

2023 Kansas Statutes

74-50,313. Credit against income, premium or privilege tax; amount; requirements; limitations; agreement with secretary of commerce; requirements and conditions of agreement; additional benefit provisions if approved by state finance council; remedy for breach of agreement. (a) (1) For taxable years commencing after December 31, 2021, a qualified firm that makes a qualified business investment in a qualified business facility and meets the requirements of K.S.A. 2023 Supp. 74-50,312, and amendments thereto, and of this section shall be allowed a credit for such investment as provided by this section against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The credit shall be earned by the taxpayer each taxable year based on the amount of the qualified investment made in that taxable year as further provided in this section. The amount of the credit that is earned each taxable year shall not be claimed by the taxpayer in the taxable year that such credit is earned but shall be divided into 10 equal portions or installments. A 1/10 portion or installment shall be claimed by the qualified firm commencing with the taxable year after the credit is earned and an equivalent amount of such portion or installment, respectively, shall be claimed in each of the next successive nine taxable years.

(2) The amount of the tax credit earned in a taxable year pursuant to this subsection shall be up to 15%, at the discretion of the secretary, of the amount of the qualified investment that is invested during such taxable year. In determining such percentage, the secretary shall consider factors including the extent of prospective new employment, the quality of new jobs and wage or salary levels, the total amount of investment, the potential for development of the industry in this state and the potential for ancillary industry development and indirect economic development. The secretary shall also consider factors pursuant to subsection (d). Such percentage shall be set forth in the agreement pursuant to K.S.A. 2023 Supp. 74-50,312, and amendments thereto. The total qualified investment shall be completed within five years commencing from the date specified in such agreement. The total amount of the qualified investment shall be at least \$1,000,000,000. The qualified firm shall repay to the state all tax credits received if the total qualified investment is not completed.

(b) (1) For taxable years commencing after December 31, 2021, a qualified supplier that makes a qualified investment and meets the requirements of K.S.A. 2023 Supp. 74-50,312, and amendments thereto, and of this section shall be allowed a credit for such investment as provided by this section against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The credit shall be earned by the taxpayer for up to two calendar years from the date that the qualified supplier enters into the agreement with the secretary of commerce pursuant to K.S.A. 2023 Supp. 74-50,312, and amendments thereto, unless all qualifying investment that is intended by the qualified supplier is completed before this date. The credit shall be taken in the earlier taxable year that would include either:

(A) The tax year following the two-calendar year expiration from entering into the agreement with the secretary; or

(B) the tax year after the calendar year that the qualified supplier determines completion of the tax credit eligible qualified investment.

(2) The amount of the tax credit shall be 5% for the first \$50,000,000 in qualified investment and an additional 1% credit for each additional \$10,000,000 in qualified investment up to a maximum of \$100,000,000 in qualified investment. The amount of the credit that is earned shall be divided into ten equal portions or installments. A 1/10 portion or installment shall first be claimed commencing with the time frame set forth in paragraph (1). Such remaining portions or installments shall be claimed in each of the next successive nine taxable years.

(3) Only the first five qualified suppliers designated by a qualified firm pursuant to

K.S.A. 2023 Supp. 74-50,312, and amendments thereto, shall qualify for the credit unless a previously designated qualified supplier breaches terms of an agreement with either the qualified firm or department of commerce and is replaced by a succeeding qualified supplier. The qualified supplier that serves as replacement shall be eligible for the tax credit pursuant to this subsection.

(4) The qualified supplier shall repay to the state all tax credits received if the total qualified investment is not completed as provided pursuant to K.S.A. 2023 Supp. 74-50,312, and amendments thereto.

(c) The secretary of commerce shall set forth in the agreement entered into pursuant to K.S.A. 2023 Supp. 74-50,312, and amendments thereto, a percentage of the earned tax credit that may be refundable when claimed, as provided in subsection (a) or (b). The percentage shall be determined as provided in subsection (d). Such percentage of a tax credit installment may be refundable to such taxpayer if the amount of the installment claimed for that taxable year exceeds the taxpayer's tax liability for such year. The secretary shall set forth in the agreement any additional provisions, if necessary, regarding disposition of the earned tax credits. No earned tax credit shall be refundable after the tenth successive taxable year period that a portion or installment of such credit may be claimed. An installment portion of an earned tax credit that is not refunded shall be carried forward for application first against the taxpayer's tax liability in the next successive tax year or for refund, as the case may be, within the ten taxable year period. An installment portion of an earned tax credit that has not been applied against the taxpayer's tax liability or refunded at the end of the tenth successive taxable year period that installment portions of such earned tax credit may be claimed shall be forfeited.

(d) The base percentage that may be refundable in each taxable year of the 1/10 portion of an earned tax credit that may be claimed, as provided by subsection (a), shall be 50%. The secretary may provide for an additional percentage that may be refundable up to 100% of the total eligible earned credit. The secretary shall base the additional percentage on the qualified firm meeting specified goals that shall be set forth in the agreement. Such goals shall include targets for the:

- (1) Creation of new jobs, including new jobs for suppliers;
- (2) benefit to the local, regional or state economy, including the development of suppliers in Kansas;
- (3) amount of capital investment;
- (4) benefit to the development of the qualified firm's industry in Kansas;
- (5) other measures or goals, if any, of the secretary consistent with the purposes of this act; and
- (6) employment, retention and attraction of employees to remain residents of, or relocate to, Kansas.

(e) The qualified firm or qualified supplier shall meet the requirements of this act, any rules and regulations of the secretary of commerce under this act and the terms of the agreement to receive a credit each year that a credit is earned or an installment portion of the earned credit is claimed. No credit shall be issued by the secretary of revenue unless the qualified firm or qualified supplier has been certified by the secretary of commerce as eligible as provided by K.S.A. 2023 Supp. 74-50,312, and amendments thereto, for each taxable year the credit is claimed. The secretary of commerce shall provide such certifications to the secretary of revenue.

(f) If the qualified firm or qualified supplier breaches the terms and conditions of the agreement pursuant to K.S.A. 2023 Supp. 74-50,312, and amendments thereto, the qualified firm or qualified supplier shall be liable for repayment of the amount of the tax credits to the state as provided by K.S.A. 2023 Supp. 74-50,312, and amendments thereto.

(g) As a condition for claiming credits pursuant to this section, any qualified firm or qualified supplier shall provide information pursuant to K.S.A. 79-32,243, and amendments thereto, as part of the tax return in which such credits are claimed. Such credits shall not be denied solely on the basis of the contents of the information provided by the qualified firm pursuant to K.S.A. 79-32,243, and amendments thereto.

(h) Prior to finalization of an agreement pursuant to K.S.A. 2023 Supp. 74-50,312, and amendments thereto, the state finance council may allow for a qualified firm or qualified supplier to be allowed to take one or more additional portions or

installments of the tax credit that such qualified firm or qualified supplier is entitled pursuant to this subsection, as provided in K.S.A. 2023 Supp. 74-50,312(e), and amendments thereto. No additional portions or installments of the tax credit shall be allowed in any taxable year unless the requested increase in the portions or installments has been so reviewed and approved by the affirmative vote of the governor and by a majority vote of the legislative members of the state finance council. This matter is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in K.S.A. 75-3711c, and amendments thereto, except that the state finance council is expressly granted the authority to act on this matter at any time, including when the legislature is in session. Upon an affirmative vote, the qualified firm or qualified supplier shall be allowed to take the additional portions or installments of the tax credit approved by the state finance council in the taxable year in which such portions or installments were approved, as shall be set forth in the agreement pursuant to K.S.A. 2023 Supp. 74-50,312, and amendments thereto. The portions or installments remaining on such credit shall decrease accordingly in the event that additional portions or installments are taken by a qualified firm or qualified supplier.

History: L. 2022, ch. 3, § 3; February 10.