

**SENATE BILL No. 230**

By Committee on Assessment and Taxation

3-15

1 AN ACT concerning taxation; relating to the high performance incentive  
2 program; moratorium on income tax credits, sales tax exemptions;  
3 amending K.S.A. 2016 Supp. 74-50,115, 74-50,131, 74-50,132 and 79-  
4 32,160a and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 74-50,115 is hereby amended to read as  
8 follows: 74-50,115. (a) A manufacturing business may be eligible for a  
9 sales tax exemption under the provisions of ~~subsection (cc)~~ of K.S.A. 79-  
10 3606(cc), and amendments thereto, if the manufacturing business complies  
11 with the following requirements:

12 (1) A manufacturing business shall provide documented evidence of  
13 job expansion involving the employment of at least two additional full-  
14 time employees; and

15 (2) a manufacturing business located within the state of Kansas that  
16 has documented evidence of job expansion as provided in paragraph (1),  
17 which relocates in another city or county within the state of Kansas must  
18 receive approval from the secretary prior to qualifying for the sales tax  
19 exemption in ~~subsection (cc)~~ of K.S.A. 79-3606(cc), and amendments  
20 thereto, except that approval by the secretary shall not be required if the  
21 manufacturing business relocates within the same city.

22 (b) A nonmanufacturing business may be eligible for a sales tax  
23 exemption under the provisions of ~~subsection (cc)~~ of K.S.A. 79-3606(cc),  
24 and amendments thereto, if the nonmanufacturing business complies with  
25 the following requirements:

26 (1) A nonmanufacturing business shall provide documented evidence  
27 of job expansion involving the employment of at least five additional full-  
28 time employees; and

29 (2) a nonmanufacturing business located within the state of Kansas  
30 that has documented evidence of job expansion as provided in paragraph  
31 (1), which relocates in another city or county within the state of Kansas  
32 must receive approval from the secretary prior to qualifying for the sales  
33 tax exemption in ~~subsection (cc)~~ of K.S.A. 79-3606(cc), and amendments  
34 thereto, except that approval by the secretary shall not be required if the  
35 nonmanufacturing business relocates within the same city.

36 (c) A retail business may qualify for the sales tax exemption under

1 ~~subsection (ee) of K.S.A. 79-3606(cc)~~, and amendments thereto, if the  
2 retail business complies with the following requirements:

3 (1) A retail business shall provide documented evidence of job  
4 expansion involving the employment of at least two additional full-time  
5 employees; and

6 (2) (A) such retail business locates or expands to a city having a  
7 population of 2,500 or less, as determined by the latest Kansas division of  
8 budget revised population numbers that are certified to the secretary of  
9 state, or (B) such retail business locates or expands to a location outside a  
10 city in a county having a population of 10,000 or less, as determined by  
11 the latest Kansas division of budget revised population numbers that are  
12 certified to the secretary of state.

13 (d) Any person constructing, reconstructing, remodeling or enlarging  
14 a facility which will be leased in whole or in part for a period of five years  
15 or more, or commencing on the effective date of this act and ending on  
16 April 1, 2007, any person constructing, reconstructing, remodeling or  
17 enlarging a facility located within Saline county which title of such facility  
18 will be conveyed, to a business that would be eligible for a sales tax  
19 exemption hereunder if such business had constructed, reconstructed,  
20 enlarged or remodeled such facility or portion thereof itself shall be  
21 entitled to the sales tax exemption under the provisions of ~~subsection (ee)~~  
22 ~~of K.S.A. 79-3606(cc)~~, and amendments thereto. When such person leases  
23 less than the total facility to an eligible business, a project exemption  
24 certificate may be granted on: (1) The total cost of constructing,  
25 reconstructing, remodeling or enlarging, the facility multiplied by a  
26 fraction given by dividing the number of leased square feet eligible for the  
27 sales tax exemption by the total square feet being constructed,  
28 reconstructed, remodeled or enlarged; or (2) the actual cost of  
29 constructing, reconstructing, remodeling or enlarging that portion of the  
30 facility to be occupied by the eligible business, as the person may elect.

31 (e) A business may qualify for a sales tax exemption under ~~subsection~~  
32 ~~(ee) of K.S.A. 79-3606(cc)~~, and amendments thereto, without regard to  
33 any of the foregoing requirements of this section if it is certified as a  
34 qualified firm by the secretary of commerce pursuant to K.S.A. 74-50,131,  
35 and amendments thereto, and is entitled to the corporate tax credit  
36 established in K.S.A. 74-50,132, and amendments thereto, or has received  
37 written approval for participation and has participated, during the tax year  
38 in which the exemption is claimed, in training assistance by the  
39 department of commerce under the Kansas industrial training, Kansas  
40 industrial retraining or state of Kansas investments in lifelong learning  
41 program. *For tax years 2018 through 2020, the secretary of commerce*  
42 *shall not initially certify a business under this section as a qualified firm*  
43 *that qualifies for a sales tax exemption certificate.*

1 (f) The secretary may adopt rules and regulations to implement and  
2 administer the provisions of this section.

3 Sec. 2. K.S.A. 2016 Supp. 74-50,131 is hereby amended to read as  
4 follows: 74-50,131. Commencing after December 31, 1999: (a) As used in  
5 this act: "Qualified firm" means a for-profit business establishment,  
6 subject to state income, sales or property taxes, identified under the North  
7 American industry classification system (NAICS) subsectors 221, 311 to  
8 339, 423 to 425, 481 to 519, 521 to 721 and 811 to 928 or is identified as a  
9 corporate or regional headquarters or back-office operation of a national or  
10 multi-national corporation regardless of NAICS designation. The secretary  
11 of commerce shall determine eligibility when a difference exists between a  
12 firm's primary business activity and NAICS designation. A business  
13 establishment may be assigned a NAICS designation according to the  
14 primary business activity at a single physical location in the state.

15 (b) In the case of firms in NAICS subsectors 221, 423 to 425, 481 to  
16 519, 521 to 721 and 811 to 928, the business establishment must also  
17 demonstrate the following:

18 (1) More than  $\frac{1}{2}$  of its gross revenues are a result of sales to  
19 commercial or governmental customers outside the state of Kansas; or

20 (2) more than  $\frac{1}{2}$  of its gross revenues are a result of sales to Kansas  
21 manufacturing firms within NAICS subsectors 311 to 339; or

22 (3) more than  $\frac{1}{2}$  of its gross revenues are a result of a combination of  
23 sales described in (1) and (2).

24 (c) For purposes of determining whether one of the average wage  
25 options described in subsection (d) below is satisfied, business  
26 establishments located within a metropolitan county, as defined in K.S.A.  
27 74-50,114, and amendments thereto, will be compared only to other  
28 businesses within that metropolitan county, and business establishments  
29 located outside of a metropolitan county will be compared to businesses  
30 within an aggregation of counties representing the business establishment's  
31 region of the state, which regional aggregation will exclude metropolitan  
32 counties. Such aggregation shall be determined by the department of  
33 commerce.

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

37 (1) The establishment with 500 or fewer full-time equivalent  
38 employees will provide an average wage that is above the average wage  
39 paid by all firms with 500 or fewer full-time equivalent employees which  
40 share the appropriate NAICS designation.

41 (2) The establishment with 500 or fewer full-time equivalent  
42 employees is the sole firm within its appropriate NAICS designation  
43 which has 500 or fewer full-time equivalent employees.

1 (3) The establishment with more than 500 full-time equivalent  
2 employees will provide an average wage that is above the average wage  
3 paid by firms with more than 500 full-time equivalent employees which  
4 share the appropriate NAICS designation.

5 (4) The establishment with more than 500 full-time equivalent  
6 employees is the sole firm within its appropriate NAICS designation  
7 which has more than 500 full-time equivalent employees, in which event it  
8 shall either provide an average wage that is above the average wage paid  
9 by all firms with 500 or fewer full-time equivalent employees which share  
10 the appropriate NAICS designation, or be the sole firm within its  
11 appropriate NAICS designation.

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

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

24 (g) The secretary of commerce shall certify annually to the secretary  
25 of revenue that a firm meets the criteria for a qualified firm and that the  
26 firm is eligible for the benefits and assistance provided under this act. *The*  
27 *secretary of commerce shall not certify the initial eligibility for any firm*  
28 *on and after January 1, 2018, and before January 1, 2021.* The secretary  
29 of commerce is hereby authorized to obtain any and all information  
30 necessary to determine such eligibility. Information obtained under this  
31 section shall not be subject to disclosure pursuant to K.S.A. 45-215 et seq.,  
32 and amendments thereto, but shall upon request be made available to the  
33 legislative post audit division. The secretary of commerce shall publish  
34 rules and regulations for the implementation of this act. Such rules and  
35 regulations shall include, but not be limited to:

36 (1) A definition of "training and education" for purposes of K.S.A.  
37 74-50,132, and amendments thereto.

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

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

43 (4) Establishment of guidelines for prioritizing business assistance

1 programs pursuant to K.S.A. 74-50,133, and amendments thereto.

2 (5) A definition of "commercial customer" for the purpose of K.S.A.  
3 74-50,133, and amendments thereto.

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

6 (7) Establishment of guidelines concerning the use and disclosure of  
7 any information obtained to determine the eligibility of a firm for the  
8 assistance and benefits provided for by this act.

9 Sec. 3. K.S.A. 2016 Supp. 74-50,132 is hereby amended to read as  
10 follows: 74-50,132. (a) ~~For taxable years commencing after December 31,~~  
11 ~~1997,~~A qualified firm shall be entitled to a credit against the tax imposed  
12 by the Kansas income tax act, the premium tax or privilege fee imposed  
13 pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as  
14 measured by net income of financial institutions imposed pursuant to  
15 ~~chapter 79,~~ article 11 *of chapter 79* of the Kansas Statutes Annotated, *and*  
16 *amendments thereto*, in an amount equal to the portion of the qualified  
17 business facility cash investment in the training and education of the firm's  
18 employees that exceeds 2% of the firm's total payroll costs. The maximum  
19 amount of the credit that may be claimed by a single corporate taxpayer in  
20 any single tax year under this section shall not exceed \$50,000. Tax credits  
21 earned by a qualified business under this section must be claimed in their  
22 entirety in the tax year eligible. *No tax credits shall be allowed pursuant to*  
23 *this section for tax years 2018 through 2020.*

24 (b) For tax years commencing after December 31, 2005, any taxpayer  
25 claiming credits pursuant to this section, as a condition for claiming and  
26 qualifying for such credits, shall provide information pursuant to K.S.A.  
27 2016 Supp. 79-32,243, and amendments thereto, as part of the tax return in  
28 which such credits are claimed. Such credits shall not be denied solely on  
29 the basis of the contents of the information provided by the taxpayer  
30 pursuant to K.S.A. 2016 Supp. 79-32,243, and amendments thereto.

31 Sec. 4. K.S.A. 2016 Supp. 79-32,160a is hereby amended to read as  
32 follows: 79-32,160a. (a) For taxable years commencing after December  
33 31, 1999, and before January 1, 2012, any taxpayer who shall invest in a  
34 qualified business facility, as defined in ~~subsection (b)~~ of K.S.A. 79-  
35 32,154(b), and amendments thereto, and effective for tax years  
36 commencing after December 31, 2010, and before January 1, 2012,  
37 located in an area other than a metropolitan county as defined in either  
38 K.S.A. 2016 Supp. 74-50,114 or 74-50,211, and amendments thereto, and  
39 also meets the definition of a business in ~~subsection (b)~~ of K.S.A. 74-  
40 50,114(b), and amendments thereto, shall be allowed a credit for such  
41 investment, in an amount determined under subsection (b) or (c), as the  
42 case requires, against the tax imposed by the Kansas income tax act or  
43 where the qualified business facility is the principal place from which the

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

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

1 following:

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

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

9 (c) The credit allowed by subsection (a) for any taxpayer who invests  
10 in a qualified business facility, which is not located in a nonmetropolitan  
11 region established under K.S.A. 74-50,116, and amendments thereto, and  
12 effective for tax years commencing after December 31, 2010, and before  
13 January 1, 2012, located in an area other than a metropolitan county as  
14 defined in either K.S.A. 2016 Supp. 74-50,114 or 74-50,211, and  
15 amendments thereto, and which also meets the definition of business in  
16 ~~subsection (b) of K.S.A. 74-50,114(b)~~, and amendments thereto, on or  
17 after the effective date of this act, shall be a portion of the income tax  
18 imposed by the Kansas income tax act on the taxpayer's Kansas taxable  
19 income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-  
20 252, and amendments thereto, or the privilege tax as measured by the net  
21 income of financial institutions imposed pursuant to article 11 of chapter  
22 79 of the Kansas Statutes Annotated, and amendments thereto, for the  
23 taxable year for which such credit is allowed, but in the case where the  
24 qualified business facility investment was made prior to January 1, 1996,  
25 not in excess of 50% of such tax. Such portion shall be an amount equal to  
26 the sum of the following:

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

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

34 (d) The credit allowed by subsection (a) for each qualified business  
35 facility employee and for qualified business facility investment shall be a  
36 one-time credit. If the amount of the credit allowed under subsection (a)  
37 exceeds the tax imposed by the Kansas income tax act on the taxpayer's  
38 Kansas taxable income, the premium tax and privilege fees imposed  
39 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as  
40 measured by the net income of financial institutions imposed pursuant to  
41 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments  
42 thereto, for the taxable year, or in the case where the qualified business  
43 facility investment was made prior to January 1, 1996, 50% of such tax

1 imposed upon the amount which exceeds such tax liability or such portion  
2 thereof may be carried over for credit in the same manner in the  
3 succeeding taxable years until the total amount of such credit is used.  
4 Except that, before the credit is allowed, a taxpayer, who meets the  
5 definition of a manufacturing business in ~~subsection (d)~~ of K.S.A. 74-  
6 50,114(d), and amendments thereto, shall recertify annually that the net  
7 increase of a minimum of two qualified business facility employees has  
8 continued to be maintained and a taxpayer, who meets the definition of a  
9 nonmanufacturing business in ~~subsection (f)~~ of K.S.A. 74-50,114(f), and  
10 amendments thereto, shall recertify annually that the net increase of a  
11 minimum of five qualified business employees has continued to be  
12 maintained.

13 (e) Notwithstanding the foregoing provisions of this section, and  
14 except as otherwise provided in this subsection, any taxpayer qualified and  
15 certified under the provisions of K.S.A. 74-50,131, and amendments  
16 thereto; which, prior to making a commitment to invest in a qualified  
17 Kansas business, has filed a certificate of intent to invest in a qualified  
18 business facility in a form satisfactory to the secretary of commerce; and  
19 that has received written approval from the secretary of commerce for  
20 participation and has participated, during the tax year for which the  
21 exemption is claimed, in the Kansas industrial training, Kansas industrial  
22 retraining or the state of Kansas investments in lifelong learning program  
23 or is eligible for the tax credit established in K.S.A. 74-50,132, and  
24 amendments thereto, shall be entitled to a credit in an amount equal to  
25 10% of that portion of the qualified business facility investment which  
26 exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2)  
27 without regard to the number of qualified business facility employees  
28 engaged or maintained in employment at the qualified business facility.  
29 For tax years beginning on or after January 1, 2012, for a qualified  
30 business facility investment in Douglas, Johnson, Sedgwick, Shawnee or  
31 Wyandotte counties, such credit shall be in an amount equal to 10% of that  
32 portion of the qualified business facility investment which exceeds  
33 \$1,000,000. Any taxpayer who has filed a certificate of intent to invest in a  
34 qualified business facility pursuant to this subsection in Douglas, Johnson,  
35 Sedgwick, Shawnee or Wyandotte county prior to December 31, 2011, and  
36 commences investments in a qualified business facility prior to December  
37 31, 2013, may claim credits under K.S.A. 74-50,131, 74-50,132 and  
38 ~~subsection (e) of 79-32,160a(e)~~, and amendments thereto, in an amount  
39 equal to 10% of that portion of the qualified business facility investment  
40 which exceeds \$50,000. Timing modifications may be authorized at the  
41 discretion of the secretary of commerce and the secretary of revenue  
42 during the transition period. The credit allowed by this subsection shall be  
43 a one-time credit. If the amount thereof exceeds the tax imposed by the

1 Kansas income tax act on the taxpayer's Kansas taxable income or the  
2 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and  
3 amendments thereto, or the privilege tax as measured by net income of  
4 financial institutions imposed pursuant to article 11 of chapter 79 of the  
5 Kansas Statutes Annotated, and amendments thereto, for the taxable year,  
6 the amount thereof which exceeds such tax liability may be carried  
7 forward for credit in the succeeding taxable year or years until the total  
8 amount of the tax credit is used, except that no such tax credit shall be  
9 carried forward for deduction after the 16<sup>th</sup> taxable year succeeding the  
10 taxable year in which such credit initially was claimed, and no  
11 carryforward shall be allowed for deduction in any succeeding taxable  
12 year unless the taxpayer certifies under oath that the taxpayer continues to  
13 meet the requirements of K.S.A. 74-50,131, and amendments thereto, and  
14 this act. In no event shall any credit allowed under this section that expired  
15 during any taxable year prior to the taxable year commencing January 1,  
16 2011, be revived under the provisions of this act. *The secretary of*  
17 *commerce shall not approve any certificates of intent to invest in a*  
18 *qualified business facility on and after January 1, 2018, and before*  
19 *January 1, 2021.*

20 (f) For tax years commencing after December 31, 2005, any taxpayer  
21 claiming credits pursuant to this section, as a condition for claiming and  
22 qualifying for such credits, shall provide information pursuant to K.S.A.  
23 2016 Supp. 79-32,243, and amendments thereto, as part of the tax return in  
24 which such credits are claimed. Such credits shall not be denied solely on  
25 the basis of the contents of the information provided by the taxpayer  
26 pursuant to K.S.A. 2016 Supp. 79-32,243, and amendments thereto.

27 (g) This section and K.S.A. 79-32,160b, and amendments thereto,  
28 shall be part of and supplemental to the job expansion and investment  
29 credit act of 1976, and amendments thereto.

30 Sec. 5. K.S.A. 2016 Supp. 74-50,115, 74-50,131, 74-50,132 and 79-  
31 32,160a are hereby repealed.

32 Sec. 6. This act shall take effect and be in force from and after its  
33 publication in the statute book.