

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1091
97TH GENERAL ASSEMBLY

4204H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto four new sections relating to port facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 135, RSMo, is amended by adding thereto four new sections, to be known as sections 135.1660, 135.1662, 135.1664, and 135.1666, to read as follows:

135.1660. As used in sections 135.1662 to 135.1666, unless the context requires a different meaning, the following terms shall mean:

(1) "Department", the department of economic development;

(2) "Director", the director of the department of economic development;

(3) "State tax liability", in the case of a business taxpayer, any liability incurred by such taxpayer under the provisions of chapters 143, 147, 148, and 153, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265 and related provisions and in the case of an individual taxpayer, any liability incurred by such taxpayer under the provisions of chapter 143, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265;

(4) "Taxpayer", a person, firm, partner in a firm, member of a limited liability company, corporation, or shareholder in an S corporation doing business in the state of Missouri and subject to the state income tax imposed by the provisions of chapter 143, or a corporation subject to the annual corporation franchise tax imposed by the provisions of chapter 147, or an insurance company paying an annual tax on its gross premium receipts in this state, or other financial institution paying taxes to the state of Missouri or any political subdivision of this state under the provisions of chapter 148, or an express company which pays an annual tax on its gross receipts in this state under chapter 153.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

135.1662. 1. As used in this section, unless the context clearly indicates otherwise,
2 the following terms shall mean:

3 (1) "Base year port cargo volume", the total amount of net tons of non-
4 containerized cargo or twenty-foot equivalent units (TEUs) of cargo actually transported
5 by way of a waterborne ship or vehicle through a port facility during the period from
6 January 1, 2013, through December 31, 2013. Base year port cargo volume must be at least
7 seventy-five net tons of non-containerized cargo or ten loaded TEUs for a taxpayer to be
8 eligible for the credits provided in this section. For a taxpayer that does not ship that
9 amount in the year ending December 31, 2013, including a taxpayer who locates to
10 Missouri after December 31, 2013, the base cargo volume will be measured by the initial
11 January first through December thirty-first calendar year in which it meets the
12 requirements of seventy-five net tons of non-containerized cargo or ten loaded TEUs. Base
13 year port cargo volume must be recalculated each calendar year after the initial base year;

14 (2) "Major facility", a new facility to be located in Missouri that is projected to
15 import or export cargo through a port in excess of twenty-five thousand TEUs or the non-
16 containerized cargo equivalent in its first calendar year;

17 (3) "Port cargo volume", the total amount of net tons of non-containerized cargo
18 or containers measured in TEUs of cargo transported by way of a waterborne ship or
19 vehicle
20 through a port facility;

21 (4) "Port facility", any publicly or privately owned facility located within Missouri
22 through which cargo is transported by way of a waterborne ship or vehicle to or from
23 destinations outside the state and handles cargo owned by third parties in addition to cargo
24 owned by the port facility's owner; and

25 (5) "TEU" or "Twenty-foot equivalent unit", a volumetric measure based on the
26 size of a container that is twenty feet long by eight feet wide by eight feet, six inches high.

27 2. (1) For taxable years beginning on or after January 1, 2014, but before January 1,
28 2020, a taxpayer engaged in the manufacturing of goods or the distribution of
29 manufactured goods that uses port facilities in this state and increases its port cargo
30 volume at these facilities by a minimum of five percent in a single calendar year over its
31 base year port cargo volume, shall be allowed to claim a tax credit against the taxpayer's
32 state tax liability in an amount determined by the department. The department may waive
33 the requirement that port cargo volume be increased by a minimum of five percent over
34 base year port cargo volume for any taxpayer that qualifies as a major facility.

35 (2) Qualifying taxpayers that increase their port cargo volume by a minimum of five
36 percent in a qualifying calendar year shall be allowed to claim a fifty dollar tax credit

37 against the taxpayer's state tax liability for each TEU or the non-containerized cargo
38 equivalent above the base year port cargo volume. A qualifying taxpayer that is a major
39 facility as defined in this section shall be allowed to claim a fifty dollar tax credit against
40 the taxpayer's state tax liability for each TEU or the non-containerized cargo equivalent
41 transported through a port facility during the major facility's first calendar year. A
42 qualifying taxpayer may not receive more than two hundred fifty thousand dollars for each
43 calendar year except as provided for in subdivision (2) of subsection 3. The maximum
44 amount of credits allowed for all qualifying taxpayers under this section shall not exceed
45 three million five hundred thousand dollars for each calendar year. The department shall
46 allocate the credits under the provisions in subdivisions (1) and (2) of subsection 3.

47 (3) If the credit exceeds the taxpayer's tax liability for the taxable year, the excess
48 amount may be carried forward and claimed against income taxes in the next five
49 succeeding taxable years.

50 (4) The credit may be claimed by the taxpayer as provided in subdivision (1) of this
51 subsection only if the taxpayer owns the cargo at the time the port facilities are used.

52 3. (1) For every year in which a taxpayer claims the credit, the taxpayer shall submit
53 an application to the department by March first of the calendar year after the calendar
54 year in which the increase in port cargo volume occurs. The taxpayer shall attach a
55 schedule to the taxpayer's application to the department with the following information
56 and any other information requested by the department:

57 (a) A description of how the base year port cargo volume and the increase in port
58 cargo volume were determined;

59 (b) The amount of the base year port cargo volume;

60 (c) The amount of the increase in port cargo volume for the taxable year stated both
61 as a percentage increase and as a total increase in net tons of non-containerized cargo and
62 TEUs of cargo, including information that demonstrates an increase in port cargo volume
63 in excess of the minimum amount required to claim the tax credits under this section;

64 (d) Any tax credit utilized by the taxpayer in prior years; and

65 (e) The amount of tax credit carried over from prior years.

66 (2) If on March fifteenth of each year the cumulative amount of tax credits
67 requested by qualifying taxpayers for the prior year exceeds three million five hundred
68 thousand dollars, then the three million five hundred thousand dollars in credits shall be
69 prorated among the qualifying taxpayers who requested the credit.

70 (3) The taxpayer shall claim the credit on its income tax return in a manner
71 prescribed by the department of revenue, and the department may require a copy of the

72 certification form issued by a Missouri port authority be attached to the return or
73 otherwise provided.

74 4. Credits granted to a partnership, limited liability company, or electing small
75 business corporation (S corporation) shall be allocated to the individual partners,
76 members, or shareholders respectively in proportion to their ownership interests in such
77 business entities.

135.1664. 1. As used in this section, unless the context clearly indicates otherwise,
2 the term "international trade facility" shall mean a company that:

3 (1) Is doing business in the state and engaged in port-related activities including, but
4 not limited to, warehousing, distribution, freight forwarding and handling, and goods
5 processing;

6 (2) Has the sole discretion and authority to move cargo in containers or non-
7 containerized, originating or terminating in the state;

8 (3) Uses maritime port facilities located in the state; and

9 (4) Uses barges and rail systems to move cargo, in containers or non-containerized,
10 through port facilities in the state.

11 2. For taxable years beginning on or after January 1, 2014, but before January 1,
12 2020, a company that is an international trade facility shall be allowed a twenty-five dollar
13 tax credit against the taxpayer's state tax liability for each TEU or each sixteen tons of
14 non-containerized cargo moved by barge or rail.

15 3. The department shall issue tax credits under this section, and in no case shall the
16 department issue more than two million dollars in tax credits under this section in any
17 fiscal year of the state. In addition, the department shall not issue tax credits under this
18 section subsequent to the state's fiscal year ending on June 30, 2020. The international
19 trade facility shall not be allowed to claim any tax credit under this section unless it has
20 applied to the department for the tax credit and the department has approved the credit.
21 The department shall determine the credit amount allowable for the year and provide a
22 written certification to the international trade facility, which certification shall report the
23 amount of the tax credit approved by the department. The international trade facility shall
24 attach the certification to the applicable tax return.

25 4. For purposes of this section, the amount of any credit attributable to a
26 partnership, S corporation, or limited liability company shall be allocated to the individual
27 partners, shareholders, or members respectively in proportion to their ownership or
28 interest in such business entities.

29 5. Any credit not usable for the taxable year may be carried over for the next five
30 taxable years or until such credit is fully taken, whichever occurs first. The amount of the

31 credit allowed under this section shall not exceed the tax imposed for such taxable year.
32 No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject
33 to the tax limitation imposed under this subsection is allowed another credit under any
34 other provision of law or has a credit carryover from a preceding taxable year, such
35 taxpayer shall be considered to have first utilized any credit allowed that does not have a
36 carryover provision and then any credit that is carried forward from a preceding taxable
37 year before using any credit allowed under this section.

38 6. The department shall issue guidelines for the computation and carryover of the
39 credits provided under this section and the establishment of criteria for international trade
40 facilities.

41 7. The department shall promulgate rules to implement the provisions of this
42 section. Any rule or portion of a rule, as that term is defined in section 536.010, that is
43 created under the authority delegated in this section shall become effective only if it
44 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
45 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
46 vested with the general assembly under chapter 536 to review, to delay the effective date,
47 or to disapprove and annul a rule are subsequently held unconstitutional, then the grant
48 of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be
49 invalid and void.

135.1666. 1. As used in this section, unless the context requires a different meaning,
2 the following terms shall mean:

3 (1) "Affiliated companies", two or more companies related to each other so that:

4 (a) One company owns at least eighty percent of the voting power of the other or
5 others; or

6 (b) The same interest owns at least eighty percent of the voting power of two or
7 more companies.

8 (2) "Capital investment", the amount properly chargeable to a capital account for
9 improvements to rehabilitate or expand depreciable real property placed in service during
10 the taxable year and the cost of machinery, tools, and equipment used in an international
11 trade facility directly related to the movement of cargo. "Capital investment" includes
12 expenditures associated with any exterior, structural, mechanical, or electrical
13 improvements necessary to expand or rehabilitate a building for commercial or industrial
14 use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other
15 land improvements. For purposes of this section, machinery, tools, and equipment shall
16 be deemed to include only that property placed in service by the international trade facility
17 on or after January 1, 2013. Machinery, tools, and equipment excludes property:

- 18 **(a) For which a credit under this section was previously granted;**
19 **(b) Placed in service by the taxpayer, a related party as defined in 267(b) of the**
20 **Internal Revenue Code, as amended, or by a trade or business under common control as**
21 **defined in 52(b) of the Internal Revenue Code, as amended; or**
22 **(c) Previously in service in the state that has a basis in the hands of the person**
23 **acquiring it, determined in whole or in part by reference to the basis of such property in**
24 **the hands of the person from whom acquired or 1014(a) of the Internal Revenue Code, as**
25 **amended. "Capital investment" shall not include:**
26 **a. The cost of acquiring any real property or building;**
27 **b. The cost of furnishings;**
28 **c. Any expenditure associated with appraisal, architectural, engineering, or interior**
29 **design fees;**
30 **d. Loan fees, points, or capitalized interest;**
31 **e. Legal, accounting, realtor, sales and marketing, or other professional fees;**
32 **f. Closing costs, permit fees, user fees, zoning fees, impact fees, and inspection fees;**
33 **g. Bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary**
34 **facilities costs incurred during construction;**
35 **h. Utility hook-up or access fees;**
36 **i. Outbuildings; or**
37 **j. The cost of any well or septic system.**
38 **(3) "Credit year", the first taxable year following the taxable year in which the**
39 **international trade facility commenced or expanded its operations. A separate credit year**
40 **and a three-year allowance shall exist for each distinct international trade facility of a**
41 **single taxpayer.**
42 **(4) "International trade facility", a company that:**
43 **(a) Is engaged in port-related activities including, but not limited to, warehousing,**
44 **distribution, freight forwarding and handling, and goods processing;**
45 **(b) Uses maritime port facilities located in the state; and**
46 **(c) Transports at least ten percent more cargo, measured in TEU marine containers**
47 **or the non-containerized cargo equivalent, through maritime port facilities in the state**
48 **during the taxable year than was transported by the company through such facilities**
49 **during the preceding taxable year.**
50 **(5) "New, permanent full-time position", a job of indefinite duration, created by the**
51 **company after establishing or expanding an international trade facility in the state,**
52 **requiring a minimum of thirty-five hours of employment per week for each employee for**
53 **the entire normal year of the company's operations, or a position of indefinite duration**

54 that requires a minimum of thirty-five hours of employment per week for each employee
55 for the portion of the taxable year that the employee was initially hired for, or transferred
56 to the international trade facility in the state. Seasonal or temporary positions, or a job
57 created when a job function is shifted from an existing location in the state to the
58 international trade facility, and positions in building and grounds maintenance, security,
59 and other such positions that are ancillary to the principal activities performed by the
60 employees at the international trade facility shall not qualify as new, permanent full-time
61 positions.

62 (6) "Normal year", at least forty-eight weeks in a calendar year.

63 (7) "Qualified full-time employee", an employee filling a new, permanent full-time
64 position in an international trade facility in the state.

65 (8) "Qualified trade activities", the completed exportation or importation of at least
66 one International Organization for Standardization ocean container or the non-
67 containerized equivalent with a minimum twenty foot length, through a Missouri port
68 authority-operated cargo facility. An export container or the non-containerized cargo
69 equivalent with an ultimate international destination must be loaded on a barge and an
70 import container or the noncontainerized cargo equivalent originating from an
71 international destination must be discharged from a barge at such facility.

72 2. For taxable years beginning on or after January 1, 2014, but before January 1,
73 2020, a taxpayer satisfying the requirements of this section shall be allowed to claim a tax
74 credit against the taxpayer's state tax liability in an amount equal to either (i) three
75 thousand five hundred dollars per qualified full-time employee that results from increased
76 qualified trade activities by the taxpayer or (ii) an amount equal to two percent of the
77 capital investment made by the taxpayer to facilitate the increased qualified trade
78 activities. The election of which tax credit amount to claim shall be the responsibility of
79 the taxpayer. Both tax credits shall not be claimed for the same activities that occur within
80 a calendar year. The portion of the three thousand five hundred dollars credit earned with
81 respect to any qualified full-time employee who works in the state for less than twelve full
82 months during the credit year shall be determined by multiplying the credit amount by a
83 fraction, the numerator of which is the number of full months such employee worked for
84 the international trade facility in the state during the credit year and the denominator of
85 which is twelve.

86 3. The department shall issue tax credits under this section, and in no case shall the
87 department issue more than five hundred thousand dollars in tax credits under this section
88 in any fiscal year of the state. If the amount of tax credits requested under this section for
89 any taxable year exceeds five hundred thousand dollars such credits shall be allocated

90 proportionately among all qualified taxpayers. The department shall not issue tax credits
91 under this section subsequent to the state's fiscal year ending on June 30, 2020. The
92 taxpayer shall not be allowed to claim any tax credit under this section unless it has applied
93 to the department for the tax credit and the department has approved the credit. The
94 department shall determine the credit amount allowable for the taxable year and shall
95 provide a written certification to the taxpayer, which certification shall report the amount
96 of the tax credit approved by the department. The taxpayer shall attach the certification
97 to the applicable income tax return.

98 4. The amount of the credit allowed under this section shall not exceed fifty percent
99 of the tax imposed for the taxable year. Any remaining credit amount may be carried
100 forward for the next ten taxable years. In the event a taxpayer who is subject to the
101 limitation imposed under this subsection is allowed a different tax credit under another
102 provision of law, or has a credit carry forward from a preceding taxable year, such
103 taxpayer shall be considered to have first utilized any credit that does not have a carry
104 forward provision and then any credit carried forward from a preceding taxable year,
105 before using any of the credit allowed under this section.

106 5. No credit shall be earned for any employee:

107 (1) For whom a credit under this section was previously earned by a related party
108 as defined in section 267(b) of the Internal Revenue Code, as amended, or a trade or
109 business under common control as defined in section 52(b) of the Internal Revenue Code,
110 as amended;

111 (2) Who was previously employed in the same job function in Missouri by a related
112 party as defined in section 267(b) of the Internal Revenue Code, as amended, or a trade or
113 business under common control as defined in section 52(b) of the Internal Revenue Code,
114 as amended; or

115 (3) Whose job function was previously performed at a different location in Missouri
116 by an employee of the taxpayer, by a related party as defined in section 267(b) of the
117 Internal Revenue Code, as amended, or by a trade or business under common control as
118 defined in section 52(b) of the Internal Revenue Code, as amended.

119 6. For purposes of this section, the amount of any credit attributable to a
120 partnership, electing small business corporation (S corporation), or limited liability
121 company shall be allocated to the individual partners, shareholders, or members
122 respectively in proportion to their ownership or interest in such business entities.

123 7. For the purposes of this section, two or more affiliated companies may elect to
124 aggregate the number of jobs created for qualified full-time employees or the amounts of

125 capital investments as the result of the establishment or expansion by the individual
126 companies in order to qualify for the credit allowed herein.

127 **8. Recapture of the credit amount under the following circumstances shall be**
128 **accomplished by increasing the tax in any of the five years succeeding the taxable year in**
129 **which a credit has been earned pursuant to this section if the number of qualified full-time**
130 **employees falls below the average number of qualified full-time employees during the**
131 **taxable year. The tax increase amount shall be determined by recalculating the credit that**
132 **would have been earned for the original taxable year using the decreased number of**
133 **qualified full-time employees and subtracting the recalculated credit amount from the**
134 **amount previously earned. In the event that the average number of qualified full-time**
135 **employees employed at an international trade facility falls below the number employed by**
136 **the taxpayer prior to claiming any credits under this section in any of the five taxable years**
137 **succeeding the year in which the credits were earned, all credits earned with respect to the**
138 **international trade facility shall be recaptured. No credit amount shall be recaptured more**
139 **than once under this subsection. Any recapture under this subsection shall reduce credits**
140 **earned but not yet allowed, and credits allowed but carried forward before the taxpayer's**
141 **tax liability is increased.**

142 **9. The department shall issue guidelines for:**

143 **(1) The computation, carryover, and recapture of the credits provided under this**
144 **section;**

145 **(2) The establishment of criteria for:**

146 **(a) International trade facilities;**

147 **(b) Qualified full-time employees at such facilities; and**

148 **(c) Capital investments; and**

149 **(3) The computation, carryover, recapture, and redemption of the credit by**
150 **affiliated companies.**

151 **10. The department shall promulgate rules to implement the provisions of this**
152 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
153 **created under the authority delegated in this section shall become effective only if it**
154 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
155 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
156 **vested with the general assembly under chapter 536 to review, to delay the effective date,**
157 **or to disapprove and annul a rule are subsequently held unconstitutional, then the grant**
158 **of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be**
159 **invalid and void.**

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