

FIRST REGULAR SESSION

SENATE BILL NO. 355

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CIERPIOT.

Read 1st time February 6, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1357S.011

AN ACT

To repeal section 135.100, RSMo, and to enact in lieu thereof one new section 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Section A. Section 135.100, RSMo, is repealed and one new section
2 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
2 mean:

3 (1) "Commencement of commercial operations" shall be deemed to occur
4 during the first taxable year for which the new business facility is first available
5 for use by the taxpayer, or first capable of being used by the taxpayer, in the
6 revenue-producing enterprise in which the taxpayer intends to use the new
7 business facility;

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

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

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

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

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

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

33 (b) Such facility is acquired by, or leased to, the taxpayer after December
34 31, 1983. A facility shall be deemed to have been acquired by, or leased to, the
35 taxpayer after December 31, 1983, if the transfer of title to the taxpayer, the
36 transfer of possession pursuant to a binding contract to transfer title to the
37 taxpayer, or the commencement of the term of the lease to the taxpayer occurs
38 after December 31, 1983, or, if the facility is constructed, erected or installed by
39 or on behalf of the taxpayer, such construction, erection or installation is
40 commenced after December 31, 1983;

41 (c) If such facility was acquired by the taxpayer from another person or
42 persons and such facility was employed immediately prior to the transfer of title
43 to such facility to the taxpayer, or to the commencement of the term of the lease
44 of such facility to the taxpayer, by any other person or persons in the operation
45 of a revenue-producing enterprise, the operation of the same or a substantially
46 similar revenue-producing enterprise is not continued by the taxpayer at such
47 facility;

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

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

52 (6) "New business facility employee", a person employed by the taxpayer
53 in the operation of a new business facility during the taxable year for which the
54 credit allowed by section 135.110 is claimed, except that truck drivers and rail
55 and barge vehicle operators shall not constitute new business facility employees.

56 A person shall be deemed to be so employed if such person performs duties in
57 connection with the operation of the new business facility on:

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

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

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

64 (7) "New business facility income", the Missouri taxable income, as
65 defined in chapter 143, derived by the taxpayer from the operation of the new
66 business facility. For the purpose of apportionment as prescribed in this
67 subdivision, the term "Missouri taxable income" means, in the case of insurance
68 companies, direct premiums as defined in chapter 148. If a taxpayer has income
69 derived from the operation of a new business facility as well as from other
70 activities conducted within this state, the Missouri taxable income derived by the
71 taxpayer from the operation of the new business facility shall be determined by
72 multiplying the taxpayer's Missouri taxable income, computed in accordance with
73 chapter 143, or in the case of an insurance company, computed in accordance with
74 chapter 148, by a fraction, the numerator of which is the property factor, as
75 defined in paragraph (a) of this subdivision, plus the payroll factor, as defined in
76 paragraph (b) of this subdivision, and the denominator of which is two:

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

83 (b) The payroll factor is a fraction, the numerator of which is the total
84 amount paid during the tax period by the taxpayer for compensation to persons
85 qualifying as new business facility employees, as determined by subsection 4 of
86 section 135.110, at the new business facility, and the denominator of which is the
87 total amount paid in this state during the tax period by the taxpayer for
88 compensation. The compensation paid in this state shall be determined as
89 provided in chapter 32. For the purpose of this subdivision, "other activities
90 conducted within this state" shall include activities previously conducted at the
91 expanded, acquired or replaced facility at any time during the tax period

92 immediately prior to the tax period in which commencement of commercial
93 operations occurred;

94 (8) "New business facility investment", the value of [real and depreciable
95 tangible personal] property, acquired by the taxpayer as part of the new business
96 facility, which is used by the taxpayer in the operation of the new business
97 facility, during the taxable year for which the credit allowed by section 135.110
98 is claimed, except that trucks, truck-trailers, truck semitrailers, rail vehicles,
99 barge vehicles, aircraft and other rolling stock for hire, track, switches, barges,
100 bridges, tunnels and rail yards and spurs shall not constitute new business
101 facility investments. **For the purposes of sections 135.100 to 135.150,**
102 **property may be acquired by the taxpayer by purchase, lease, or**
103 **license, including the right to use software and hardware via**
104 **on-demand network access to a shared pool of configurable computing**
105 **resources as long as the rights are used at the new business**
106 **facility.** The total value of such property during such taxable year shall be:

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

108 (b) Eight times the net annual rental rate **or license**, if leased **or**
109 **licensed** by the taxpayer. The net annual rental **or license** rate shall be the
110 annual rental **or license** rate paid by the taxpayer less any annual rental **or**
111 **license** rate received by the taxpayer from subrentals **or sublicenses**. The new
112 business facility investment shall be determined by dividing by twelve the sum
113 of the total value of such property on the last business day of each calendar
114 month of the taxable year. If the new business facility is in operation for less
115 than an entire taxable year, the new business facility investment shall be
116 determined by dividing the sum of the total value of such property on the last
117 business day of each full calendar month during the portion of such taxable year
118 during which the new business facility was in operation by the number of full
119 calendar months during such period;

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

128 section;

129 (10) "Related taxpayer" shall mean:

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

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

134 (c) A corporation, partnership, trust or association controlled by an
135 individual, corporation, partnership, trust or association in control of the
136 taxpayer. For the purposes of sections 135.100 to 135.150, "control of a
137 corporation" shall mean ownership, directly or indirectly, of stock possessing at
138 least fifty percent of the total combined voting power of all classes of stock
139 entitled to vote; "control of a partnership or association" shall mean ownership
140 of at least fifty percent of the capital or profits interest in such partnership or
141 association; and "control of a trust" shall mean ownership, directly or indirectly,
142 of at least fifty percent of the beneficial interest in the principal or income of such
143 trust; ownership shall be determined as provided in Section 318 of the U.S.
144 Internal Revenue Code;

145 (11) "Replacement business facility", a facility otherwise described in
146 subdivision (3) of this section, hereafter referred to in this subdivision as "new
147 facility", which replaces another facility, hereafter referred to in this subdivision
148 as "old facility", located within the state, which the taxpayer or a related taxpayer
149 previously operated but discontinued operating on or before the close of the first
150 taxable year in which the credit allowed by this section is claimed. A new facility
151 shall be deemed to replace an old facility if the following conditions are met:

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

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

160 Notwithstanding the preceding provisions of this subdivision, a facility shall not
161 be considered a replacement business facility if the taxpayer's new business
162 facility investment, as computed in subsection 5 of section 135.110, in the new
163 facility during the tax period in which the credits allowed in sections 135.110,

164 135.225 and 135.235 and the exemption allowed in section 135.220 are claimed
165 exceed one million dollars or, if less, two hundred percent of the investment in
166 the old facility by the taxpayer or related taxpayer, and if the total number of
167 employees at the new facility exceeds the total number of employees at the old
168 facility by at least two except that the total number of employees at the new
169 facility exceeds the total number of employees at the old facility by at least
170 twenty-five if an office as defined in subdivision (9) of this section is established
171 by a revenue-producing enterprise other than a revenue-producing enterprise
172 defined in paragraphs (a) to (g) and (i) to (l) of subdivision (12) of this section;

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

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

175 (b) Agricultural activities classified as NAICS 11;

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

177 (d) Motor freight transportation terminal activities classified as NAICS
178 484 and NAICS 4884;

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

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

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

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

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

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

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

188 (l) Interexchange telecommunications services as defined in subdivision
189 (20) of section 386.020 or training activities conducted by an interexchange
190 telecommunications company as defined in subdivision (19) of section 386.020;

191 (m) Recycling activities classified as NAICS 42393;

192 (n) Office activities as defined in subdivision (9) of this section,
193 notwithstanding NAICS classification;

194 (o) Mining activities classified as NAICS 21;

195 (p) Computer programming, data processing and other computer-related
196 activities classified as NAICS 5415;

197 (q) The administrative management of any of the foregoing activities; or

198 (r) Any combination of any of the foregoing activities;

199 (13) "Same or substantially similar revenue-producing enterprise", a

200 revenue-producing enterprise in which the nature of the products produced or
201 sold, or activities conducted, are similar in character and use or are produced,
202 sold, performed or conducted in the same or similar manner as in another
203 revenue-producing enterprise;

204 (14) "Taxpayer", an individual proprietorship, corporation described in
205 section 143.441 or 143.471, and partnership or an insurance company subject to
206 the tax imposed by chapter 148, or in the case of an insurance company exempt
207 from the thirty-percent employee requirement of section 135.230, to any
208 obligation imposed pursuant to section 375.916.

Unofficial ✓

Bill

Copy