

SECOND REGULAR SESSION

HOUSE BILL NO. 2754

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BROWN (16).

5675H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 135.110 and 135.155, RSMo, and to enact in lieu thereof two new sections relating to a tax credit for new business facilities.

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

Section A. Sections 135.110 and 135.155, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 135.110 and 135.155, to read as follows:

135.110. 1. Any taxpayer who shall establish a new business facility shall be allowed a credit, each year for ten years, in an amount determined pursuant to subsection 2 or 3 of this section, whichever is applicable, against the tax imposed by chapter 143, excluding withholding tax imposed by sections 143.191 to 143.265, or an insurance company which shall establish a new business facility by satisfying the requirements in subdivision (9) of section 135.100 shall be allowed a credit against the tax otherwise imposed by chapter 148, and in the case of an insurance company exempt from the thirty percent employee requirement of section 135.230, against any obligation imposed pursuant to section 375.916, except that no taxpayer shall be entitled to multiple ten-year periods for subsequent expansions at the same facility, except as otherwise provided in this section. For the purpose of this section, the term "facility" shall mean, and be limited to, the facility or facilities which are located on the same site in which the new business facility is located, and in which the business conducted at such facility or facilities is directly related to the business conducted at the new business facility. Notwithstanding the provisions of this subsection, a taxpayer may be entitled to an additional ten-year period, **and an additional ten-year period after the expiration of such additional ten-year period**, if a new business facility is expanded in the eighth, ninth or tenth year of the current ten-year period or in subsequent years following the

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.

18 expiration of the ten-year period, if the number of new business facility employees attributed
19 to such expansion is at least twenty-five and the amount of new business facility investment
20 attributed to such expansion is at least one million dollars. Credits may not be carried
21 forward but shall be claimed for the taxable year during which commencement of commercial
22 operations occurs at such new business facility, and for each of the nine succeeding taxable
23 years. A letter of intent, as provided for in section 135.258, must be filed with the department
24 of economic development no later than fifteen days prior to the commencement of
25 commercial operations at the new business facility. The initial application for claiming tax
26 credits must be made in the taxpayer's tax period immediately following the tax period in
27 which commencement of commercial operations began at the new business facility. This
28 provision shall have effect on all initial applications filed on or after August 28, 1992. No
29 credit shall be allowed pursuant to this section unless the number of new business facility
30 employees engaged or maintained in employment at the new business facility for the taxable
31 year for which the credit is claimed equals or exceeds two; except that the number of new
32 business facility employees engaged or maintained in employment by a revenue-producing
33 enterprise other than a revenue-producing enterprise defined in paragraphs (a) to (g) and (i) to
34 (l) of subdivision (12) of section 135.100 which establishes an office as defined in subdivision
35 (9) of section 135.100 shall equal or exceed twenty-five.

36 2. For tax periods beginning after August 28, 1991, in the case of a taxpayer operating
37 an existing business facility, the credit allowed by subsection 1 of this section shall offset the
38 greater of:

39 (1) Some portion of the income tax otherwise imposed by chapter 143, excluding
40 withholding tax imposed by sections 143.191 to 143.265, or in the case of an insurance
41 company, the tax on the direct premiums, as defined in chapter 148, and in the case of an
42 insurance company exempt from the thirty percent employee requirement of section 135.230,
43 against any obligation imposed pursuant to section 375.916 with respect to such taxpayer's
44 new business facility income for the taxable year for which such credit is allowed; or

45 (2) Up to fifty percent or, in the case of an economic development project located
46 within a distressed community as defined in section 135.530, seventy-five percent of the
47 business income tax otherwise imposed by chapter 143, excluding withholding tax imposed
48 by sections 143.191 to 143.265, or in the case of an insurance company, the tax on the direct
49 premiums, as defined in chapter 148, and in the case of an insurance company exempt from
50 the thirty percent employee requirement of section 135.230, against any obligation imposed
51 pursuant to section 375.916 if the business operates no other facilities in Missouri. In the case
52 of an existing business facility operating more than one facility in Missouri, the credit
53 allowed in subsection 1 of this section shall offset up to the greater of the portion prescribed
54 in subdivision (1) of this subsection or twenty-five percent or, in the case of an economic

55 development project located within a distressed community as defined in section 135.530,
56 thirty-five percent of the business' tax, except that no taxpayer operating more than one
57 facility in Missouri shall be allowed to offset more than twenty-five percent or, in the case of
58 an economic development project located within a distressed community as defined in section
59 135.530, thirty-five percent of the taxpayer's business income tax in any tax period under the
60 method prescribed in this subdivision. Such credit shall be an amount equal to the sum of one
61 hundred dollars or, in the case of an economic development project located within a distressed
62 community as defined in section 135.530, one hundred fifty dollars for each new business
63 facility employee plus one hundred dollars or, in the case of an economic development project
64 located within a distressed community as defined in section 135.530, one hundred fifty
65 dollars for each one hundred thousand dollars, or major fraction thereof (which shall be
66 deemed to be fifty-one percent or more) in new business facility investment. For the purpose
67 of this section, tax credits earned by a taxpayer, who establishes a new business facility
68 because it satisfies the requirements of paragraph (c) of subdivision (5) of section 135.100,
69 shall offset the greater of the portion prescribed in subdivision (1) of this subsection or up to
70 fifty percent or, in the case of an economic development project located within a distressed
71 community as defined in section 135.530, seventy-five percent of the business' tax provided
72 the business operates no other facilities in Missouri. In the case of a business operating more
73 than one facility in Missouri, the credit allowed in subsection 1 of this section shall offset up
74 to the greater of the portion prescribed in subdivision (1) of this subsection or twenty-five
75 percent or, in the case of an economic development project located within a distressed
76 community as defined in section 135.530, thirty-five percent of the business' tax, except that
77 no taxpayer operating more than one facility in Missouri shall be allowed to offset more than
78 twenty-five percent or, in the case of an economic development project located within a
79 distressed community as defined in section 135.530, thirty-five percent of the taxpayer's
80 business income tax in any tax period under the method prescribed in this subdivision.

81 3. For tax periods beginning after August 28, 1991, in the case of a taxpayer not
82 operating an existing business facility, the credit allowed by subsection 1 of this section shall
83 offset the greater of:

84 (1) Some portion of the income tax otherwise imposed by chapter 143, excluding
85 withholding tax imposed by sections 143.191 to 143.265, or in the case of an insurance
86 company, the tax on the direct premiums, as defined in chapter 148, and in the case of an
87 insurance company exempt from the thirty percent employee requirement of section 135.230,
88 against any obligation imposed pursuant to section 375.916 with respect to such taxpayer's
89 new business facility income for the taxable year for which such credit is allowed; or

90 (2) Up to one hundred percent of the business income tax otherwise imposed by
91 chapter 143, excluding withholding tax imposed by sections 143.191 to 143.265, or in the

case of an insurance company, the tax on the direct premiums, as defined in chapter 148, and in the case of an insurance company exempt from the thirty percent employee requirement of section 135.230, against any obligation imposed pursuant to section 375.916 if the business has no other facilities operating in Missouri. In the case of a taxpayer not operating an existing business and operating more than one facility in Missouri, the credit allowed by subsection 1 of this section shall offset up to the greater of the portion prescribed in subdivision (1) of this subsection or twenty-five percent or, in the case of an economic development project located within a distressed community as defined in section 135.530, thirty-five percent of the business' tax, except that no taxpayer operating more than one facility in Missouri shall be allowed to offset more than twenty-five percent or, in the case of an economic development project located within a distressed community as defined in section 135.530, thirty-five percent of the taxpayer's business income tax in any tax period under the method prescribed in this subdivision. Such credit shall be an amount equal to the sum of seventy-five dollars or, in the case of an economic development project located within a distressed community as defined in section 135.530, one hundred twenty-five dollars for each new business facility employee plus seventy-five dollars or, in the case of an economic development project located within a distressed community as defined in section 135.530, one hundred twenty-five dollars for each one hundred thousand dollars, or major fraction thereof (which shall be deemed to be fifty-one percent or more) in new business facility investment.

4. The number of new business facility employees during any taxable year shall be determined by dividing by twelve the sum of the number of individuals employed on the last business day of each month of such taxable year. If the new business facility is in operation for less than the entire taxable year, the number of new business facility employees shall be determined by dividing the sum of the number of individuals employed on the last business day of each full calendar month during the portion of such taxable year during which the new business facility was in operation by the number of full calendar months during such period. For the purpose of computing the credit allowed by this section in the case of a facility which qualifies as a new business facility because it qualifies as a separate facility pursuant to subsection 6 of this section, and, in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision (5) of section 135.100, or subdivision (11) of section 135.100, the number of new business facility employees at such facility shall be reduced by the average number of individuals employed, computed as provided in this subsection, at the facility during the taxable year immediately preceding the taxable year in which such expansion, acquisition, or replacement occurred and shall further be reduced by the number of individuals employed by the taxpayer or related taxpayer that was subsequently transferred to the new business facility from another Missouri facility and for which credits

129 authorized in this section are not being earned, whether such credits are earned because of an
130 expansion, acquisition, relocation or the establishment of a new facility.

131 5. For the purpose of computing the credit allowed by this section in the case of a
132 facility which qualifies as a new business facility because it qualifies as a separate facility
133 pursuant to subsection 6 of this section, and, in the case of a new business facility which
134 satisfies the requirements of paragraph (c) of subdivision (5) of section 135.100 or
135 subdivision (11) of section 135.100, the amount of the taxpayer's new business facility
136 investment in such facility shall be reduced by the average amount, computed as provided in
137 subdivision (8) of section 135.100 for new business facility investment, of the investment of
138 the taxpayer, or related taxpayer immediately preceding such expansion or replacement or at
139 the time of acquisition. Furthermore, the amount of the taxpayer's new business facility
140 investment shall also be reduced by the amount of investment employed by the taxpayer or
141 related taxpayer which was subsequently transferred to the new business facility from another
142 Missouri facility and for which credits authorized in this section are not being earned,
143 whether such credits are earned because of an expansion, acquisition, relocation or the
144 establishment of a new facility.

145 6. If a facility, which does not constitute a new business facility, is expanded by the
146 taxpayer, the expansion shall be considered a separate facility eligible for the credit allowed
147 by this section if:

148 (1) The taxpayer's new business facility investment in the expansion during the tax
149 period in which the credits allowed in this section are claimed exceeds one hundred thousand
150 dollars, or, if less, one hundred percent of the investment in the original facility prior to
151 expansion and if the number of new business facility employees engaged or maintained in
152 employment at the expansion facility for the taxable year for which credit is claimed equals or
153 exceeds two, except that the number of new business facility employees engaged or
154 maintained in employment at the expansion facility for the taxable year for which the credit is
155 claimed equals or exceeds twenty-five if an office as defined in subdivision (9) of section
156 135.100 is established by a revenue-producing enterprise other than a revenue-producing
157 enterprise defined in paragraphs (a) to (g) and (i) to (l) of subdivision (12) of section 135.100
158 and the total number of employees at the facility after the expansion is at least two greater
159 than the total number of employees before the expansion, except that the total number of
160 employees at the facility after the expansion is at least greater than the number of employees
161 before the expansion by twenty-five, if an office as defined in subdivision (9) of section
162 135.100 is established by a revenue-producing enterprise other than a revenue-producing
163 enterprise defined in paragraphs (a) to (g) and (i) to (l) of subdivision (12) of section 135.100;
164 and

165 (2) The expansion otherwise constitutes a new business facility. The taxpayer's
166 investment in the expansion and in the original facility prior to expansion shall be determined
167 in the manner provided in subdivision (8) of section 135.100.

168 7. No credit shall be allowed pursuant to this section to a public utility, as such term is
169 defined in section 386.020. Notwithstanding any provision of this subsection to the contrary,
170 motor carriers, barge lines or railroads engaged in transporting property for hire, or any
171 interexchange telecommunications company or local exchange telecommunications company
172 that establishes a new business facility shall be eligible to qualify for credits allowed in this
173 section.

174 8. For the purposes of the credit described in this section, in the case of a corporation
175 described in section 143.471 or partnership, in computing Missouri's tax liability, this credit
176 shall be allowed to the following:

177 (1) The shareholders of the corporation described in section 143.471;

178 (2) The partners of the partnership. This credit shall be apportioned to the entities
179 described in subdivisions (1) and (2) of this subsection in proportion to their share of
180 ownership on the last day of the taxpayer's tax period.

181 9. Notwithstanding any provision of law to the contrary, any employee-owned
182 engineering firm classified as SIC 8711, architectural firm as classified SIC 8712, or
183 accounting firm classified SIC 8721 establishing a new business facility because it qualifies
184 as a headquarters as defined in subsection 10 of this section, shall be allowed the credits
185 described in subsection 11 of this section under the same terms and conditions prescribed in
186 sections 135.100 to 135.150; provided:

187 (1) Such facility maintains an average of at least five hundred new business facility
188 employees as defined in subdivision (6) of section 135.100 during the taxpayer's tax period in
189 which such credits are being claimed; and

190 (2) Such facility maintains an average of at least twenty million dollars in new
191 business facility investment as defined in subdivision (8) of section 135.100 during the
192 taxpayer's tax period in which such credits are being claimed.

193 10. For the purpose of the credits allowed in subsection 9 of this section:

194 (1) "Employee-owned" means the business employees own directly or indirectly,
195 including through an employee stock ownership plan or trust at least:

196 (a) Seventy-five percent of the total business stock, if the taxpayer is a corporation
197 described in section 143.441; or

198 (b) One hundred percent of the interest in the business if the taxpayer is a corporation
199 described in section 143.471, a partnership, or a limited liability company; and

200 (2) "Headquarters" means:

201 (a) The administrative management of at least three integrated facilities operated by
202 the taxpayer or related taxpayer; and

203 (b) The taxpayer's business has been headquartered in this state for more than fifty
204 years.

205 11. The tax credits allowed in subsection 9 of this section shall be the greater of:

206 (1) Four hundred dollars for each new business facility employee as computed in
207 subsection 4 of this section and four percent of new business facility investment as computed
208 in subsection 5 of this section; or

209 (2) Five hundred dollars for each new business facility employee as computed in
210 subsection 4 of this section, and five hundred dollars of each one hundred thousand dollars of
211 new business facility investment as computed in subsection 5 of this section.

212 12. For the purpose of the credit described in subsection 9 of this section, in the case
213 of a small corporation described in section 143.471, or a partnership, or a limited liability
214 company, the credits allowed in subsection 9 of this section shall be apportioned in proportion
215 to the share of ownership of each shareholder, partner or stockholder on the last day of the
216 taxpayer's tax period for which such credits are being claimed.

217 13. For the purpose of the credit described in subsection 9 of this section, tax credits
218 earned, to the extent such credits exceed the taxpayer's Missouri tax on taxable business
219 income, shall constitute an overpayment of taxes and in such case, be refunded to the taxpayer
220 provided such refunds are used by the taxpayer to purchase specified facility items. For the
221 purpose of the refund as authorized in this subsection, "specified facility items" means
222 equipment, computers, computer software, copiers, tenant finishing, furniture and fixtures
223 installed and in use at the new business facility during the taxpayer's taxable year. The
224 taxpayer shall perfect such refund by attesting in writing to the director, subject to the
225 penalties of perjury, the requirements prescribed in this subsection have been met and
226 submitting any other information the director may require.

227 14. Notwithstanding any provision of law to the contrary, any taxpayer may sell,
228 assign, exchange, convey or otherwise transfer tax credits allowed in subsection 9 of this
229 section under the terms and conditions prescribed in subdivisions (1) and (2) of this
230 subsection. Such taxpayer, referred to as the assignor for the purpose of this subsection, may
231 sell, assign, exchange or otherwise transfer earned tax credits:

232 (1) For no less than seventy-five percent of the par value of such credits; and

233 (2) In an amount not to exceed one hundred percent of such earned credits. The
234 taxpayer acquiring the earned credits referred to as the assignee for the purpose of this
235 subsection may use the acquired credits to offset up to one hundred percent of the tax
236 liabilities otherwise imposed by chapter 143, excluding withholding tax imposed by sections
237 143.191 to 143.261, or chapter 148, or in the case of an insurance company exempt from the

238 thirty percent employee requirement of section 135.230, against any obligation imposed
239 pursuant to section 375.916. Unused credits in the hands of the assignee may be carried
240 forward for up to five tax periods, provided all such credits shall be claimed within ten tax
241 periods following the tax period in which commencement of commercial operations occurred
242 at the new business facility. The assignor shall enter into a written agreement with the
243 assignee establishing the terms and conditions of the agreement and shall perfect such transfer
244 by notifying the director in writing within thirty calendar days following the effective date of
245 the transfer and shall provide any information as may be required by the director to administer
246 and carry out the provisions of this subsection. Notwithstanding any other provision of law to
247 the contrary, the amount received by the assignor of such tax credit shall be taxable as income
248 of the assignor, and the difference between the amount paid by the assignee and the par value
249 of the credits shall be taxable as income of the assignee.

135.155. 1. Notwithstanding any provision of the law to the contrary, no revenue-
2 producing enterprise other than headquarters as defined in subsection 10 of section 135.110
3 shall receive the incentives set forth in sections 135.100 to 135.150 for facilities commencing
4 operations on or after January 1, 2005. No headquarters shall receive the incentives set forth
5 in subsections 9 to 14 of section 135.110 for facilities commencing or expanding operations
6 on or after January 1, ~~2025~~ 2035.

7 2. Notwithstanding subsection 9 of section 135.110 to the contrary, expansions at
8 headquarters facilities shall each be considered a separate new business facility and each be
9 entitled to the credits as set forth in subsections 9 to 14 of section 135.110 if the number of
10 new business facility employees attributed to each such expansion is at least twenty-five and
11 the amount of new business facility investment attributed to each such expansion is at least
12 one million dollars. In any year in which a new business facility is not created, the jobs and
13 investment for that year shall be included in calculating the credits for the most recent new
14 business facility and not an earlier created new business facility.

15 3. Notwithstanding any provision of law to the contrary, for headquarters, buildings
16 on multiple noncontiguous real properties shall be considered one facility if the buildings are
17 located within the same county or within the same municipality.

✓