

SECOND REGULAR SESSION

# SENATE BILL NO. 724

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 31, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5132S.011

## AN ACT

To repeal sections 135.815 and 135.967, RSMo, and to enact in lieu thereof two new sections relating to ensuring that recipients of tax credits pay taxes owed.

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

Section A. Sections 135.815 and 135.967, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 135.815 and 135.967, to  
3 read as follows:

135.815. 1. Prior to authorization of any tax credit application, an  
2 administering agency shall verify through the department of revenue that the tax  
3 credit applicant does not owe any delinquent income, sales, or use taxes, or  
4 interest or penalties on such taxes, [and] through the department of insurance,  
5 financial institutions and professional registration that the applicant does not  
6 owe any delinquent insurance taxes, **and that the applicant does not owe**  
7 **any delinquent property taxes or federal taxes.** [Such delinquency shall  
8 not affect the authorization of the application for such tax credits, except that the  
9 amount of credits issued shall be reduced by the applicant's tax delinquency. If  
10 the department of revenue or the department of insurance, financial institutions  
11 and professional registration concludes that a taxpayer is delinquent after June  
12 fifteenth but before July first of any year, and the application of tax credits to  
13 such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then  
14 the taxpayer shall be granted thirty days to satisfy the deficiency in which  
15 interest, penalties, and additions to tax shall be tolled. After applying all  
16 available credits towards a tax delinquency, the administering agency shall notify  
17 the appropriate department, and that department shall update the amount of  
18 outstanding delinquent tax owed by the applicant. If any credits remain after

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

19 satisfying all insurance, income, sales, and use tax delinquencies, the remaining  
20 credits shall be issued to the applicant, subject to the restrictions of other  
21 provisions of law.] **The administering agency shall not authorize the tax**  
22 **credit application until the tax credit applicant has remedied the**  
23 **delinquency or arrangements have been made to remedy such**  
24 **delinquency.**

25           2. Any applicant of a tax credit program contained in the definition of the  
26 term "all tax credit programs" who purposely and directly employs unauthorized  
27 aliens shall forfeit any tax credits issued to such applicant which have not been  
28 redeemed, and shall repay the amount of any tax credits redeemed by such  
29 applicant during the period of time such unauthorized alien was employed by the  
30 applicant. As used in this subsection, the term "unauthorized alien" shall mean  
31 an alien who does not have the legal right or authorization under federal law to  
32 work in the United States, as defined under Section 8 U.S.C. 1324a(h)(3).

135.967. 1. A taxpayer who establishes a new business facility may, upon  
2 approval by the department, be allowed a credit, each tax year for up to ten tax  
3 years, in an amount determined as set forth in this section, against the tax  
4 imposed by chapter 143, excluding withholding tax imposed by sections 143.191  
5 to 143.265. No taxpayer shall receive multiple ten-year periods for subsequent  
6 expansions at the same facility.

7           2. Notwithstanding any provision of law to the contrary, any taxpayer who  
8 establishes a new business facility in an enhanced enterprise zone and is awarded  
9 state tax credits under this section may not also receive tax credits under sections  
10 135.100 to 135.150, sections 135.200 to 135.286, or section 135.535, and may not  
11 simultaneously receive tax credits under sections 620.1875 to 620.1890 at the  
12 same facility.

13           3. No credit shall be issued pursuant to this section unless:

14           (1) The number of new business facility employees engaged or maintained  
15 in employment at the new business facility for the taxable year for which the  
16 credit is claimed equals or exceeds two; and

17           (2) The new business facility investment for the taxable year for which the  
18 credit is claimed equals or exceeds one hundred thousand dollars.

19           4. The annual amount of credits allowed for an approved enhanced  
20 business enterprise shall be the lesser of:

21           (1) The annual amount authorized by the department for the enhanced  
22 business enterprise, which shall be limited to the projected state economic

23 benefit, as determined by the department; or

24 (2) The sum calculated based upon the following:

25 (a) A credit of four hundred dollars for each new business facility  
26 employee employed within an enhanced enterprise zone;

27 (b) An additional credit of four hundred dollars for each new business  
28 facility employee who is a resident of an enhanced enterprise zone;

29 (c) An additional credit of four hundred dollars for each new business  
30 facility employee who is paid by the enhanced business enterprise a wage that  
31 exceeds the average wage paid within the county in which the facility is located,  
32 as determined by the department; and

33 (d) A credit equal to two percent of new business facility investment  
34 within an enhanced enterprise zone.

35 5. Prior to January 1, 2007, in no event shall the department authorize  
36 more than four million dollars annually to be issued for all enhanced business  
37 enterprises. After December 31, 2006, in no event shall the department authorize  
38 more than twenty-four million dollars annually to be issued for all enhanced  
39 business enterprises.

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

43 (1) The taxpayer's new business facility investment in the expansion  
44 during the tax period in which the credits allowed in this section are claimed  
45 exceeds one hundred thousand dollars and if the number of new business facility  
46 employees engaged or maintained in employment at the expansion facility for the  
47 taxable year for which credit is claimed equals or exceeds two, and the total  
48 number of employees at the facility after the expansion is at least two greater  
49 than the total number of employees before the expansion; and

50 (2) The taxpayer's investment in the expansion and in the original facility  
51 prior to expansion shall be determined in the manner provided in subdivision (19)  
52 of section 135.950.

53 7. The number of new business facility employees during any taxable year  
54 shall be determined by dividing by twelve the sum of the number of individuals  
55 employed on the last business day of each month of such taxable year. If the new  
56 business facility is in operation for less than the entire taxable year, the number  
57 of new business facility employees shall be determined by dividing the sum of the  
58 number of individuals employed on the last business day of each full calendar

59 month during the portion of such taxable year during which the new business  
60 facility was in operation by the number of full calendar months during such  
61 period. For the purpose of computing the credit allowed by this section in the  
62 case of a facility which qualifies as a new business facility under subsection 6 of  
63 this section, and in the case of a new business facility which satisfies the  
64 requirements of paragraph (c) of subdivision (17) of section 135.950, or  
65 subdivision (25) of section 135.950, the number of new business facility employees  
66 at such facility shall be reduced by the average number of individuals employed,  
67 computed as provided in this subsection, at the facility during the taxable year  
68 immediately preceding the taxable year in which such expansion, acquisition, or  
69 replacement occurred and shall further be reduced by the number of individuals  
70 employed by the taxpayer or related taxpayer that was subsequently transferred  
71 to the new business facility from another Missouri facility and for which credits  
72 authorized in this section are not being earned, whether such credits are earned  
73 because of an expansion, acquisition, relocation, or the establishment of a new  
74 facility.

75           8. In the case where a new business facility employee who is a resident  
76 of an enhanced enterprise zone for less than a twelve-month period is employed  
77 for less than a twelve-month period, the credits allowed by paragraph (b) of  
78 subdivision (2) of subsection 4 of this section shall be determined by multiplying  
79 four hundred dollars by a fraction, the numerator of which is the number of  
80 calendar days during the taxpayer's tax year for which such credits are claimed,  
81 in which the employee was a resident of an enhanced enterprise zone, and the  
82 denominator of which is three hundred sixty-five.

83           9. For the purpose of computing the credit allowed by this section in the  
84 case of a facility which qualifies as a new business facility pursuant to subsection  
85 6 of this section, and in the case of a new business facility which satisfies the  
86 requirements of paragraph (c) of subdivision (17) of section 135.950 or subdivision  
87 (25) of section 135.950, the amount of the taxpayer's new business facility  
88 investment in such facility shall be reduced by the average amount, computed as  
89 provided in subdivision (19) of section 135.950 for new business facility  
90 investment, of the investment of the taxpayer, or related taxpayer immediately  
91 preceding such expansion or replacement or at the time of  
92 acquisition. Furthermore, the amount of the taxpayer's new business facility  
93 investment shall also be reduced by the amount of investment employed by the  
94 taxpayer or related taxpayer which was subsequently transferred to the new

95 business facility from another Missouri facility and for which credits authorized  
96 in this section are not being earned, whether such credits are earned because of  
97 an expansion, acquisition, relocation, or the establishment of a new facility.

98         10. For a taxpayer with flow-through tax treatment to its members,  
99 partners, or shareholders, the credit shall be allowed to members, partners, or  
100 shareholders in proportion to their share of ownership on the last day of the  
101 taxpayer's tax period.

102         11. Credits may not be carried forward but shall be claimed for the  
103 taxable year during which commencement of commercial operations occurs at  
104 such new business facility, and for each of the nine succeeding taxable years for  
105 which the credit is issued.

106         12. Certificates of tax credit authorized by this section may be  
107 transferred, sold, or assigned by filing a notarized endorsement thereof with the  
108 department that names the transferee, the amount of tax credit transferred, and  
109 the value received for the credit, as well as any other information reasonably  
110 requested by the department. The sale price cannot be less than seventy-five  
111 percent of the par value of such credits.

112         13. The director of revenue shall issue a refund to the taxpayer to the  
113 extent that the amount of credits allowed in this section exceeds the amount of  
114 the taxpayer's income tax.

115         14. Prior to the issuance of tax credits, the department shall verify  
116 through the department of revenue, or any other state department, that the tax  
117 credit applicant does not owe any delinquent income, sales, or use tax or interest  
118 or penalties on such taxes, or any delinquent fees or assessments levied by any  
119 state department and through the department of insurance, financial institutions  
120 and professional registration that the applicant does not owe any delinquent  
121 insurance taxes, **and that the applicant does not owe any delinquent**  
122 **property taxes or federal taxes.** [Such delinquency shall not affect the  
123 authorization of the application for such tax credits, except that the amount of  
124 credits issued shall be reduced by the applicant's tax delinquency. If the  
125 department of revenue or the department of insurance, financial institutions and  
126 professional registration, or any other state department, concludes that a  
127 taxpayer is delinquent after June fifteenth but before July first of any year and  
128 the application of tax credits to such delinquency causes a tax deficiency on  
129 behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to  
130 satisfy the deficiency in which interest, penalties, and additions to tax shall be

131 tolled. After applying all available credits toward a tax delinquency, the  
132 administering agency shall notify the appropriate department, and that  
133 department shall update the amount of outstanding delinquent tax owed by the  
134 applicant. If any credits remain after satisfying all insurance, income, sales, and  
135 use tax delinquencies, the remaining credits shall be issued to the applicant,  
136 subject to the restrictions of other provisions of law.] **The department shall**  
137 **not authorize the tax credit application until the tax credit applicant**  
138 **has remedied the delinquency or arrangements have been made to**  
139 **remedy such delinquency.**

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