

FIRST REGULAR SESSION

HOUSE BILL NO. 560

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FITZWATER.

1353H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 135.100, RSMo, and to enact in lieu thereof one new section relating to tax credits.

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

Section A. Section 135.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 135.100, to read as follows:

135.100. As used in sections 135.100 to 135.150 the following terms shall mean:

(1) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the new 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 new business facility;

(2) "Existing business facility", any facility in this state which was employed by the taxpayer claiming the credit in the operation of a revenue-producing enterprise immediately prior to an expansion, acquisition, addition, or replacement;

(3) "Facility", any building used as a revenue-producing enterprise located within the state, including the land on which the facility is located and all machinery, equipment and other real and depreciable tangible personal property acquired for use at and located at or within such facility and used in connection with the operation of such facility;

(4) "NAICS", the North American Industrial Classification System as such classifications are defined in the 2007 edition of the North American Industrial Classification System;

(5) "New business facility", a facility which satisfies the following requirements:

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.

17 (a) Such facility is employed by the taxpayer in the operation of a revenue-producing
18 enterprise. Such facility shall not be considered a new business facility in the hands of the
19 taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person
20 or persons. If the taxpayer employs only a portion of such facility in the operation of a
21 revenue-producing enterprise, and leases another portion of such facility to another person or
22 persons or does not otherwise use such other portions in the operation of a revenue-producing
23 enterprise, the portion employed by the taxpayer in the operation of a revenue-producing
24 enterprise shall be considered a new business facility, if the requirements of paragraphs (b), (c),
25 (d) and (e) of this subdivision are satisfied;

26 (b) Such facility is acquired by, or leased to, the taxpayer after December 31, 1983. A
27 facility shall be deemed to have been acquired by, or leased to, the taxpayer after December 31,
28 1983, if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding
29 contract to transfer title to the taxpayer, or the commencement of the term of the lease to the
30 taxpayer occurs after December 31, 1983, or, if the facility is constructed, erected or installed by
31 or on behalf of the taxpayer, such construction, erection or installation is commenced after
32 December 31, 1983;

33 (c) If such facility was acquired by the taxpayer from another person or persons and such
34 facility was employed immediately prior to the transfer of title to such facility to the taxpayer,
35 or to the commencement of the term of the lease of such facility to the taxpayer, by any other
36 person or persons in the operation of a revenue-producing enterprise, the operation of the same
37 or a substantially similar revenue-producing enterprise is not continued by the taxpayer at such
38 facility;

39 (d) Such facility is not a replacement business facility, as defined in subdivision (11) of
40 this section; and

41 (e) The new business facility investment exceeds one hundred thousand dollars during
42 the tax period in which the credits are claimed;

43 (6) "New business facility employee", a person employed by the taxpayer in the
44 operation of a new business facility during the taxable year for which the credit allowed by
45 section 135.110 is claimed, except that truck drivers and rail and barge vehicle operators shall
46 not constitute new business facility employees. A person shall be deemed to be so employed if
47 such person performs duties in connection with the operation of the new business facility on:

48 (a) A regular, full-time basis; or

49 (b) A part-time basis, provided such person is customarily performing such duties an
50 average of at least twenty hours per week; or

51 (c) A seasonal basis, provided such person performs such duties for at least eighty
52 percent of the season customary for the position in which such person is employed;

53 (7) "New business facility income", the Missouri taxable income, as defined in chapter
54 143, derived by the taxpayer from the operation of the new business facility. For the purpose of
55 apportionment as prescribed in this subdivision, the term "Missouri taxable income" means, in
56 the case of insurance companies, direct premiums as defined in chapter 148. If a taxpayer has
57 income derived from the operation of a new business facility as well as from other activities
58 conducted within this state, the Missouri taxable income derived by the taxpayer from the
59 operation of the new business facility shall be determined by multiplying the taxpayer's Missouri
60 taxable income, computed in accordance with chapter 143, or in the case of an insurance
61 company, computed in accordance with chapter 148, by a fraction, the numerator of which is the
62 property factor, as defined in paragraph (a) of this subdivision, plus the payroll factor, as defined
63 in paragraph (b) of this subdivision, and the denominator of which is two:

64 (a) The property factor is a fraction, the numerator of which is the new business facility
65 investment certified for the tax period, and the denominator of which is the average value of all
66 the taxpayer's real and depreciable tangible personal property owned or rented and used in this
67 state during the tax period. The average value of all such property shall be determined as
68 provided in chapter 32;

69 (b) The payroll factor is a fraction, the numerator of which is the total amount paid
70 during the tax period by the taxpayer for compensation to persons qualifying as new business
71 facility employees, as determined by subsection 4 of section 135.110, at the new business
72 facility, and the denominator of which is the total amount paid in this state during the tax period
73 by the taxpayer for compensation. The compensation paid in this state shall be determined as
74 provided in chapter 32. For the purpose of this subdivision, "other activities conducted within
75 this state" shall include activities previously conducted at the expanded, acquired or replaced
76 facility at any time during the tax period immediately prior to the tax period in which
77 commencement of commercial operations occurred;

78 (8) "New business facility investment", the value of ~~real and depreciable tangible~~
79 ~~personal~~ property, acquired by the taxpayer as part of the new business facility, which is used
80 by the taxpayer in the operation of the new business facility, during the taxable year for which
81 the credit allowed by section 135.110 is claimed, except that trucks, truck-trailers, truck
82 semitrailers, rail vehicles, barge vehicles, aircraft and other rolling stock for hire, track, switches,
83 barges, bridges, tunnels and rail yards and spurs shall not constitute new business facility
84 investments. **For the purposes of this section only, property may be acquired by the**
85 **taxpayer by purchase, lease, or license, including the right to use software and hardware**
86 **via on-demand network access to a shared pool of configurable computing resources as**
87 **long as the rights are used at the new business facility.** The total value of such property
88 during such taxable year shall be:

89 (a) Its original cost if owned by the taxpayer; or

90 (b) Eight times the net annual rental rate **or license**, if leased **or licensed** by the taxpayer.

91 The net annual rental **or license** rate shall be the annual rental **or license** rate paid by the
92 taxpayer less any annual rental **or license** rate received by the taxpayer from subrentals **or**
93 **sublicenses**. The new business facility investment shall be determined by dividing by twelve
94 the sum of the total value of such property on the last business day of each calendar month of the
95 taxable year. If the new business facility is in operation for less than an entire taxable year, the
96 new business facility investment shall be determined by dividing the sum of the total value of
97 such property on the last business day of each full calendar month during the portion of such
98 taxable year during which the new business facility was in operation by the number of full
99 calendar months during such period;

100 (9) "Office", a regional, national or international headquarters, a telemarketing operation,
101 a computer operation, an insurance company, a passenger transportation ticket/reservation system
102 or a credit card billing and processing center. For the purposes of this subdivision,
103 "headquarters" means the administrative management of at least four integrated facilities
104 operated by the taxpayer or related taxpayer. An office, as defined in this subdivision, when
105 established must create and maintain positions for a minimum number of twenty-five new
106 business facility employees as defined in subdivision (6) of this section;

107 (10) "Related taxpayer" shall mean:

108 (a) A corporation, partnership, trust or association controlled by the taxpayer;

109 (b) An individual, corporation, partnership, trust or association in control of the taxpayer;

110 or

111 (c) A corporation, partnership, trust or association controlled by an individual,
112 corporation, partnership, trust or association in control of the taxpayer. For the purposes of
113 sections 135.100 to 135.150, "control of a corporation" shall mean ownership, directly or
114 indirectly, of stock possessing at least fifty percent of the total combined voting power of all
115 classes of stock entitled to vote; "control of a partnership or association" shall mean ownership
116 of at least fifty percent of the capital or profits interest in such partnership or association; and
117 "control of a trust" shall mean ownership, directly or indirectly, of at least fifty percent of the
118 beneficial interest in the principal or income of such trust; ownership shall be determined as
119 provided in Section 318 of the U.S. Internal Revenue Code;

120 (11) "Replacement business facility", a facility otherwise described in subdivision (3)
121 of this section, hereafter referred to in this subdivision as "new facility", which replaces another
122 facility, hereafter referred to in this subdivision as "old facility", located within the state, which
123 the taxpayer or a related taxpayer previously operated but discontinued operating on or before

124 the close of the first taxable year in which the credit allowed by this section is claimed. A new
125 facility shall be deemed to replace an old facility if the following conditions are met:

126 (a) The old facility was operated by the taxpayer or a related taxpayer during the
127 taxpayer's or related taxpayer's taxable period immediately preceding the taxable year in which
128 commencement of commercial operations occurs at the new facility; and

129 (b) The old facility was employed by the taxpayer or a related taxpayer in the operation
130 of a revenue-producing enterprise and the taxpayer continues the operation of the same or
131 substantially similar revenue-producing enterprise at the new facility.

132

133 Notwithstanding the preceding provisions of this subdivision, a facility shall not be considered
134 a replacement business facility if the taxpayer's new business facility investment, as computed
135 in subsection 5 of section 135.110, in the new facility during the tax period in which the credits
136 allowed in sections 135.110, 135.225 and 135.235 and the exemption allowed in section 135.220
137 are claimed exceed one million dollars or, if less, two hundred percent of the investment in the
138 old facility by the taxpayer or related taxpayer, and if the total number of employees at the new
139 facility exceeds the total number of employees at the old facility by at least two except that the
140 total number of employees at the new facility exceeds the total number of employees at the old
141 facility by at least twenty-five if an office as defined in subdivision (9) of this section is
142 established by a revenue-producing enterprise other than a revenue-producing enterprise defined
143 in paragraphs (a) to (g) and (i) to (l) of subdivision (12) of this section;

144 (12) "Revenue-producing enterprise" means:

145 (a) Manufacturing activities classified as NAICS 31-33;

146 (b) Agricultural activities classified as NAICS 11;

147 (c) Rail transportation terminal activities classified as NAICS 482;

148 (d) Motor freight transportation terminal activities classified as NAICS 484 and NAICS
149 4884;

150 (e) Public warehousing and storage activities classified as NAICS 493, miniwarehouse
151 warehousing and warehousing self-storage;

152 (f) Water transportation terminal activities classified as NAICS 4832;

153 (g) Airports, flying fields, and airport terminal services classified as NAICS 481;

154 (h) Wholesale trade activities classified as NAICS 42;

155 (i) Insurance carriers activities classified as NAICS 524;

156 (j) Research and development activities classified as NAICS 5417;

157 (k) Farm implement dealer activities classified as NAICS 42382;

- 158 (l) Interexchange telecommunications services as defined in subdivision (20) of section
159 386.020 or training activities conducted by an interexchange telecommunications company as
160 defined in subdivision (19) of section 386.020;
- 161 (m) Recycling activities classified as NAICS 42393;
- 162 (n) Office activities as defined in subdivision (9) of this section, notwithstanding NAICS
163 classification;
- 164 (o) Mining activities classified as NAICS 21;
- 165 (p) Computer programming, data processing and other computer-related activities
166 classified as NAICS 5415;
- 167 (q) The administrative management of any of the foregoing activities; or
- 168 (r) Any combination of any of the foregoing activities;
- 169 (13) "Same or substantially similar revenue-producing enterprise", a revenue-producing
170 enterprise in which the nature of the products produced or sold, or activities conducted, are
171 similar in character and use or are produced, sold, performed or conducted in the same or similar
172 manner as in another revenue-producing enterprise;
- 173 (14) "Taxpayer", an individual proprietorship, corporation described in section 143.441
174 or 143.471, and partnership or an insurance company subject to the tax imposed by chapter 148,
175 or in the case of an insurance company exempt from the thirty-percent employee requirement of
176 section 135.230, to any obligation imposed ~~pursuant to~~ **under** section 375.916.

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