

Senate Substitute for HOUSE BILL No. 2157

By Committee on Assessment and Taxation

3-15

1 AN ACT concerning income taxation; relating to apportionment of
2 business income by certain taxpayers; election thereof; requirements;
3 *{credits;}* amending *{K.S.A. 79-32,141 and}* K.S.A. 2011 Supp. 79-
4 3279 *{and 79-32,160a}* and repealing the existing ~~section~~ *{sections;*
5 *also repealing K.S.A. 2011 Supp. 79-32,160f}*.
6

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

8 Section 1. K.S.A. 2011 Supp. 79-3279 is hereby amended to read as
9 follows: 79-3279. (a) All business income of railroads and interstate motor
10 carriers of persons or property for-hire shall be apportioned to this state by
11 multiplying the business income by a fraction, in the case of railroads, the
12 numerator of which is the freight car miles in this state and the
13 denominator of which is the freight car miles everywhere, and, in the case
14 of interstate motor carriers, the numerator of which is the total number of
15 miles operated in this state and the denominator of which is the total
16 number of miles operated everywhere.

17 (b) All business income of any other taxpayer shall be apportioned to
18 this state by one of the following methods:

19 (1) By multiplying the business income by a fraction, the numerator
20 of which is the property factor plus the payroll factor plus the sales factor,
21 and the denominator of which is three; or

22 (2) at the election of a qualifying taxpayer, by multiplying the
23 business income by a fraction, the numerator of which is the property
24 factor plus the sales factor, and the denominator of which is two.

25 (A) For purposes of this subsection (b)(2), a qualifying taxpayer is
26 any taxpayer whose payroll factor for a taxable year exceeds 200% of the
27 average of the property factor and the sales factor. Whenever two or more
28 corporations are engaged in a unitary business and required to file a
29 combined report, the fraction comparison provided by this subsection (b)
30 (2) shall be calculated by using the payroll factor, property factor and sales
31 factor of the combined group of unitary corporations.

32 (B) An election under this subsection (b)(2) shall be made by
33 including a statement with the original tax return indicating that the
34 taxpayer elects to apply the apportionment method under this subsection
35 (b)(2). The election shall be effective and irrevocable for the taxable year
36 of the election and the following nine taxable years. The election shall be

1 binding on all members of a unitary group of corporations.
2 Notwithstanding the above, the secretary of revenue may upon the request
3 of the taxpayer, grant permission to terminate the election under this
4 subsection (b)(2) prior to expiration of the ten-year period.

5 (3) At the election of a qualifying telecommunications company, by
6 multiplying the business income by a fraction, the numerator of which is
7 the information carrying capacity of wire and fiber optic cable available
8 for use in this state, and the denominator of which is the information
9 carrying capacity of wire and fiber optic cable available for use
10 everywhere during the tax year.

11 (A) For purposes of this subsection (b)(3), a qualifying
12 telecommunications company is a telecommunications company that is a
13 qualifying taxpayer under paragraph (A) of subsection (b)(2).

14 (B) A qualifying telecommunications company shall make the
15 election under this subsection (b)(3) in the same manner as provided under
16 paragraph (B) of subsection (b)(2).

17 (4) At the election of a distressed area taxpayer, by multiplying the
18 business income by the sales factor. The election shall be made by
19 including a statement with the original tax return indicating that the
20 taxpayer elects to apply this apportionment method. The election may be
21 made only once, it must be made on or before December 31, 1999 and it
22 shall be effective for the taxable year of the election and the following nine
23 taxable years for so long as the taxpayer maintains the payroll amount
24 prescribed by subsection (j) of K.S.A. 79-3271, and amendments thereto.

25 (5) At the election of the taxpayer made at the time of filing of the
26 original return, the qualifying business income of any investment funds
27 service corporation organized as a corporation or S corporation which
28 maintains its primary headquarters and operations or is a branch facility
29 that employs at least 100 individuals on a full-time equivalent basis in this
30 state and has any investment company fund shareholders resided in this
31 state shall be apportioned to this state as provided in this subsection, as
32 follows:

33 (A) By multiplying the investment funds service corporation's
34 qualifying business income from administration, distribution and
35 management services provided to each investment company by a fraction,
36 the numerator of which shall be the average of the number of shares
37 owned by the investment company's fund shareholders resided in this
38 state at the beginning of and at the end of the investment company's
39 taxable year that ends with or within the investment funds service
40 corporation's taxable year, and the denominator of which shall be the
41 average of the number of shares owned by the investment company's fund
42 shareholders everywhere at the beginning of and at the end of the
43 investment company's taxable year that ends with or within the investment

1 funds service corporation's taxable year.

2 (B) A separate computation shall be made to determine the qualifying
3 business income from each fund of each investment company. The
4 qualifying business income from each investment company shall be
5 multiplied by the fraction calculated pursuant to paragraph (A) for each
6 fund of such investment company.

7 (C) The qualifying portion of total business income of an investment
8 funds service corporation shall be determined by multiplying such total
9 business income by a fraction, the numerator of which is the gross receipts
10 from the provision of management, distribution and administration
11 services to or on behalf of an investment company, and the denominator of
12 which is the gross receipts of the investment funds service company. To
13 the extent an investment funds service corporation has business income
14 that is not qualifying business income, such business income shall be
15 apportioned to this state pursuant to subsection (b)(1).

16 (D) For tax year 2002, the tax liability of an investment funds service
17 corporation that has elected to apportion its business income pursuant to
18 paragraph (5) shall be increased by an amount equal to 50% of the
19 difference of the amount of such tax liability if determined pursuant to
20 subsection (b)(1) less the amount of such tax liability determined with
21 regard to paragraph (5).

22 (E) When an investment funds service corporation is part of a unitary
23 group, the business income of the unitary group attributable to the
24 investment funds service corporation shall be determined by multiplying
25 the business income of the unitary group by a fraction, the numerator of
26 which is the property factor plus the payroll factor plus the sales factor,
27 and the denominator of which is three. The property factor is a fraction,
28 the numerator of which is the average value of the investment funds
29 service corporation's real and tangible personal property owned or rented
30 and used during the tax period and the denominator of which is the
31 average value of the unitary group's real and tangible personal property
32 owned or rented and used during the tax period. The payroll factor is a
33 fraction, the numerator of which is the total amount paid during the tax
34 period by the investment funds service corporation for compensation, and
35 the denominator of which is the total compensation paid by the unitary
36 group during the tax period. The sales factor is a fraction, the numerator of
37 which is the total sales of the investment funds service corporation during
38 the tax period, and the denominator of which is the total sales of the
39 unitary group during the tax period.

40 (F) A taxpayer seeking to make the election available pursuant to
41 subsection (b)(5) of K.S.A. 79-3279, and amendments thereto, shall only
42 be eligible to continue to make such election if the taxpayer maintains at
43 least 95% of the Kansas employees in existence at the time the taxpayer

1 first makes such an election.

2 (6) At the election of a qualifying taxpayer, by multiplying such
3 taxpayer's business income by the sales factor. The election shall be made
4 by including a statement with the original tax return indicating that the
5 taxpayer elects to apply this apportionment method. The election may be
6 made only once and must be made on or before the last day of the taxable
7 year during which the investment described in paragraph (A) is placed in
8 service, but not later than December 31, 2009, and it shall be effective for
9 the taxable year of the election and the following nine taxable years or for
10 so long as the taxpayer maintains the wage requirements set forth in
11 paragraph (A). If the qualifying taxpayer is a member of a unitary group of
12 corporations, all other members of the unitary group doing business within
13 this state shall apportion their business income to this state pursuant to
14 subsection (b)(1).

15 (A) For purposes of this subsection, a qualifying taxpayer is any
16 taxpayer making an investment of \$100,000,000 for construction in
17 Kansas of a new business facility identified under the North American
18 industry classification system (NAICS) subsectors of 31-33, as assigned
19 by the secretary of the department of labor, employing 100 or more new
20 employees at such facility after July 1, 2007, and prior to December 31,
21 2009, and meeting the following requirements for paying such employees
22 higher-than-average wages within the wage region for such facility:

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

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

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

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

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

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

12 (vii) alternatively, a taxpayer may wage-qualify its new Kansas
13 business facility if, after excluding the headcount and wages reported on
14 the quarterly wage reports to the Kansas department of labor for
15 employees at that new Kansas business facility who own ~~five percent~~ 5%
16 or more equity in the taxpayer, the average wage calculated for the
17 taxpayer's new Kansas business facility is greater than or equal to 1.5
18 times the aggregate state-wide average wage paid by industries covered by
19 the employment security law based on data maintained by the secretary of
20 labor.

21 (B) For the purposes of the wage requirements in paragraph (A), the
22 number of full-time equivalent employees shall be determined by dividing
23 the number of hours worked by part-time employees during the pertinent
24 measurement interval by an amount equal to the corresponding multiple of
25 a 40-hour work week and adding the quotient to the average number of
26 full-time employees.

27 (C) When the qualifying taxpayer is part of a unitary group, the
28 business income of the unitary group attributable to the qualifying
29 taxpayer shall be determined by multiplying the business income of the
30 unitary group by a fraction, the numerator of which is the property factor
31 plus the payroll factor plus the sales factor, and the denominator of which
32 is three. The property factor is a fraction, the numerator of which is the
33 average value of the qualifying taxpayer's real and tangible personal
34 property owned or rented and used during the tax period and the
35 denominator of which is the average value of the unitary group's real and
36 tangible personal property owned or rented and used during the tax period.
37 The payroll factor is a fraction, the numerator of which is the total amount
38 paid during the tax period by the qualifying taxpayer for compensation,
39 and the denominator of which is the total compensation paid by the unitary
40 group during the tax period. The sales factor is a fraction, the numerator of
41 which is the total sales of the qualifying taxpayer during the tax period,
42 and the denominator of which is the total sales of the unitary group during
43 the tax period.

1 (D) For purposes of this subsection, the secretary of revenue, upon a
2 showing of good cause and after receiving a certification by the secretary
3 of commerce of substantial compliance with provisions of this subsection
4 (b)(6), may extend any required performance date provided in this
5 subsection (b)(6) for a period not to exceed six months.

6 (7) (A) *For taxable years commencing after December 31, 2012, at*
7 *the election of a taxpayer who relocates such taxpayer's business activities*
8 *and at least 10 or more full-time equivalent employees to a facility, office*
9 *or other operation in Kansas by multiplying such taxpayer's business*
10 *income by the sales factor. For purposes of this subsection, a taxpayer*
11 *eligible for such election had no employees nor owned or rented real or*
12 *tangible personal property in Kansas before January 1, 2013. Such*
13 *election shall be available for the year the election is made and for each of*
14 *the following nine taxable years, provided the number of full-time*
15 *equivalent employees engaged or maintained in employment at the Kansas*
16 *facility, office or operation equals or exceeds 10 during each taxable year*
17 *in which the election is in effect. The election shall no longer be in effect*
18 *in the event the number of full-time equivalent employees engaged or*
19 *maintained in employment at the Kansas facility, office or operation does*
20 *not equal or exceed 10 during any taxable year of the election period.*

21 (B) *As used in this subsection, "full-time equivalent employee" means*
22 *a person employed by the taxpayer at the Kansas facility, office or*
23 *operation during the taxable year when the election is in effect. A person*
24 *shall be deemed to be so engaged if such person performs duties in*
25 *connection with the Kansas facility, office or operation on a: (i) Regular,*
26 *full-time basis; (ii) part-time basis, if such person is customarily*
27 *performing such duties at least 20 hours per week throughout the taxable*
28 *year; or (iii) a seasonal basis, if such person performs such duties for*
29 *substantially all of the season customary for the position in which such*
30 *person is employed. The number of full-time equivalent employees during*
31 *any taxable year shall be determined by dividing by 12 the sum of the*
32 *number of full-time equivalent employees on the last business day of each*
33 *month of such taxable year. If the Kansas facility, office or operation is in*
34 *operation for less than the entire taxable year, the number of full-time*
35 *equivalent employees shall be determined by dividing the sum of the*
36 *number of full-time equivalent employees on the last business day of each*
37 *full calendar month during the portion of such taxable year during which*
38 *the Kansas facility, office or operation was in operation by the number of*
39 *full calendar months during such period.*

40 (C) *The election shall be made by including a statement with the*
41 *original tax return indicating that the taxpayer elects to apply this*
42 *apportionment method. The election may be made only once and shall be*
43 *effective for the taxable year of the election and the following nine taxable*

1 years. A taxpayer who makes an election pursuant to this subsection shall
2 not be eligible to claim an income tax credit pursuant to the provisions of
3 subsection (e) of K.S.A. 79-32,160a nor 79-32,266, and amendments
4 thereto, nor any benefit pursuant to the provisions of K.S.A. 74-50,210 et
5 seq., and amendments thereto. A taxpayer that relocates such taxpayer's
6 business activities to Kansas through a merger or acquisition with a
7 company which employed employees or owned or rented real and tangible
8 personal property in Kansas before January 1, 2013 is not eligible for
9 election.

10 (D) The department shall have authority to promulgate rules and
11 regulations necessary to implement the provisions of this act.}

12 {**Sec. 2. K.S.A. 79-32,141 is hereby amended to read as follows:**
13 **79-32,141. (a) The director may allocate gross income, deductions,**
14 **credits, or allowances between two or more organizations, trades or**
15 **businesses (whether or not incorporated, or organized in the United**
16 **States or affiliated) owned or controlled directly or indirectly by the**
17 **same interests, if the director determines such allocation is necessary to**
18 **prevent evasion of taxes or to clearly reflect income of the organizations,**
19 **trades or businesses.**

20 (b) Commencing with the tax year which commences after December
21 31, 2011, and all taxable years thereafter, credits claimed by a corporation
22 that is a member of a unitary group filing a combined report that has
23 earned credits pursuant to subsection (e) of K.S.A. 79-32,160a, and
24 amendments thereto, that has filed a certificate of intent on or after
25 October 1, 2011, and prior to June 30, 2013, to place in service a
26 qualified business facility investment of at least \$10,000,000 and create a
27 minimum of 50 new jobs that satisfy the average wage requirements set
28 forth in K.S.A. 74-50,131, and amendments thereto, at a qualified business
29 facility after October 1, 2011, and that has entered into an agreement with
30 the secretary of commerce, may apply such tax credits, including any
31 carryforward credits, earned pursuant to subsection (e) of K.S.A. 79-
32 32,160a, and amendments thereto, against the tax liability of any member
33 or members of such group in such combined report in the following
34 manner:

35 (1) Credits earned prior to January 1, 2012, and claimed in taxable
36 years commencing after December 31, 2011, shall be subject to the
37 following limitations:

38 (A) The amount of carryforward credits applied against the tax
39 liability of any member or members of a unitary group shall not exceed in
40 the aggregate 15% of the carryforward credits available during the
41 taxable year in which the carryforward credits are first applied against
42 the tax liability of any member or members of any such group. Such
43 limitation shall be effective for the taxable year in which the carryforward

1 *credits are first applied against a member or members of the group and*
2 *the six immediately succeeding taxable years. Any carryforward credits*
3 *not applied during the seven-year period set forth herein may be applied*
4 *without limitation against the tax liability of any member or members of*
5 *such group for the remainder of the credit carryforward period under*
6 *subsection (e) of K.S.A. 79-32,160a, and amendments thereto.*

7 *(B) In the event the remainder of the credit carryforward period*
8 *under subsection (e) of K.S.A. 79-32,160a, and amendments thereto, at the*
9 *time the carryforward credits are first applied against the tax liability of*
10 *any member or members of such group is less than seven years, then the*
11 *carryforward credits applied against the liability of any member or*
12 *members of such group shall not in the aggregate exceed the percentage of*
13 *carryforward credits determined by dividing the total carryforward credits*
14 *by the number of years remaining in the carryforward period under*
15 *subsection (e) of K.S.A. 79-32,160a, and amendments thereto.*

16 *(2) Credits earned after January 1, 2012, may be applied against the*
17 *tax liability of any member or members of such group in such combined*
18 *report in such manner as may be determined by the corporation.*

19 *(3) Failure to comply with the capital investment and job creation*
20 *requirements set forth in subsection (b) of K.S.A. 79-32,141, and*
21 *amendments thereto, within 36 months of the date of the agreement with*
22 *the secretary of commerce, shall result in the corporation remitting to the*
23 *state an amount equal to the amount of credits applied against the tax*
24 *liability of the other members of the unitary group. A corporation that has*
25 *entered into a separate agreement with the secretary of commerce shall*
26 *have 54 months to comply with the capital investment and job creation*
27 *requirements set forth in subsection (b) of K.S.A. 79-32,141, and*
28 *amendments thereto.*

29 **Sec. 3. K.S.A. 2011 Supp. 79-32,160a is hereby amended to read as**
30 **follows: 79-32,160a. (a) For taxable years commencing after December**
31 **31, 1999, and before January 1, 2012, any taxpayer who shall invest in a**
32 **qualified business facility, as defined in subsection (b) of K.S.A. 79-**
33 **32,154, and amendments thereto, and effective for tax years**
34 **commencing after December 31, 2010, and before January 1, 2012,**
35 **located in an area other than a metropolitan county as defined in either**
36 **K.S.A. 2011 Supp. 74-50,114 or 74-50,211, and amendments thereto, and**
37 **also meets the definition of a business in subsection (b) of K.S.A. 74-**
38 **50,114, and amendments thereto, shall be allowed a credit for such**
39 **investment, in an amount determined under subsection (b) or (c), as the**
40 **case requires, against the tax imposed by the Kansas income tax act or**
41 **where the qualified business facility is the principal place from which**
42 **the trade or business of the taxpayer is directed or managed and the**
43 **facility has facilitated the creation of at least 20 new full-time positions,**

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

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

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

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

8 ***(c) The credit allowed by subsection (a) for any taxpayer who***
9 ***invests in a qualified business facility, which is not located in a***
10 ***nonmetropolitan region established under K.S.A. 74-50,116, and***
11 ***amendments thereto, and effective for tax years commencing after***
12 ***December 31, 2010, and before January 1, 2012, located in an area other***
13 ***than a metropolitan county as defined in either K.S.A. 2011 Supp. 74-***
14 ***50,114 or 74-50,211, and amendments thereto, and which also meets the***
15 ***definition of business in subsection (b) of K.S.A. 74-50,114, and***
16 ***amendments thereto, on or after the effective date of this act, shall be a***
17 ***portion of the income tax imposed by the Kansas income tax act on the***
18 ***taxpayer's Kansas taxable income, the premium tax or privilege fees***
19 ***imposed pursuant to K.S.A. 40-252, and amendments thereto, or the***
20 ***privilege tax as measured by the net income of financial institutions***
21 ***imposed pursuant to article 11 of chapter 79 of the Kansas Statutes***
22 ***Annotated, and amendments thereto, for the taxable year for which such***
23 ***credit is allowed, but in the case where the qualified business facility***
24 ***investment was made prior to January 1, 1996, not in excess of 50% of***
25 ***such tax. Such portion shall be an amount equal to the sum of the***
26 ***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***
29 ***amendments thereto; and***

30 ***(2) one thousand dollars for each \$100,000, or major fraction***
31 ***thereof, which shall be deemed to be 51% or more, in qualified business***
32 ***facility investment as determined under K.S.A. 79-32,154, and***
33 ***amendments 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***
40 ***as measured by the net income of financial institutions imposed***
41 ***pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated,***
42 ***and amendments thereto, for the taxable year, or in the case where the***
43 ***qualified business facility investment was made prior to January 1, 1996,***

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

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

1 *In no event shall any credit allowed under this section that expired*
2 *during any taxable year prior to the taxable year commencing January*
3 *1, 2011, be revived under the provisions of this act.*

4 *(f) For tax years commencing after December 31, 2005, any*
5 *taxpayer claiming credits pursuant to this section, as a condition for*
6 *claiming and qualifying for such credits, shall provide information*
7 *pursuant to K.S.A. 2011 Supp. 79-32,243, and amendments thereto, as*
8 *part of the tax return in which such credits are claimed. Such credits*
9 *shall not be denied solely on the basis of the contents of the information*
10 *provided by the taxpayer pursuant to K.S.A. 2011 Supp. 79-32,243, and*
11 *amendments thereto.*

12 *(g) This section and K.S.A. 79-32,160b, and amendments thereto,*
13 *shall be part of and supplemental to the job expansion and investment*
14 *credit act of 1976-, and amendments thereto.}*

15 ~~Sec. 2 {4. K.S.A. 79-32,141 and}~~ K.S.A. 2011 Supp. 79-3279 ~~is~~ {, 79-
16 ~~32,160a and 79-32,160f are}~~ hereby repealed.

17 ~~Sec. 3 {5.}~~ This act shall take effect and be in force from and after its
18 publication in the statute book.