

## 2023 Kansas Statutes

**74-50,314. Payroll withholding tax retention benefit for qualified suppliers; eligibility requirements; agreement with secretary of commerce; requirements and conditions; remedy for breach of agreement; certification of continued eligibility by secretary of commerce.** (a) For taxable years commencing after December 31, 2021, a qualified supplier that meets the requirements of K.S.A. 2023 Supp. 74-50,312, and amendments thereto, and this section may be eligible to retain up to 65%, as determined by the secretary, of the qualified supplier's Kansas payroll withholding taxes under the Kansas withholding and declaration of estimated tax act for the qualified supplier's employees in a taxable year that such requirements are met. This benefit shall be available for a period of up to 10 successive taxable years. In determining the percentage and number of successive years, the secretary shall, at a minimum, consider the factors set forth in K.S.A. 2023 Supp. 74-50,313(b) and (d), and amendments thereto, as applicable. Qualified suppliers that have been selected by a qualified firm for benefit eligibility, and that meet the sales amount requirement, as provided by K.S.A. 2023 Supp. 74-50,312, and amendments thereto, may be eligible to earn benefits of this section prior to the qualified firm's commencement of commercial operations at the qualified business facility. Any benefits shall only be awarded after the qualified firm that has selected the qualified supplier for benefit eligibility commences commercial operations.

(b) For purposes of the benefit under this section, a qualified supplier may utilize or contract with a third-party employer to perform services whereby the third-party employer:

- (1) Serves as the legal employer of the qualified supplier's employees providing services to the qualified supplier;
- (2) performs such services in Kansas; and
- (3) is subject to, and the qualified supplier's employees are subject to, the Kansas withholding and declaration of estimated tax act.

(c) The qualified supplier shall submit an application to the secretary of commerce in the form and manner required by the secretary and provide all information requested by the secretary. If approved by the secretary, the qualified supplier shall enter into an agreement with the secretary, as required pursuant to K.S.A. 2023 Supp. 74-50,312, and amendments thereto, with such terms and conditions as may be required by the secretary. In addition, the agreement shall set forth the percentage of payroll withholding taxes to be retained each year and any requirements or performance targets to receive such benefits, as determined by the secretary. If necessary, the secretary may also enter into an agreement with any third party described in subsection (b), or such third party may be a party to an agreement between the qualified supplier and the secretary.

(d) The agreement between the secretary of commerce and the qualified supplier shall specify that, if the qualified supplier breaches the terms and conditions set forth in the agreement, the qualified supplier shall be required to remit to the state an amount equal to the aggregate Kansas payroll withholding taxes retained by the qualified supplier, or remitted to the qualified supplier by a third party, as provided by K.S.A. 2023 Supp. 74-50,312, and amendments thereto.

(e) For each year that the agreement is in effect, the secretary of commerce shall certify to the secretary of revenue:

- (1) That the qualified supplier is eligible to receive benefits under this act and the terms of the agreement;
- (2) the number of employees;
- (3) the amount of gross wages being paid to each such employee; and
- (4) the percentage of payroll withholding taxes to be retained by the qualified supplier.

(f) Any qualified supplier that has entered into an agreement with the secretary of commerce pursuant to this section and K.S.A. 2023 Supp. 74-50,312, and amendments thereto, and is eligible to receive benefits pursuant to this section, shall complete and submit to the department of revenue the amount of Kansas payroll withholding tax being retained by the qualified supplier in the form and manner

prescribed by the director of taxation.

(g) The secretary of revenue and the secretary of commerce shall cooperate to develop and coordinate procedures to implement the provisions of this act.

**History:** L. 2022, ch. 3, § 4; February 10.