

SENATE BILL NO. 1141

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR RAZER.

5570S.01H

ADRIANE D. CROUSE, Secretary

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
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 135.110 and 135.155, to read as follows:

135.110. 1. Any taxpayer who shall establish a new
2 business facility shall be allowed a credit, each year for
3 ten years, in an amount determined pursuant to subsection 2
4 or 3 of this section, whichever is applicable, against the
5 tax imposed by chapter 143, excluding withholding tax
6 imposed by sections 143.191 to 143.265, or an insurance
7 company which shall establish a new business facility by
8 satisfying the requirements in subdivision (9) of section
9 135.100 shall be allowed a credit against the tax otherwise
10 imposed by chapter 148, and in the case of an insurance
11 company exempt from the thirty percent employee requirement
12 of section 135.230, against any obligation imposed pursuant
13 to section 375.916, except that no taxpayer shall be
14 entitled to multiple ten-year periods for subsequent
15 expansions at the same facility, except as otherwise
16 provided in this section. For the purpose of this section,
17 the term "facility" shall mean, and be limited to, the
18 facility or facilities which are located on the same site in

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 which the new business facility is located, and in which the
20 business conducted at such facility or facilities is
21 directly related to the business conducted at the new
22 business facility. Notwithstanding the provisions of this
23 subsection, a taxpayer may be entitled to an additional ten-
24 year period, **and an additional ten-year period after the**
25 **expiration of such additional ten-year period,** if a new
26 business facility is expanded in the eighth, ninth or tenth
27 year of the current ten-year period or in subsequent years
28 following the expiration of the ten-year period, if the
29 number of new business facility employees attributed to such
30 expansion is at least twenty-five and the amount of new
31 business facility investment attributed to such expansion is
32 at least one million dollars. Credits may not be carried
33 forward but shall be claimed for the taxable year during
34 which commencement of commercial operations occurs at such
35 new business facility, and for each of the nine succeeding
36 taxable years. A letter of intent, as provided for in
37 section 135.258, must be filed with the department of
38 economic development no later than fifteen days prior to the
39 commencement of commercial operations at the new business
40 facility. The initial application for claiming tax credits
41 must be made in the taxpayer's tax period immediately
42 following the tax period in which commencement of commercial
43 operations began at the new business facility. This
44 provision shall have effect on all initial applications
45 filed on or after August 28, 1992. No credit shall be
46 allowed pursuant to this section unless the number of new
47 business facility employees engaged or maintained in
48 employment at the new business facility for the taxable year
49 for which the credit is claimed equals or exceeds two;
50 except that the number of new business facility employees

51 engaged or maintained in employment by a revenue-producing
52 enterprise other than a revenue-producing enterprise defined
53 in paragraphs (a) to (g) and (i) to (l) of subdivision (12)
54 of section 135.100 which establishes an office as defined in
55 subdivision (9) of section 135.100 shall equal or exceed
56 twenty-five.

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

61 (1) Some portion of the income tax otherwise imposed
62 by chapter 143, excluding withholding tax imposed by
63 sections 143.191 to 143.265, or in the case of an insurance
64 company, the tax on the direct premiums, as defined in
65 chapter 148, and in the case of an insurance company exempt
66 from the thirty percent employee requirement of section
67 135.230, against any obligation imposed pursuant to section
68 375.916 with respect to such taxpayer's new business
69 facility income for the taxable year for which such credit
70 is allowed; or

71 (2) Up to fifty percent or, in the case of an economic
72 development project located within a distressed community as
73 defined in section 135.530, seventy-five percent of the
74 business income tax otherwise imposed by chapter 143,
75 excluding withholding tax imposed by sections 143.191 to
76 143.265, or in the case of an insurance company, the tax on
77 the direct premiums, as defined in chapter 148, and in the
78 case of an insurance company exempt from the thirty percent
79 employee requirement of section 135.230, against any
80 obligation imposed pursuant to section 375.916 if the
81 business operates no other facilities in Missouri. In the
82 case of an existing business facility operating more than

83 one facility in Missouri, the credit allowed in subsection 1
84 of this section shall offset up to the greater of the
85 portion prescribed in subdivision (1) of this subsection or
86 twenty-five percent or, in the case of an economic
87 development project located within a distressed community as
88 defined in section 135.530, thirty-five percent of the
89 business' tax, except that no taxpayer operating more than
90 one facility in Missouri shall be allowed to offset more
91 than twenty-five percent or, in the case of an economic
92 development project located within a distressed community as
93 defined in section 135.530, thirty-five percent of the
94 taxpayer's business income tax in any tax period under the
95 method prescribed in this subdivision. Such credit shall be
96 an amount equal to the sum of one hundred dollars or, in the
97 case of an economic development project located within a
98 distressed community as defined in section 135.530, one
99 hundred fifty dollars for each new business facility
100 employee plus one hundred dollars or, in the case of an
101 economic development project located within a distressed
102 community as defined in section 135.530, one hundred fifty
103 dollars for each one hundred thousand dollars, or major
104 fraction thereof (which shall be deemed to be fifty-one
105 percent or more) in new business facility investment. For
106 the purpose of this section, tax credits earned by a
107 taxpayer, who establishes a new business facility because it
108 satisfies the requirements of paragraph (c) of subdivision
109 (5) of section 135.100, shall offset the greater of the
110 portion prescribed in subdivision (1) of this subsection or
111 up to fifty percent or, in the case of an economic
112 development project located within a distressed community as
113 defined in section 135.530, seventy-five percent of the
114 business' tax provided the business operates no other

115 facilities in Missouri. In the case of a business operating
116 more than one facility in Missouri, the credit allowed in
117 subsection 1 of this section shall offset up to the greater
118 of the portion prescribed in subdivision (1) of this
119 subsection or twenty-five percent or, in the case of an
120 economic development project located within a distressed
121 community as defined in section 135.530, thirty-five percent
122 of the business' tax, except that no taxpayer operating more
123 than one facility in Missouri shall be allowed to offset
124 more than twenty-five percent or, in the case of an economic
125 development project located within a distressed community as
126 defined in section 135.530, thirty-five percent of the
127 taxpayer's business income tax in any tax period under the
128 method prescribed in this subdivision.

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

133 (1) Some portion of the income tax otherwise imposed
134 by chapter 143, excluding withholding tax imposed by
135 sections 143.191 to 143.265, or in the case of an insurance
136 company, the tax on the direct premiums, as defined in
137 chapter 148, and in the case of an insurance company exempt
138 from the thirty percent employee requirement of section
139 135.230, against any obligation imposed pursuant to section
140 375.916 with respect to such taxpayer's new business
141 facility income for the taxable year for which such credit
142 is allowed; or

143 (2) Up to one hundred percent of the business income
144 tax otherwise imposed by chapter 143, excluding withholding
145 tax imposed by sections 143.191 to 143.265, or in the case
146 of an insurance company, the tax on the direct premiums, as

147 defined in chapter 148, and in the case of an insurance
148 company exempt from the thirty percent employee requirement
149 of section 135.230, against any obligation imposed pursuant
150 to section 375.916 if the business has no other facilities
151 operating in Missouri. In the case of a taxpayer not
152 operating an existing business and operating more than one
153 facility in Missouri, the credit allowed by subsection 1 of
154 this section shall offset up to the greater of the portion
155 prescribed in subdivision (1) of this subsection or twenty-
156 five percent or, in the case of an economic development
157 project located within a distressed community as defined in
158 section 135.530, thirty-five percent of the business' tax,
159 except that no taxpayer operating more than one facility in
160 Missouri shall be allowed to offset more than twenty-five
161 percent or, in the case of an economic development project
162 located within a distressed community as defined in section
163 135.530, thirty-five percent of the taxpayer's business
164 income tax in any tax period under the method prescribed in
165 this subdivision. Such credit shall be an amount equal to
166 the sum of seventy-five dollars or, in the case of an
167 economic development project located within a distressed
168 community as defined in section 135.530, one hundred twenty-
169 five dollars for each new business facility employee plus
170 seventy-five dollars or, in the case of an economic
171 development project located within a distressed community as
172 defined in section 135.530, one hundred twenty-five dollars
173 for each one hundred thousand dollars, or major fraction
174 thereof (which shall be deemed to be fifty-one percent or
175 more) in new business facility investment.

176 4. The number of new business facility employees
177 during any taxable year shall be determined by dividing by
178 twelve the sum of the number of individuals employed on the

179 last business day of each month of such taxable year. If
180 the new business facility is in operation for less than the
181 entire taxable year, the number of new business facility
182 employees shall be determined by dividing the sum of the
183 number of individuals employed on the last business day of
184 each full calendar month during the portion of such taxable
185 year during which the new business facility was in operation
186 by the number of full calendar months during such period.
187 For the purpose of computing the credit allowed by this
188 section in the case of a facility which qualifies as a new
189 business facility because it qualifies as a separate
190 facility pursuant to subsection 6 of this section, and, in
191 the case of a new business facility which satisfies the
192 requirements of paragraph (c) of subdivision (5) of section
193 135.100, or subdivision (11) of section 135.100, the number
194 of new business facility employees at such facility shall be
195 reduced by the average number of individuals employed,
196 computed as provided in this subsection, at the facility
197 during the taxable year immediately preceding the taxable
198 year in which such expansion, acquisition, or replacement
199 occurred and shall further be reduced by the number of
200 individuals employed by the taxpayer or related taxpayer
201 that was subsequently transferred to the new business
202 facility from another Missouri facility and for which
203 credits authorized in this section are not being earned,
204 whether such credits are earned because of an expansion,
205 acquisition, relocation or the establishment of a new
206 facility.

207 5. For the purpose of computing the credit allowed by
208 this section in the case of a facility which qualifies as a
209 new business facility because it qualifies as a separate
210 facility pursuant to subsection 6 of this section, and, in

211 the case of a new business facility which satisfies the
212 requirements of paragraph (c) of subdivision (5) of section
213 135.100 or subdivision (11) of section 135.100, the amount
214 of the taxpayer's new business facility investment in such
215 facility shall be reduced by the average amount, computed as
216 provided in subdivision (8) of section 135.100 for new
217 business facility investment, of the investment of the
218 taxpayer, or related taxpayer immediately preceding such
219 expansion or replacement or at the time of acquisition.
220 Furthermore, the amount of the taxpayer's new business
221 facility investment shall also be reduced by the amount of
222 investment employed by the taxpayer or related taxpayer
223 which was subsequently transferred to the new business
224 facility from another Missouri facility and for which
225 credits authorized in this section are not being earned,
226 whether such credits are earned because of an expansion,
227 acquisition, relocation or the establishment of a new
228 facility.

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

233 (1) The taxpayer's new business facility investment in
234 the expansion during the tax period in which the credits
235 allowed in this section are claimed exceeds one hundred
236 thousand dollars, or, if less, one hundred percent of the
237 investment in the original facility prior to expansion and
238 if the number of new business facility employees engaged or
239 maintained in employment at the expansion facility for the
240 taxable year for which credit is claimed equals or exceeds
241 two, except that the number of new business facility
242 employees engaged or maintained in employment at the

243 expansion facility for the taxable year for which the credit
244 is claimed equals or exceeds twenty-five if an office as
245 defined in subdivision (9) of section 135.100 is established
246 by a revenue-producing enterprise other than a revenue-
247 producing enterprise defined in paragraphs (a) to (g) and
248 (i) to (l) of subdivision (12) of section 135.100 and the
249 total number of employees at the facility after the
250 expansion is at least two greater than the total number of
251 employees before the expansion, except that the total number
252 of employees at the facility after the expansion is at least
253 greater than the number of employees before the expansion by
254 twenty-five, if an office as defined in subdivision (9) of
255 section 135.100 is established by a revenue-producing
256 enterprise other than a revenue-producing enterprise defined
257 in paragraphs (a) to (g) and (i) to (l) of subdivision (12)
258 of section 135.100; and

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

263 7. No credit shall be allowed pursuant to this section
264 to a public utility, as such term is defined in section
265 386.020. Notwithstanding any provision of this subsection to
266 the contrary, motor carriers, barge lines or railroads
267 engaged in transporting property for hire, or any
268 interexchange telecommunications company or local exchange
269 telecommunications company that establishes a new business
270 facility shall be eligible to qualify for credits allowed in
271 this section.

272 8. For the purposes of the credit described in this
273 section, in the case of a corporation described in section

274 143.471 or partnership, in computing Missouri's tax
275 liability, this credit shall be allowed to the following:

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

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

283 9. Notwithstanding any provision of law to the
284 contrary, any employee-owned engineering firm classified as
285 SIC 8711, architectural firm as classified SIC 8712, or
286 accounting firm classified SIC 8721 establishing a new
287 business facility because it qualifies as a headquarters as
288 defined in subsection 10 of this section, shall be allowed
289 the credits described in subsection 11 of this section under
290 the same terms and conditions prescribed in sections 135.100
291 to 135.150; provided:

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

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

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

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

306 (a) Seventy-five percent of the total business stock,
307 if the taxpayer is a corporation described in section
308 143.441; or

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

313 (2) "Headquarters" means:

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

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

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

321 (1) Four hundred dollars for each new business
322 facility employee as computed in subsection 4 of this
323 section and four percent of new business facility investment
324 as computed in subsection 5 of this section; or

325 (2) Five hundred dollars for each new business
326 facility employee as computed in subsection 4 of this
327 section, and five hundred dollars of each one hundred
328 thousand dollars of new business facility investment as
329 computed in subsection 5 of this section.

330 12. For the purpose of the credit described in
331 subsection 9 of this section, in the case of a small
332 corporation described in section 143.471, or a partnership,
333 or a limited liability company, the credits allowed in
334 subsection 9 of this section shall be apportioned in
335 proportion to the share of ownership of each shareholder,
336 partner or stockholder on the last day of the taxpayer's tax
337 period for which such credits are being claimed.

338 13. For the purpose of the credit described in
339 subsection 9 of this section, tax credits earned, to the
340 extent such credits exceed the taxpayer's Missouri tax on
341 taxable business income, shall constitute an overpayment of
342 taxes and in such case, be refunded to the taxpayer provided
343 such refunds are used by the taxpayer to purchase specified
344 facility items. For the purpose of the refund as authorized
345 in this subsection, "specified facility items" means
346 equipment, computers, computer software, copiers, tenant
347 finishing, furniture and fixtures installed and in use at
348 the new business facility during the taxpayer's taxable
349 year. The taxpayer shall perfect such refund by attesting
350 in writing to the director, subject to the penalties of
351 perjury, the requirements prescribed in this subsection have
352 been met and submitting any other information the director
353 may require.

354 14. Notwithstanding any provision of law to the
355 contrary, any taxpayer may sell, assign, exchange, convey or
356 otherwise transfer tax credits allowed in subsection 9 of
357 this section under the terms and conditions prescribed in
358 subdivisions (1) and (2) of this subsection. Such taxpayer,
359 referred to as the assignor for the purpose of this
360 subsection, may sell, assign, exchange or otherwise transfer
361 earned tax credits:

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

364 (2) In an amount not to exceed one hundred percent of
365 such earned credits. The taxpayer acquiring the earned
366 credits referred to as the assignee for the purpose of this
367 subsection may use the acquired credits to offset up to one
368 hundred percent of the tax liabilities otherwise imposed by
369 chapter 143, excluding withholding tax imposed by sections

370 143.191 to 143.261, or chapter 148, or in the case of an
371 insurance company exempt from the thirty percent employee
372 requirement of section 135.230, against any obligation
373 imposed pursuant to section 375.916. Unused credits in the
374 hands of the assignee may be carried forward for up to five
375 tax periods, provided all such credits shall be claimed
376 within ten tax periods following the tax period in which
377 commencement of commercial operations occurred at the new
378 business facility. The assignor shall enter into a written
379 agreement with the assignee establishing the terms and
380 conditions of the agreement and shall perfect such transfer
381 by notifying the director in writing within thirty calendar
382 days following the effective date of the transfer and shall
383 provide any information as may be required by the director
384 to administer and carry out the provisions of this
385 subsection. Notwithstanding any other provision of law to
386 the contrary, the amount received by the assignor of such
387 tax credit shall be taxable as income of the assignor, and
388 the difference between the amount paid by the assignee and
389 the par value of the credits shall be taxable as income of
390 the assignee.

135.155. 1. Notwithstanding any provision of the law
2 to the contrary, no revenue-producing enterprise other than
3 headquarters as defined in subsection 10 of section 135.110
4 shall receive the incentives set forth in sections 135.100
5 to 135.150 for facilities commencing operations on or after
6 January 1, 2005. No headquarters shall receive the
7 incentives set forth in subsections 9 to 14 of section
8 135.110 for facilities commencing or expanding operations on
9 or after January 1, **[2025] 2035**.

10 2. Notwithstanding subsection 9 of section 135.110 to
11 the contrary, expansions at headquarters facilities shall

12 each be considered a separate new business facility and each
13 be entitled to the credits as set forth in subsections 9 to
14 14 of section 135.110 if the number of new business facility
15 employees attributed to each such expansion is at least
16 twenty-five and the amount of new business facility
17 investment attributed to each such expansion is at least one
18 million dollars. In any year in which a new business
19 facility is not created, the jobs and investment for that
20 year shall be included in calculating the credits for the
21 most recent new business facility and not an earlier created
22 new business facility.

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

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