160a. (a) For taxable years commencing after December  
39 31, 1999, any taxpayer who shall invest in a qualified business facility, as  
40 defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto,  
41 and also meets the definition of a business in subsection (b) of K.S.A. 74-  
42 50,114, and amendments thereto, shall be allowed a credit for such in-  
43 vestment, in an amount determined under subsection (b) or (c), as the

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

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

1 50% of such tax. Such portion shall be an amount equal to the sum of  
2 the following:

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

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

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

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

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

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

1 allowed, a taxpayer, who meets the definition of a manufacturing business  
2 in subsection (d) of K.S.A. 74-50,114, and amendments thereto, shall  
3 recertify annually that the net increase of a minimum of two qualified  
4 business facility employees has continued to be maintained and a tax-  
5 payer, who meets the definition of a nonmanufacturing business in sub-  
6 section (f) of K.S.A. 74-50,114, and amendments thereto, shall recertify  
7 annually that the net increase of a minimum of five qualified business  
8 employees has continued to be maintained.

9 (e) Notwithstanding the foregoing provisions of this section, *com-*  
10 *mencing after December 31, 2005*, any taxpayer qualified and certified  
11 under the provisions of K.S.A. 74-50,131, and amendments thereto;  
12 ~~which, prior to making a commitment to invest in a qualified Kansas~~  
13 ~~business, has filed a certificate of intent to invest in a qualified business~~  
14 ~~facility in a form satisfactory to the secretary of commerce, and that has~~  
15 ~~received written approval from the secretary of commerce for participa-~~  
16 ~~tion and has participated, during the tax year for which the exemption is~~  
17 ~~claimed, in the Kansas industrial training, Kansas industrial retraining or~~  
18 ~~the state of Kansas investments in lifelong learning program or is eligible~~  
19 ~~for the tax credit established in K.S.A. 74-50,132, and amendments~~  
20 ~~thereto~~, shall be entitled to a credit in an amount equal to 10% of ~~that~~  
21 ~~portion of the~~ *such taxpayer's* qualified business facility investment ~~which~~  
22 ~~exceeds \$50,000~~ in lieu of the credit provided in subsection (b)(2) or (c)(2)  
23 without regard to the number of qualified business facility employees  
24 engaged or maintained in employment at the qualified business facility  
25 *or without regard to the provisions of subsection (b) of K.S.A. 74-50,131,*  
26 *and amendments thereto.* The credit allowed by this subsection shall be  
27 a one-time credit. If the amount thereof exceeds the tax imposed by the  
28 Kansas income tax act on the taxpayer's Kansas taxable income or the  
29 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and  
30 amendments thereto, or the privilege tax as measured by net income of  
31 financial institutions imposed pursuant to chapter 79, article 11 of the  
32 Kansas Statutes Annotated for the taxable year, the amount thereof which  
33 exceeds such tax liability may be carried forward for credit in the suc-  
34 ceeding taxable year or years until the total amount of the tax credit is  
35 used, ~~except that no such tax credit shall be carried forward for deduction~~  
36 ~~after the 10th taxable year succeeding the taxable year in which such~~  
37 ~~credit initially was claimed and no carry forward shall be allowed for~~  
38 ~~deduction in any succeeding taxable year unless the taxpayer continued~~  
39 ~~to be qualified and was recertified for such succeeding taxable year pur-~~  
40 ~~suant to K.S.A. 74-50,131, and amendments thereto.~~

41 (f) This section and K.S.A. 79-32,160b, and amendments thereto,  
42 shall be part of and supplemental to the job expansion and investment  
43 credit act of 1976 and acts amendatory thereof and supplemental thereto.

1     Sec. 3. K.S.A. 2005 Supp. 74-50,131 and 79-32,160a are hereby  
2 repealed.  
3     Sec. 4. This act shall take effect and be in force from and after its  
4 publication in the statute book.