**Opinion Letter**

|  |  |
| --- | --- |
| **Letter Number:** | **O-2001-012** |

|  |  |
| --- | --- |
| **Tax Type:** | **Corporate Income Tax** |
| **Brief Description:** | **Calculation of the business and job development credits.** |
| **Keywords:** |  |
| **Approval Date:** | **02/22/2001** |

**Body:**

Office of Policy & Research

February 22, 2001

XXXX
XXXX
XXXX
XXXX
XXXX

Dear XXXX:

Thank you for your letter regarding the calculation of the business and job development credit for XXXX.

K.S.A. 79-32,153(a) provides,

“For …, any taxpayer who shall invest in a qualified business facility, as defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto, shall be allowed a credit for such investment, in an amount determined under subsection (b) against the tax imposed … for the taxable year during which commencement of commercial operations, as defined in subsection (f) of K.S.A. 79-32,154, and amendments thereto, occurs at such qualified business facility, and for each of the nine succeeding taxable years. …”

K.S.A. 79-32,160a(a) provides,

“For …, any taxpayer who shall invest in a qualified business facility, as defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto, and also meets the definition of a business in subsection (b) of K.S.A. 74-50,114 and amendments thereto, shall be allowed a credit for such investment, in an amount determined under subsection (b) or (c), as the case requires, against the tax imposed …, for the taxable year during which commencement of commercial operations, as defined in subsection (f) of K.S.A. 79-32,154, and amendments thereto, occurs at such qualified business facility.”

K.S.A. 79-32,154(b) provides the definition of qualified business facility as,

(b) a **facility** which satisfies the requirements of paragraphs (1) and (2) of this subsection.
(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.
(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical revenue producing enterprise, as defined in subsection (i), at such facility.” (emphasis added)

Facility is defined in K.S.A. 79-32,154(a) as,

“Facility shall mean any factory, mill, plant, refinery, warehouse, feedlot, building or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word "building" shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.”

K.S.A. 79-32,154(f) provides that commencement of commercial operations,

“shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility.

K.S.A. 79-32,154(e) provides the definition of qualified business facility investment as,

“the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, which constitutes the qualified business facility, or which is used by the taxpayer in the operation of the qualified business facility, during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. The value of such property during such taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, **in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.**” (emphasis added)

K.S.A.79-32,154(d) provides the definition of qualified business facility employee as,

“a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed: (1) A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the qualified business facility on: (A) A regular, full-time basis; (B) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (C) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of qualified business facility employees during any taxable year shall be determined by dividing by 12 the sum of the number of qualified business facility employees on the last business day of each month of such taxable year. If the qualified business facility is in operation for less than the entire taxable year, the number of qualified business facility employees shall be determined by dividing the sum of the number of qualified business facility employees on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. **Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment, the number of qualified business facility employees employed in the operation of such facility shall be reduced by the average number, computed as provided in this subsection, of individuals employed in the operation of the facility during the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.**(emphasis added)

In the case of an investment in a qualified business facility that existed and was operated by the taxpayer prior to the investment, the calculation of qualified business facility investment and qualified business facility employees shall begin with the first month in the taxpayer’s taxable year. In the scenario you have presented, XXXX is on a calendar tax year. The calculation for both investment and employees would therefore begin in January 2000 and end in December 2000. Those figures would then be compared to the base tax year of 1999 (Jan-Dec).

Because of the way investment and employees are calculated (monthly average), a business that makes an investment and hires employees at the end of the year, may not qualify for the credit in the year the investment was made and became operational and employees were hired. However, if it maintains the new employees and investment in the next tax year, it should be eligible for the credit in that following year.

If I may be of further assistance, please contact me at your earliest convenience.

Sincerely,

Kathleen M. Smith
Tax Specialist, Office of Policy and Research

**Date Composed: 02/23/2001 Date Modified: 10/10/2001**