

**SENATE BILL No. 467**

By Committee on Ways and Means

3-14

1 AN ACT concerning income taxation; relating to credits; amending K.S.A.  
2 79-32,141 and K.S.A. 2011 Supp. 79-32,160a and repealing the  
3 existing sections; also repealing K.S.A. 2011 Supp. 79-32,160f.  
4

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

6 Section 1. K.S.A. 79-32,141 is hereby amended to read as follows:  
7 79-32,141. (a) The director may allocate gross income, deductions, credits,  
8 or allowances between two or more organizations, trades or businesses  
9 (whether or not incorporated, or organized in the United States or  
10 affiliated) owned or controlled directly or indirectly by the same interests,  
11 if the director determines such allocation is necessary to prevent evasion of  
12 taxes or to clearly reflect income of the organizations, trades or businesses.

13 (b) *Commencing with the tax year which commences after December*  
14 *31, 2011, and all taxable years thereafter, credits claimed by a corporation*  
15 *that is a member of a unitary group filing a combined report that has*  
16 *earned credits pursuant to subsection (e) of K.S.A. 79-32,160a, and*  
17 *amendments thereto, that has filed a certificate of intent on or after*  
18 *October 1, 2011, and prior to June 30, 2013, to place in service a*  
19 *qualified business facility investment of at least \$10,000,000 and create a*  
20 *minimum of 50 new jobs that satisfy the average wage requirements set*  
21 *forth in K.S.A. 74-50,131, and amendments thereto, at a qualified business*  
22 *facility after October 1, 2011, and that has entered into an agreement with*  
23 *the secretary of commerce, may apply such tax credits, including any*  
24 *carryforward credits, earned pursuant to subsection (e) of K.S.A. 79-*  
25 *32,160a, and amendments thereto, against the tax liability of any member*  
26 *or members of such group in such combined report in the following*  
27 *manner:*

28 (1) *Credits earned prior to January 1, 2012, and claimed in taxable*  
29 *years commencing after December 31, 2011, shall be subject to the*  
30 *following limitations:*

31 (A) *The amount of carryforward credits applied against the tax*  
32 *liability of any member or members of a unitary group shall not exceed in*  
33 *the aggregate 15% of the carryforward credits available during the*  
34 *taxable year in which the carryforward credits are first applied against*  
35 *the tax liability of any member or members of any such group. Such*  
36 *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. 2. 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 commencing  
34 after December 31, 2010, and before January 1, 2012, located in an area  
35 other than a metropolitan county as defined in either K.S.A. 2011 Supp.  
36 74-50,114 or 74-50,211, and amendments thereto, and also meets the  
37 definition of a business in subsection (b) of K.S.A. 74-50,114, and  
38 amendments thereto, shall be allowed a credit for such investment, in an  
39 amount determined under subsection (b) or (c), as the case requires,  
40 against the tax imposed by the Kansas income tax act or where the  
41 qualified business facility is the principal place from which the trade or  
42 business of the taxpayer is directed or managed and the facility has  
43 facilitated the creation of at least 20 new full-time positions, against the

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

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

43 (1) Two thousand five hundred dollars for each qualified business

1 facility employee determined under K.S.A. 79-32,154, and amendments  
2 thereto; plus

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

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

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

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

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

1 succeeding taxable years until the total amount of such credit is used.  
2 Except that, before the credit is allowed, a taxpayer, who meets the  
3 definition of a manufacturing business in subsection (d) of K.S.A. 74-  
4 50,114, and amendments thereto, shall recertify annually that the net  
5 increase of a minimum of two qualified business facility employees has  
6 continued to be maintained and a taxpayer, who meets the definition of a  
7 nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and  
8 amendments thereto, shall recertify annually that the net increase of a  
9 minimum of five qualified business employees has continued to be  
10 maintained.

11 (e) Notwithstanding the foregoing provisions of this section, any  
12 taxpayer qualified and certified under the provisions of K.S.A. 74-50,131,  
13 and amendments thereto; which, prior to making a commitment to invest  
14 in a qualified Kansas business, has filed a certificate of intent to invest in a  
15 qualified business facility in a form satisfactory to the secretary of  
16 commerce; and that has received written approval from the secretary of  
17 commerce for participation and has participated, during the tax year for  
18 which the exemption is claimed, in the Kansas industrial training, Kansas  
19 industrial retraining or the state of Kansas investments in lifelong learning  
20 program or is eligible for the tax credit established in K.S.A. 74-50,132,  
21 and amendments thereto, shall be entitled to a credit in an amount equal to  
22 10% of that portion of the qualified business facility investment which  
23 exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2)  
24 without regard to the number of qualified business facility employees  
25 engaged or maintained in employment at the qualified business facility.  
26 The credit allowed by this subsection shall be a one-time credit. If the  
27 amount thereof exceeds the tax imposed by the Kansas income tax act on  
28 the taxpayer's Kansas taxable income or the premium tax or privilege fees  
29 imposed pursuant to K.S.A. 40-252, and amendments thereto, or the  
30 privilege tax as measured by net income of financial institutions imposed  
31 pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, *and*  
32 *amendments thereto*, for the taxable year, the amount thereof which  
33 exceeds such tax liability may be carried forward for credit in the  
34 succeeding 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 16<sup>th</sup> taxable year succeeding the taxable year in which such credit  
37 initially was claimed, and no carryforward shall be allowed for deduction  
38 in any succeeding taxable year unless the taxpayer certifies under oath that  
39 the taxpayer continues to meet the requirements of K.S.A. 74-50,131, and  
40 amendments thereto, and this act. In no event shall any credit allowed  
41 under this section that expired during any taxable year prior to the taxable  
42 year commencing January 1, 2011, be revived under the provisions of this  
43 act.

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

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

11 Sec. 3. K.S.A. 79-32,141 and K.S.A. 2011 Supp. 79-32,160a and 79-  
12 32,160f are hereby repealed.

13 Sec. 4. This act shall take effect and be in force from and after its  
14 publication in the statute book.