

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1048

90TH GENERAL ASSEMBLY

Reported from the Committee on Local Government and Economic Development, March 15, 2000, with recommendation that the Senate Committee Substitute do pass.

4607S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 100.286, 135.220, 135.235, 135.355, 135.411, 135.420, 135.423, 135.429, 178.892, 348.304, 348.306, 348.308, 348.310, 348.312, 348.316, 348.318, 620.470 and 620.474, RSMo 1994, sections 135.110, 135.115, 135.150, 135.225, 135.230, 135.240, 135.245, 135.247, 135.250, 135.258, 135.400, 135.403, 135.405, 135.430, 135.478, 135.484, 135.487, 135.545, 135.700, 135.766, 208.750, 348.300, 348.302, 447.708, 620.478, 620.1039, 620.1400, 620.1420, 620.1430, 620.1440, 620.1450 and 620.1560, RSMo Supp. 1999, sections 135.100, 135.200 and 135.535, as enacted by conference committee substitute for senate substitute for senate committee substitute for house substitute for house committee substitute for house bill no. 701, ninetieth general assembly, first regular session, section 135.100 as enacted by conference committee substitute for house substitute for house committee substitute for senate bill no. 827, eighty-ninth general assembly, second regular session, section 135.200 as enacted by senate substitute for senate committee substitute for house substitute for house committee substitute for house bill no. 1656, eighty-ninth general assembly, second regular session, section 135.200 as enacted by conference committee substitute for house committee substitute for senate bill no. 1, eighty-ninth general assembly, second extraordinary session, and section 135.535 as enacted by conference committee substitute no. 2 for house substitute for house committee substitute for senate bill no. 20, ninetieth general assembly, first regular session, relating to tax credit programs administered by the department of economic development, and to enact in lieu thereof forty-three new sections relating to the same subject, with an effective date.

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

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

Section A. Sections 100.286, 135.220, 135.235, 135.355, 135.411, 135.420, 135.423, 135.429, 178.892, 348.304, 348.306, 348.308, 348.310, 348.312, 348.316, 348.318, 620.470 and 620.474, RSMo 1994, sections 135.110, 135.115, 135.150, 135.225, 135.230, 135.240, 135.245, 135.247, 135.250, 135.258, 135.400, 135.403, 135.405, 135.430, 135.478, 135.484, 135.487, 135.545, 135.700, 135.766, 208.750, 348.300, 348.302, 447.708, 620.478, 620.1039, 620.1400, 620.1420, 620.1430, 620.1440, 620.1450 and 620.1560, RSMo Supp. 1999, sections 135.100, 135.200 and 135.535, as enacted by conference committee substitute for senate substitute for senate committee substitute for house substitute for house committee substitute for house bill no. 701, ninetieth general assembly, first regular session, section 135.100 as enacted by conference committee substitute for house substitute for house committee substitute for senate bill no. 827, eighty-ninth general assembly, second regular session, section 135.200 as enacted by senate substitute for senate committee substitute for house substitute for house committee substitute for house bill no. 1656, eighty-ninth general assembly, second regular session, section 135.200 as enacted by conference committee substitute for house committee substitute for senate bill no. 1, eighty-ninth general assembly, second extraordinary session, and section 135.535 as enacted by conference committee substitute no. 2 for house substitute for house committee substitute for senate bill no. 20, ninetieth general assembly, first regular session, are repealed and forty-three new sections enacted in lieu thereof, to be known as sections 100.245, 100.286, 135.100, 135.110, 135.115, 135.150, 135.200, 135.220, 135.225, 135.230, 135.235, 135.240, 135.245, 135.247, 135.250, 135.258, 135.355, 135.400, 135.403, 135.405, 135.411, 135.420, 135.423, 135.478, 135.484, 135.487, 135.535, 135.545, 135.700, 178.892, 208.750, 447.708, 620.470, 620.474, 620.478, 620.1039, 620.1400, 620.1420, 620.1430, 620.1440, 620.1450, 620.1470 and 620.1472, to read as follows:

100.245. 1. This act shall be known and may be cited as the "Tax Credit Responsibility Act of 2000".

2. The general assembly finds and declares that the purposes of this act are to:

(1) Promote the responsible use of incentives in the state of Missouri for the economic development of the state, by fostering the attraction and expansion of businesses, the development of existing businesses, continued positive development of our communities, the redevelopment of economically under-performing areas of the state, and the development and training of the state's workforce;

(2) Ensure that the state's resources used for economic development in Missouri are distributed, without increasing the overall amount of credits allocated, toward those programs to produce the greatest benefit for the citizens of the state of Missouri by promoting efficiency and effectiveness in their program operations;

(3) Clarify in state law that incentive programs must achieve positive financial performance for the state of Missouri while assisting the businesses and ultimately the citizens of the state of Missouri in becoming more prosperous;

(4) Achieve a system of incentives that ensure that Missouri's programs position Missouri businesses to be competitive in this increasingly global economy and as our industries change to meet the challenges and opportunities a global economy presents for Missouri, taking into account the different industries, geographic, population, labor market, state and local governmental finance and natural resource impacts of using the programs;

(5) Reform the current incentives by repealing those programs which are ineffective or duplicative, or have unclear, ambiguous or inconsistent goals and objectives;

(6) Ensure fiscal responsibility by adjusting the cost of certain programs, and ensure for full reporting of costs and benefits; and

(7) Provide adequate legal recourse for the Missouri general assembly against those companies and citizens that do not meet the requirements of their negotiated incentive agreements.

100.286. 1. Within the discretion of the board, the development and reserve fund, the infrastructure development fund or the export finance fund may be pledged to secure the payment of any bonds or notes issued by the board, or to secure the payment of any loan made by the board or a participating lender which loan:

(1) Is requested to finance any project or export trade activity;

(2) Is requested by a borrower who is demonstrated to be financially responsible;

(3) Can reasonably be expected to provide a benefit to the economy of this state;

(4) Is otherwise secured by a mortgage or deed of trust on real or personal property or other security satisfactory to the board; provided that loans to finance export trade activities may be secured by export accounts receivable or inventories of exportable goods satisfactory to the board;

(5) Does not exceed five million dollars;

(6) Does not have a term longer than five years if such loan is made to finance export trade activities; and

(7) Is, when used to finance export trade activities, made to small or medium size businesses or agricultural businesses, as may be defined by the board.

2. The board shall prescribe standards for the evaluation of the financial condition, business history, and qualifications of each borrower and the terms and conditions of loans which may be secured, and may require each application to include a financial report and evaluation by an independent certified public accounting firm, in addition to such examination and evaluation as may be conducted by any participating lender.

3. Each application for a loan secured by the development and reserve fund, the infrastructure development fund or the export finance fund shall be reviewed in the first instance

by any participating lender to whom the application was submitted. If satisfied that the standards prescribed by the board are met and that the loan is otherwise eligible to be secured by the development and reserve fund, the infrastructure development fund or the export finance fund, the participating lender shall certify the same and forward the application for final approval to the board.

4. The securing of any loans by the development and reserve fund, the infrastructure development fund or the export finance fund shall be conditioned upon approval of the application by the board, and receipt of an annual reserve participation fee, as prescribed by the board, submitted by or on behalf of the borrower.

5. The securing of any loan by the export finance fund for export trade activities shall be conditioned upon the board's compliance with any applicable treaties and international agreements, such as the general agreement on tariffs and trade and the subsidies code, to which the United States is then a party.

6. Any taxpayer shall be entitled to a tax credit against any tax otherwise due under the provisions of chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in the amount of fifty percent of any amount contributed in money or property by the taxpayer to [the development and reserve fund,] the infrastructure development fund [or the export finance fund] during the taxpayer's tax year, provided, however, the total tax credits awarded in any calendar year beginning after January 1, 1994, shall not be the greater of ten million dollars or five percent of the average growth in general revenue receipts in the preceding three fiscal years. This limit may be exceeded only upon joint agreement by the commissioner of administration, the director of the department of economic development, and the director of the department of revenue that such action is essential to ensure retention or attraction of investment in Missouri. If the board receives, as a contribution, real property, the contributor at such contributor's own expense shall have two independent appraisals conducted by appraisers certified by the Master Appraisal Institute. Both appraisals shall be submitted to the board, and the tax credit certified by the board to the contributor shall be based upon the value of the lower of the two appraisals. The board shall not certify the tax credit until the property is deeded to the board. Such credit shall not apply to reserve participation fees paid by borrowers under sections 100.250 to 100.297. The portion of earned tax credits which exceeds the taxpayer's tax liability may be carried forward for up to five years.

7. Notwithstanding any provision of law to the contrary, any taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits allowed in subsection 6 of this section under the terms and conditions prescribed in subdivisions (1) and (2) of this subsection. Such taxpayer, hereinafter the assignor for the purpose of this subsection, may sell, assign, exchange or otherwise transfer earned tax credits:

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

(2) In an amount not to exceed one hundred percent of annual earned credits. The taxpayer acquiring earned credits, hereinafter the assignee for the purpose of this subsection, may use the acquired credits to offset up to one hundred percent of the tax liabilities otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo. Unused credits in the hands of the assignee may be carried forward for up to five years, provided all such credits shall be claimed within ten years following the tax years in which the contribution was made. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the board in writing within thirty calendar days following the effective day of the transfer and shall provide any information as may be required by the board to administer and carry out the provisions of this section. Notwithstanding any other provision of law to the contrary, the amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the excess of the par value of such credit over the amount paid by the assignee for such credit shall be taxable as income of the assignee.

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) "Department", the department of economic development;

(3) "Director", the director of the department of economic development;

~~[(2)]~~ **(4)** "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)]~~ **(5)** "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)]~~ **(6)** "New business facility", a facility which satisfies the following requirements:

(a) Such facility is employed by the taxpayer in the operation of a revenue-producing enterprise. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue-producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer in the operation of a revenue-producing

enterprise shall be considered a new business facility, if the requirements of paragraphs (b), (c), (d) and (e) of this subdivision are satisfied;

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

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

(d) Such facility is not a replacement business facility, as defined in subdivision [(10)] (12) of this section; and

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

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

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

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

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

[(6)] (8) "New business facility income", the Missouri taxable income, as defined in chapter 143, RSMo, derived by the taxpayer from the operation of the new business facility. For the purpose of apportionment as prescribed in this subdivision, the term "Missouri taxable income" means, in the case of insurance companies, direct premiums as defined in chapter 148, RSMo. If a taxpayer has income derived from the operation of a new business facility as well as from other activities conducted within this state, the Missouri taxable income derived by the taxpayer from the operation of the new business facility shall be determined by multiplying the taxpayer's

Missouri taxable income, computed in accordance with chapter 143, RSMo, or in the case of an insurance company, computed in accordance with chapter 148, RSMo, by a fraction, the numerator of which is the property factor, as defined in paragraph (a) of this subdivision, plus the payroll factor, as defined in paragraph (b) of this subdivision, and the denominator of which is two:

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

(b) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as new business facility employees, as determined by subsection [4] 5 of section 135.110, at the new business facility, and the denominator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in chapter 32, RSMo. For the purpose of this subdivision, "other activities conducted within this state" shall include activities previously conducted at the expanded, acquired or replaced facility at any time during the tax period immediately prior to the tax period in which commencement of commercial operations occurred;

[(7)] **(9)** "New business facility investment", the value of real and depreciable tangible personal property, acquired by the taxpayer as part of the new business facility, which is used by the taxpayer in the operation of the new business facility, during the taxable year for which the credit [allowed] **authorized** by section 135.110 is claimed, except that trucks, truck-trailers, truck semitrailers, rail vehicles, barge vehicles, aircraft and other rolling stock for hire, track, switches, barges, bridges, tunnels and rail yards and spurs shall not constitute new business facility investments. The total value of such property during such taxable year shall be:

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

(b) Eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the new business facility is in operation for less than an entire taxable year, the new business facility investment shall be determined by dividing the sum of the total value of such property 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;

[(8)] **(10)** "Office", a regional, national or international headquarters, [a telemarketing operation, a computer operation, an insurance company,] a passenger transportation

ticket/reservation system or a credit card billing and processing center. For the purposes of this subdivision, "headquarters" means the administrative management of at least four integrated facilities operated by the taxpayer or related taxpayer. An office, as defined in this subdivision, when established must create and maintain positions for a minimum number of twenty-five new business facility employees as defined in subdivision [(5)] (7) of this section;

[(9)] (11) "Related taxpayer" shall mean:

- (a) A corporation, partnership, trust or association controlled by the taxpayer;
- (b) An individual, corporation, partnership, trust or association in control of the taxpayer;

or

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

[(10)] (12) "Replacement business facility", a facility otherwise described in subdivision [(4)] (6) of this section, hereafter referred to in this subdivision as "new facility", which replaces another facility, hereafter referred to in this subdivision as "old facility", located within the state, which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first taxable year in which the credit [allowed] **authorized** by this section is claimed. A new facility shall be deemed to replace an old facility if the following conditions are met:

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

(b) The old facility was employed by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or substantially similar revenue-producing enterprise at the new facility. Notwithstanding the preceding provisions of this subdivision, a facility shall not be considered a replacement business facility if the taxpayer's new business facility investment, as computed in subsection [5] 6 of section 135.110, in the new facility during the tax period in which the credits [allowed in] **authorized by** sections 135.110, 135.225 and 135.235 and the exemption [allowed in] **authorized by** section 135.220 are claimed exceed one million dollars or, if less, two hundred percent of the investment in the old facility by the taxpayer or related taxpayer, and if the total number of

employees at the new facility exceeds the total number of employees at the old facility by at least two except that the total number of employees at the new facility exceeds the total number of employees at the old facility by at least twenty-five if an office as defined in subdivision [(8)] **(10)** of this section is established by a revenue-producing enterprise other than a revenue-producing enterprise defined in paragraphs (a) to [(g)] **(m)** and [(i) to (l)] **(o) to (t)** of subdivision [(11)] **(13)** of this section;

[(11)] **(13)** "Revenue-producing enterprise" means:

- (a) Manufacturing activities classified as SICs 20 through 39;
- (b) Agricultural activities classified as SIC 025;
- (c) Rail transportation terminal activities classified as SIC 4013;
- (d) Motor freight transportation terminal activities classified as SIC 4231;
- (e) Public warehousing and storage activities classified as SICs 422 and 423 except SIC 4221, miniwarehouse warehousing and warehousing self-storage;
- (f) Water transportation terminal activities classified as SIC 4491;
- (g) Airports, flying fields, and airport terminal services classified as SIC 4581;
- (h) Wholesale trade activities classified as SICs 50 and 51;
- (i) Insurance carriers activities classified as SICs 631, 632 and 633;
- (j) Research and development activities classified as SIC 873, except 8733;
- (k) Farm implement dealer activities classified as SIC 5999;
- (l) Interexchange telecommunications services as defined in subdivision [(20)] **(24) or local exchange telecommunications services as defined in subdivision (31)** of section 386.020, RSMo, or training activities conducted by an interexchange telecommunications company as defined in [subdivision (19)] **subdivisions (23) and (30)** of section 386.020, RSMo;
- (m) Recycling activities classified as SIC 5093;
- (n) Office activities as defined in subdivision (8) of this section, notwithstanding SIC classification;
- (o) Mining activities classified as SICs 10 through 14;
- (p) Computer programming, data processing and other computer-related activities classified as SIC 737;
- (q) The administrative management of any of the foregoing activities; [or]
- (r) Any combination of any of the foregoing activities;
- (s) Any other industry as determined by the director to be a targeted industry important to the economic development of the state; or**
- (t) An industry not otherwise specified but which is considering a new business facility or an expansion of an existing business facility which, in the judgment of the director, is beneficial to the economy of the area of the state in which it is to be located or to the economy of the state as a whole.**

A revenue-producing enterprise which is identified by an SIC classification number includes enterprises with the corresponding classification number in the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget.

[(12)] **(14)** "Same or substantially similar revenue-producing enterprise", a revenue-producing enterprise in which the nature of the products produced or sold, or activities conducted, are similar in character and use or are produced, sold, performed or conducted in the same or similar manner as in another revenue-producing enterprise;

[(13)] **(15)** "SIC", the **primary** standard industrial classification as such classifications are defined in the 1987 edition of the Standard Industrial Classification Manual as prepared by the Executive Office of the President, Office of Management and Budget. **For the purpose of this subdivision, "primary" means at least fifty percent of the activities so classified are performed at a new business facility during the taxpayer's tax period in which such tax credits are being claimed;**

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

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

(a) Such facility is employed by the taxpayer in the operation of a revenue-producing enterprise. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such

facility in the operation of a revenue-producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer in the operation of a revenue-producing enterprise shall be considered a new business facility, if the requirements of paragraphs (b), (c), (d) and (e) of this subdivision are satisfied;

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

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

(d) Such facility is not a replacement business facility, as defined in subdivision (10) of this section; and

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

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

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

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

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

(6) "New business facility income", the Missouri taxable income, as defined in chapter 143, RSMo, derived by the taxpayer from the operation of the new business facility. For the purpose of apportionment as prescribed in this subdivision, the term "Missouri taxable income" means, in the case of insurance companies, direct premiums as

defined in chapter 148, RSMo. If a taxpayer has income derived from the operation of a new business facility as well as from other activities conducted within this state, the Missouri taxable income derived by the taxpayer from the operation of the new business facility shall be determined by multiplying the taxpayer's Missouri taxable income, computed in accordance with chapter 143, RSMo, or in the case of an insurance company, computed in accordance with chapter 148, RSMo, by a fraction, the numerator of which is the property factor, as defined in paragraph (a) of this subdivision, plus the payroll factor, as defined in paragraph (b) of this subdivision, and the denominator of which is two:

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

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

(7) "New business facility investment", the value of real and depreciable tangible personal property, acquired by the taxpayer as part of the new business facility, which is used by the taxpayer in the operation of the new business facility, during the taxable year for which the credit allowed by section 135.110 is claimed, except that trucks, truck-trailers, truck semitrailers, rail and barge vehicles and other rolling stock for hire, track, switches, barges, bridges, tunnels and rail yards and spurs shall not constitute new business facility investments. The total value of such property during such taxable year shall be:

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

(b) Eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the new business

facility is in operation for less than an entire taxable year, the new business facility investment shall be determined by dividing the sum of the total value of such property 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;

(8) "Office", a regional, national or international headquarters, a telemarketing operation, an insurance company, a passenger transportation ticket/reservation system or a credit card billing and processing center. For the purposes of this subdivision, "headquarters" means the administrative management of at least four integrated facilities operated by the taxpayer or related taxpayer. An office, as defined in this subdivision, when established must create and maintain positions for a minimum number of twenty-five new business facility employees as defined in subdivision (5) of this section;

(9) "Related taxpayer" shall mean:

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

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

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

(10) "Replacement business facility", a facility otherwise described in subdivision (4) of this section, hereafter referred to in this subdivision as "new facility", which replaces another facility, hereafter referred to in this subdivision as "old facility", located within the state, which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first taxable year in which the credit allowed by this section is claimed. A new facility shall be deemed to replace an old facility if the following conditions are met:

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

(b) The old facility was employed by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of

the same or substantially similar revenue-producing enterprise at the new facility. Notwithstanding the preceding provisions of this subdivision, a facility shall not be considered a replacement business facility if the taxpayer's new business facility investment, as computed in subsection 5 of section 135.110, in the new facility during the tax period in which the credits allowed in sections 135.110, 135.225 and 135.235 and the exemption allowed in section 135.220 are claimed exceed one million dollars or, if less, two hundred percent of the investment in the old facility by the taxpayer or related taxpayer, and if the total number of employees at the new facility exceeds the total number of employees at the old facility by at least two except that the total number of employees at the new facility exceeds the total number of employees at the old facility by at least twenty-five if an office as defined in subdivision (8) of this section is established by a revenue-producing enterprise other than a revenue-producing enterprise defined in paragraphs (a) to (g) and (i) to (l) of subdivision (11) of this section;

(11) "Revenue-producing enterprise" means:

- (a) Manufacturing activities classified as SICs 20 through 39;
- (b) Agricultural activities classified as SIC 025;
- (c) Rail transportation terminal activities classified as SIC 4013;
- (d) Motor freight transportation terminal activities classified as SIC 4231;
- (e) Public warehousing and storage activities classified as SICs 422 and 423 except SIC 4221, miniwarehouse warehousing and warehousing self-storage;
- (f) Water transportation terminal activities classified as SIC 4491;
- (g) Wholesale trade activities classified as SICs 50 and 51;
- (h) Insurance carriers activities classified as SICs 631, 632 and 633;
- (i) Research and development activities classified as SIC 873, except 8733;
- (j) Farm implement dealer activities classified as SIC 5999;
- (k) Interexchange telecommunications services as defined in subdivision (24) or local exchange telecommunications services as defined in subdivision (31) of section 386.020, RSMo, or training activities conducted by an interexchange telecommunications company or by a local exchange telecommunications company as defined in subdivisions (23) and (30) of section 386.020, RSMo;
- (l) Recycling activities classified as SIC 5093;
- (m) Office activities as defined in subdivision (8) of this section, notwithstanding SIC classification;
- (n) Mining activities classified as SICs 10 through 14;
- (o) Computer programming, data processing and other computer-related activities classified as SIC 737;
- (p) The administrative management of any of the foregoing activities; or

(q) Any combination of any of the foregoing activities;

(12) "Same or substantially similar revenue-producing enterprise", a revenue-producing enterprise in which the nature of the products produced or sold, or activities conducted, are similar in character and use or are produced, sold, performed or conducted in the same or similar manner as in another revenue-producing enterprise;

(13) "SIC", the primary standard industrial classification as such classifications are defined in the 1987 edition of the Standard Industrial Classification Manual as prepared by the Executive Office of the President, Office of Management and Budget. For the purpose of this subdivision, "primary" means at least fifty percent of the activities so classified are performed at the new business facility during the taxpayer's tax period in which such tax credits are being claimed;

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

135.110. 1. [Any] **The director of the department of economic development may authorize a taxpayer who [shall establish] establishes** a new business facility [shall be allowed] a credit, each year for ten years, in an amount determined pursuant to subsection [2 or 3] **3 or 4** of this section, whichever is applicable, against the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or an insurance company which [shall establish] **establishes** a new business facility by satisfying the requirements in subdivision [(7)] **(10)** of section 135.100 [shall] **may** be allowed a credit against the tax otherwise imposed by chapter 148, RSMo, 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, RSMo, except that no taxpayer shall be [entitled to] **eligible for** 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] **authorized by the director to receive** an 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 expiration of the ten-year period, if the number of new business facility employees attributed to such expansion is at least twenty-five and the amount of new business facility investment attributed to such expansion is at least one million dollars. Credits may not be carried forward but shall be claimed for the taxable year during which

commencement of commercial operations occurs at such new business facility, and for each of the nine succeeding taxable years. [A letter of intent, as provided for in section 135.258, must be filed with the department of economic development no later than fifteen days prior to the commencement of commercial operations at the new business facility. The initial application for claiming tax credits must be made in the taxpayer's tax period immediately following the tax period in which commencement of commercial operations began at the new business facility. This provision shall have effect on all initial applications filed on or after August 28, 1992.]

2. For taxpayers commencing operations on or after January 1, 2001, participation in the program must be approved by the director pursuant to section 135.258 in order for a taxpayer to be eligible to receive any of the benefits authorized by sections 135.100 to 135.150. No credit [shall] **may** be allowed pursuant to this section unless the number of new business facility employees engaged or maintained in employment at the new business facility for the taxable year for which the credit is claimed equals or exceeds two; except that the number of new business facility employees engaged or maintained in employment by a revenue-producing enterprise other than a revenue-producing enterprise defined in paragraphs (a) to [(g) and (i) to (l) of subdivision (11)] **(m) and (o) to (t) of subdivision (13)** of section 135.100 which establishes an office as defined in subdivision [(8)] **(10)** of section 135.100 shall equal or exceed twenty-five.

[2.] **3.** [For tax periods beginning after August 28, 1991,] In the case of a taxpayer operating an existing business facility, the credit [allowed] **authorized** by subsection 1 of this section shall offset the greater of:

(1) Some portion of the income tax otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or in the case of an insurance company, the tax on the direct premiums, as defined in chapter 148, RSMo, 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, RSMo, with respect to such taxpayer's new business facility income for the taxable year for which such credit is allowed; or

(2) Up to fifty percent or, in the case of an economic development project located within a distressed community as defined in section 135.530, seventy-five percent of the business income tax otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or in the case of an insurance company, the tax on the direct premiums, as defined in chapter 148, RSMo, 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, RSMo, if the business operates no other facilities in Missouri. In the case of an existing business facility operating more than one facility in Missouri, the credit [allowed in] **authorized 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 one hundred dollars or, in the case of an economic development project located within a distressed community as defined in section 135.530, one hundred fifty dollars for each new business facility employee plus one hundred dollars or, in the case of an economic development project located within a distressed community as defined in section 135.530, one hundred fifty 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. For the purpose of this section, tax credits **[earned by]** **authorized by the director** a taxpayer, who establishes a new business facility because it satisfies the requirements of paragraph (c) of subdivision **[(4)] (6)** of section 135.100, shall offset the greater of the portion prescribed in subdivision (1) of this subsection or up to fifty percent or, in the case of an economic development project located within a distressed community as defined in section 135.530, seventy-five percent of the business' tax provided the business operates no other facilities in Missouri. In the case of a business operating more than one facility in Missouri, the credit **[allowed in]** **authorized 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.

[3.] 4. **[For tax periods beginning after August 28, 1991,]** In the case of a taxpayer not operating an existing business facility, the credit **[allowed]** **authorized** by subsection 1 of this section shall offset the greater of:

(1) Some portion of the income tax otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or in the case of an insurance company, the tax on the direct premiums, as defined in chapter 148, RSMo, 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, RSMo, with respect to such taxpayer's new business facility income for the taxable year for which such credit is allowed; or

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

case of an insurance company, the tax on the direct premiums, as defined in chapter 148, RSMo, 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, RSMo, 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]** **authorized** 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.] 5. 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]** **authorized** 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] 7** of this section, and, in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision **[(4)] (6)** of section 135.100, or subdivision **[(10)] (12)** 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 authorized in this section are not being earned, whether such credits are earned because of an expansion, acquisition, relocation

or the establishment of a new facility.

[5.] **6.** For the purpose of computing the credit ~~[allowed]~~ **authorized** 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]~~ **7** of this section, and, in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision ~~[(4)]~~ **(6)** of section 135.100 or subdivision ~~[(10)]~~ **(12)** of section 135.100, the amount of the taxpayer's new business facility investment in such facility shall be reduced by the average amount, computed as provided in subdivision ~~[(7)]~~ **(9)** of section 135.100 for new business facility investment, of the investment of the taxpayer, or related taxpayer immediately preceding such expansion or replacement or at the time of acquisition. Furthermore, the amount of the taxpayer's new business facility investment shall also be reduced by the amount of investment employed by the taxpayer or related taxpayer which was subsequently transferred to the new business facility from another Missouri facility and for which credits authorized in this section are not being earned, whether such credits are earned because of an expansion, acquisition, relocation or the establishment of a new facility.

[6.] **7.** If a facility, which does not constitute a new business facility, is expanded by the taxpayer, the expansion ~~[shall]~~ **may** be considered a separate facility eligible for the credit ~~[allowed]~~ **authorized** by this section if:

(1) The taxpayer's new business facility investment in the expansion during the tax period in which the credits allowed in this section are claimed exceeds one hundred thousand dollars, or, if less, one hundred percent of the investment in the original facility prior to expansion and if the number of new business facility employees engaged or maintained in employment at the expansion facility for the taxable year for which credit is claimed equals or exceeds two, except that the number of new business facility employees engaged or maintained in employment at the expansion facility for the taxable year for which the credit is claimed equals or exceeds twenty-five if an office as defined in subdivision ~~[(8)]~~ **(10)** of section 135.100 is established by a revenue-producing enterprise other than a revenue-producing enterprise defined in paragraphs (a) to ~~[(g) and (i) to (l) of subdivision (11)]~~ **(m) and (o) to (t) of subdivision (13)** of section 135.100 and the total number of employees at the facility after the expansion is at least two greater than the total number of employees before the expansion, except that the total number of employees at the facility after the expansion is at least greater than the number of employees before the expansion by twenty-five, if an office as defined in subdivision ~~[(8)]~~ **(10)** of section 135.100 is established by a revenue-producing enterprise other than a revenue-producing enterprise defined in paragraphs (a) to ~~[(g) and (i) to (l) of subdivision (11)]~~ **(m) and (o) to (t) of subdivision (13)** of section 135.100; and

(2) The expansion otherwise constitutes a new business facility. The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in subdivision ~~[(7)]~~ **(9)** of section 135.100.

[7.] **8.** No credit shall be allowed pursuant to this section to a public utility, as such term is defined in section 386.020, RSMo. Notwithstanding any provision of this subsection to the contrary, motor carriers, barge lines or railroads engaged in transporting property for hire, or any interexchange telecommunications company or local exchange telecommunications company that establishes a new business facility [shall] **may** be eligible to qualify for credits [allowed in] **authorized by** this section.

[8.] **9.** For the purposes of the credit described in this section, in the case of a corporation described in section 143.471, RSMo, or partnership, in computing Missouri's tax liability, this credit shall be allowed to the following:

- (1) The shareholders of the corporation described in section 143.471, RSMo;
- (2) The partners of the partnership. This credit shall be apportioned to the entities described in subdivisions (1) and (2) of this subsection in proportion to their share of ownership on the last day of the taxpayer's tax period.

[9.] **10.** Notwithstanding any provision of law to the contrary, any employee-owned engineering firm classified as SIC 8711, architectural firm as classified SIC 8712, or accounting firm classified SIC 8721 establishing a new business facility because it qualifies as a headquarters as defined in subsection [10] **11** of this section, [shall] **may** be allowed the credits described in subsection [11] **12** of this section under the same terms and conditions prescribed in sections 135.100 to 135.150; provided:

(1) Such facility maintains an average of at least five hundred new business facility employees as defined in subdivision [(5)] **(7)** of section 135.100 during the taxpayer's tax period in which such credits are being claimed; and

(2) Such facility maintains an average of at least twenty million dollars in new business facility investment as defined in subdivision [(7)] **(9)** of section 135.100 during the taxpayer's tax period in which such credits are being claimed.

[10.] **11.** For the purpose of the credits [allowed in] **authorized in** subsection [9] **10** of this section:

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

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

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

(2) "Headquarters" means:

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

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

[11.] **12.** The tax credits [allowed in] **authorized by** subsection [9] **10** of this section shall be the greater of:

(1) Four hundred dollars for each new business facility employee as computed in subsection [4] **5** of this section and four percent of new business facility investment as computed in subsection [5] **6** of this section; or

(2) Five hundred dollars for each new business facility employee as computed in subsection [4] **5** of this section, and five hundred dollars of each one hundred thousand dollars of new business facility investment as computed in subsection [5] **6** of this section.

[12.] **13.** For the purpose of the credit described in subsection [9] **10** of this section, in the case of a small corporation described in section 143.471, RSMo, or a partnership, or a limited liability company, the credits [allowed in] **authorized by** subsection [9] **10** of this section shall be apportioned in proportion to the share of ownership of each shareholder, partner or stockholder on the last day of the taxpayer's tax period for which such credits are being claimed.

[13.] **14.** For the purpose of the credit described in subsection [9] **10** of this section, tax credits earned, to the extent such credits exceed the taxpayer's Missouri tax on taxable business income, shall constitute an overpayment of taxes and in such case, be refunded to the taxpayer provided such refunds are used by the taxpayer to purchase specified facility items. For the purpose of the refund as authorized in this subsection, "specified facility items" means equipment, computers, computer software, copiers, tenant finishing, furniture and fixtures installed and in use at the new business facility during the taxpayer's taxable year. The taxpayer shall perfect such refund by attesting in writing to the director, subject to the penalties of perjury, the requirements prescribed in this subsection have been met and submitting any other information the director may require.

[14.] **15.** Notwithstanding any provision of law to the contrary, any taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits [allowed in] **authorized by** subsection [9] **10** of this section under the terms and conditions prescribed in subdivisions (1) and (2) of this subsection. Such taxpayer, referred to as the assignor for the purpose of this subsection, may sell, assign, exchange or otherwise transfer earned tax credits:

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

(2) In an amount not to exceed one hundred percent of such earned credits. The taxpayer acquiring the earned credits referred to as the assignee for the purpose of this subsection may use the acquired credits to offset up to one hundred percent of the tax liabilities otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, or chapter 148, RSMo, or 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, RSMo. Unused credits in the hands of the assignee may be carried forward for up to five tax periods, provided all such credits shall be claimed within ten tax periods following the tax

period in which commencement of commercial operations occurred at the new business facility. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the director in writing within thirty calendar days following the effective date of the transfer and shall provide any information as may be required by the director to administer and carry out the provisions of this subsection. Notwithstanding any other provision of law to the contrary, the amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the difference between the amount paid by the assignee and the par value of the credits shall be taxable as income of the assignee.

135.115. 1. For all revenue-producing enterprises that commenced operations on or after January 1, 1990, but before January 1, 2001, the right to receive the tax credits described in section 135.110 shall vest in the taxpayer upon commencement of operations of the revenue-producing enterprise, **to the extent such incentives do not exceed the ten-year limitation set forth in subsection 1 of section 135.110,** but the taxpayer shall waive such vested right for any given year in which the taxpayer fails to meet the terms and conditions of sections 135.100 to 135.150. [Representations made by the department of economic development and relied upon in good faith by the taxpayer shall be binding upon the state of Missouri to the extent such representations are consistent with the provisions of this chapter. The provisions of this section shall apply to all revenue-producing enterprises which are eligible for incentives pursuant to this section and which commenced operations on or after January 1, 1990, to the extent such incentives do not exceed the ten-year limitation set forth in subsection 1 of section 135.110.]

2. For all revenue-producing enterprises commencing operations on or after January 1, 2001, and which have been approved for participation in the program pursuant to subsection 2 of section 135.110 and section 135.258, there is created in the taxpayer a vested right to receive the tax credits described in section 135.110 in amounts calculated by applying the formulas set forth in the law at the time the approved applicant commenced operations, to the extent such incentives do not exceed the ten-year limitation set forth in subsection 1 of section 135.110, but the taxpayer shall waive such vested right for any given year in which the taxpayer fails to meet the eligibility requirements of sections 135.100 to 135.150.

135.150. 1. [Until January 1, 1987, the director of revenue shall prescribe such rules and regulations necessary to carry out the provisions of sections 135.100 to 135.150.

2. Beginning January 1, 1987,] The director [of economic development] shall prescribe the method for submitting applications for [claiming] **participation in the program authorized by sections 135.100 through 135.150 and for an approved taxpayer to claim** the tax credits [allowed in] **authorized by** subsections [2 and] 3 **and 4** of section 135.110 and shall, if such

application or portion thereof [is] **are** approved, certify same to the director of revenue or the director of insurance that the taxpayer claiming the credits has satisfied all requirements prescribed in sections 135.100 to 135.150 and is therefore eligible to claim the credits. The director of economic development shall also calculate and specify the amount of the credit earned by the taxpayer during the taxpayer's first taxable year in which such credits are claimed and for each of the nine succeeding taxable years the credits are claimed by the taxpayer and shall certify such amounts to the director of revenue or the director of insurance and shall notify the taxpayer in writing of the action taken on [his] **the taxpayer's** request for the credits and if the request for credits is disallowed, the director of economic development shall state the reason or reasons the claim for credit was disallowed. The director shall certify the extent to which earned credits can be claimed to the director of revenue or the director of insurance and shall notify the taxpayer in writing of such determination. The director of economic development may prescribe such rules and regulations necessary to carry out the provisions of sections 135.100 to 135.150.

[3.] **2.** The director of revenue and, when appropriate, the director of insurance may prescribe rules and regulations necessary to process the credits following certification by the director of economic development. [No rule or portion of a rule promulgated under the authority of sections 135.100 to 135.160 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

[4.] **3.** Any taxpayer who **commenced operations before January 1, 2001, or any taxpayer who commences operations on or after January 1, 2001, and has been approved by the director of the department of economic development for participation in the program authorized by sections 135.100 to 135.150** and has submitted an application for claiming tax credits as [allowed in] **authorized by** section 135.110 may file with the director [of economic development,] a protest within sixty days (one hundred fifty days if the taxpayer is outside the United States) after the date of such certification notice or the date of the notice denying such certification. The protest shall be in writing and shall set forth the grounds on which the protest is based.

[5.] **4.** If a protest is filed, the director [of economic development] shall consider the taxpayer's grounds for protest and make a determination concerning such protest. The director [of economic development] shall notify the taxpayer in writing of such determination within thirty days following the date on which the written protest was received. Such notice shall be mailed to the taxpayer by certified or registered mail and such notice shall set forth briefly the [director of economic development's] **director's** findings of fact and the basis of decision.

[6.] **5.** The decision of the director [of economic development] on the taxpayer's protest is final upon the expiration of thirty days from the date when [he] **the director** mails notice of his **or her** action to the taxpayer unless within this period, the taxpayer seeks review of the [director of economic development's] **director's** determination by the administrative hearing

commission, which is hereby authorized.

135.200. The following terms, whenever used in sections 135.200 to [135.256] **135.257**, mean:

- (1) "Department", the department of economic development;
- (2) "Director", the director of the department of economic development;
- (3) "Facility", any building used as a revenue-producing enterprise located within an enterprise zone, 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) "Governing authority", the body holding primary legislative authority over a county or incorporated municipality;
- (5) "New business facility" shall have the meaning defined in section 135.100, except that the term "lease" as used therein shall not include the leasing of property defined in paragraph (d) of subdivision (6) of this section;
 - (6) "Revenue-producing enterprise", means:
 - (a) Manufacturing activities classified as SICs 20 through 39;
 - (b) Agricultural activities classified as SIC 025;
 - (c) Rail transportation terminal activities classified as SIC 4013;
 - (d) Renting or leasing of residential property to low- and moderate- income persons as defined in federal law, 42 U.S.C. 5302(a)(20);
 - (e) Motor freight transportation terminal activities classified as SIC 4231;
 - (f) Public warehousing and storage activities classified as SICs 422 and 423 except SIC 4221, miniwarehouse warehousing and warehousing self-storage;
 - (g) Water transportation terminal activities classified as SIC 4491;
 - (h) Airports, flying fields, and airport terminal services classified as SIC 4581;
 - (i) Wholesale trade activities classified as SICs 50 and 51;
 - (j) Insurance carriers activities classified as SICs 631, 632 and 633;
 - (k) Research and development activities classified as SIC 873, except 8733;
 - (l) Farm implement dealer activities classified as SIC 5999;
 - (m) Employment agency activities classified as SIC 7361;
 - (n) Computer programming, data processing and other computer-related activities classified as SIC 737;
 - (o) Health service activities classified as SICs 801, 802, 803, 804, 806, 807, 8092 and 8093;
 - (p) Interexchange telecommunications as defined in subdivision [(20)] **(24) or local exchange telecommunications services as defined in subdivision (31)** of section 386.020, RSMo, or training activities conducted by an interexchange telecommunications company as defined in [subdivision (19)] **subdivisions (23) and (30)** of section 386.020, RSMo;

(q) Recycling activities classified as SIC 5093;
(r) Banking activities classified as SICs 602 and 603;
(s) Office activities as defined in subdivision [(8)] **(10)** of section 135.100, notwithstanding SIC classification;

(t) Mining activities classified as SICs 10 through 14;

(u) **Photofinishing laboratory activities classified in SIC 7384 and microfilm recording and developing services as contained in SIC classification 7389, provided that each such revenue-producing enterprise employs a minimum of one hundred employees at a single business facility;**

(v) The administrative management of any of the foregoing activities; [or]

[(v)] (w) Any combination of any of the foregoing activities;

(x) **Any other industry as determined by the director to be a targeted industry important to the economic development of the state; or**

(y) **An industry not otherwise specified but which is considering a new business facility or an expansion of an existing business facility in an enterprise zone which, in the judgment of the director of the department of economic development, is beneficial to the economy of the area of the state in which it is to be located or to the economy of the state as a whole.**

A revenue-producing enterprise which is identified by a SIC classification number includes enterprises with the corresponding classification number in the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget.

(7) "Satellite zone", a noncontiguous addition to an existing state designated enterprise zone;

(8) "SIC", the **primary** standard industrial classification as such classifications are defined in the 1987 edition of the Standard Industrial Classification Manual as prepared by the Executive Office of the President, Office of Management and Budget. **For purposes of this subdivision, "primary" means at least fifty percent of the activities so classified are performed at the new business facility during the taxpayer's tax period in which such tax credits are being claimed.**

[135.200. The following terms, whenever used in sections 135.200 to 135.256, mean:

(1) "Department", the department of economic development;

(2) "Director", the director of the department of economic development;

(3) "Facility", any building used as a revenue-producing enterprise located within an enterprise zone, 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) "Governing authority", the body holding primary legislative authority over a county or incorporated municipality;

(5) "New business facility" shall have the meaning defined in section 135.100, except that the term "lease" as used therein shall not include the leasing of property defined in paragraph (d) of subdivision (6) of this section;

(6) "Revenue-producing enterprise", means:

(a) Manufacturing activities classified as SICs 20 through 39;

(b) Agricultural activities classified as SIC 025;

(c) Rail transportation terminal activities classified as SIC 4013;

(d) Renting or leasing of residential property to low and moderate income persons as defined in federal law, 42 U.S.C. 5302(a)(20);

(e) Motor freight transportation terminal activities classified as SIC 4231;

(f) Public warehousing and storage activities classified as SICs 422 and 423 except SIC 4221, miniwarehouse warehousing and warehousing self-storage;

(g) Water transportation terminal activities classified as SIC 4491;

(h) Wholesale trade activities classified as SICs 50 and 51;

(i) Insurance carriers activities classified as SICs 631, 632 and 633;

(j) Research and development activities classified as SIC 873, except 8733;

(k) Farm implement dealer activities classified as SIC 5999;

(l) Employment agency activities classified as SIC 7361;

(m) Computer programming, data processing and other computer-related activities classified as SIC 737;

(n) Health service activities classified as SICs 801, 802, 803, 804, 806, 807, 8092 and 8093;

(o) Interexchange telecommunications as defined in subdivision (20) of section 386.020, RSMo, or training activities conducted by an interexchange telecommunications company as defined in subdivision (19) of section 386.020, RSMo;

(p) Recycling activities classified as SIC 5093;

(q) Banking activities classified as SICs 602 and 603;

(r) Office activities as defined in subdivision (8) of section 135.100, notwithstanding SIC classification;

(s) Mining activities classified as SICs 10 through 14;

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

(u) Any combination of any of the foregoing activities;

(7) "Satellite zone", a noncontiguous addition to an existing state designated enterprise zone;

(8) "SIC", the primary standard industrial classification as such classifications are

defined in the 1987 edition of the Standard Industrial Classification Manual as prepared by the Executive Office of the President, Office of Management and Budget. For the purpose of this subdivision, "primary" means at least fifty percent of the activities so classified are performed at the new business facility during the taxpayer's tax period in which such tax credits are being claimed.]

[135.200. The following terms, whenever used in sections 135.200 to 135.256, mean:

(1) "Department", the department of economic development;

(2) "Director", the director of the department of economic development;

(3) "Facility", any building used as a revenue-producing enterprise located within an enterprise zone, 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) "Governing authority", the body holding primary legislative authority over a county or incorporated municipality;

(5) "New business facility" shall have the meaning defined in section 135.100, except that the term "lease" as used therein shall not include the leasing of property defined in paragraph (d) of subdivision (6) of this section;

(6) "Revenue-producing enterprise" means:

(a) Manufacturing activities classified as SICs 20 through 39;

(b) Agricultural activities classified as SIC 025;

(c) Rail transportation terminal activities classified as SIC 4013;

(d) Renting or leasing of residential property to low and moderate income persons as defined in federal law, 42 U.S.C. 5302(a)(20);

(e) Motor freight transportation terminal activities classified as SIC 4231;

(f) Public warehousing and storage activities classified as SICs 422 and 423 except SIC 4221, miniwarehouse warehousing and warehousing self- storage;

(g) Water transportation terminal activities classified as SIC 4491;

(h) Wholesale trade activities classified as SICs 50 and 51;

(i) Insurance carriers activities classified as SICs 631, 632 and 633;

(j) Research and development activities classified as SIC 873, except 8733;

(k) Farm implement dealer activities classified as SIC 5999;

(l) Employment agency activities classified as SIC 7361;

(m) Computer programming, data processing and other computer-related activities classified as SIC 737;

(n) Health service activities classified as SICs 801, 802, 803, 804, 806, 807, 8092 and 8093;

(o) Interexchange telecommunications as defined in subdivision (20) of section 386.020, RSMo, or training activities conducted by an interexchange telecommunications company as defined in subdivision (19) of section 386.020, RSMo;

(p) Recycling activities classified as SIC 5093;

(q) Banking activities classified as SICs 602 and 603;

(r) Office activities as defined in subdivision (8) of section 135.100, notwithstanding SIC classification;

(s) Mining activities classified as SICs 10 through 14;

(t) Photofinishing laboratory activities classified in SIC 7384 and microfilm recording and developing services as contained in SIC classification 7389, provided that each such revenue-producing enterprise employs a minimum of one hundred employees at a single business facility;

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

(v) Any combination of any of the foregoing activities;

(7) "Satellite zone", a noncontiguous addition to an existing state designated enterprise zone;

(8) "SIC", the standard industrial classification as such classifications are defined in the 1987 edition of the Standard Industrial Classification Manual as prepared by the Executive Office of the President, Office of Management and Budget.]

135.220. 1. The provisions of chapter 143, RSMo, notwithstanding, **an eligible taxpayer approved by the director to participate in the program authorized by sections 135.200 to 135.257 shall receive an exemption from taxation pursuant to chapter 143, RSMo, in an amount equal to** one-half of the Missouri taxable income attributed to a new business facility in an enterprise zone which is earned by a taxpayer establishing and operating a new business facility located within an enterprise zone [shall be exempt from taxation under chapter 143, RSMo. A]. **An approved** taxpayer operating a revenue producing enterprise as defined in paragraph (d) of subdivision (6) of section 135.200 may elect to exempt from taxation under chapter 143, RSMo, one-half of the Missouri taxable income attributed to a new business facility in an enterprise zone or may elect to claim a fifty-dollar credit against the tax imposed under chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, for each room constructed for use as a bedroom for each qualifying residential unit. A "bedroom" is defined as a structurally separate room used primarily for sleeping, and not as a living room, dining room, kitchen or closet. That portion of income attributed to the new business facility shall be determined in a manner prescribed in paragraph (b) of subdivision [(6)] **(8)** of section 135.100, except that compensation paid to truck drivers, or rail or barge vehicle operators shall be excluded from the fraction.

2. In the case of a small corporation described in section 143.471, RSMo, or a partnership,

in computing the Missouri taxable income of the taxpayers described in subdivisions (1) and (2) of this subsection, a deduction apportioned in proportion to their share of ownership of the business on the last day of the taxpayer's tax period for which such tax credits are being claimed, **[shall] may** be allowed from their Missouri adjusted gross income in the amount of one-half of the Missouri taxable income earned by the new business facility, as determined by the method prescribed in subsection 1 of this section located within the enterprise zone, as defined in this section, to the following:

- (1) The shareholders of a small corporation described in section 143.471, RSMo;
- (2) The partners in a partnership.

135.225. 1. The credits otherwise **[provided] authorized** by sections 135.100 to 135.150 shall, upon proper application **as determined by the department** be granted to any taxpayer **who has been approved by the director for participation in the program authorized by section 135.200 to 135.257, and** who shall establish and operate a new business facility located within an enterprise zone, except one designated pursuant to subsection 5 of section 135.230, on the same terms and conditions specified in **[those] sections 135.100 to 135.150**, except that:

(1) The credit otherwise allowed for each new business facility employee employed within an enterprise zone shall be four hundred dollars;

(2) An additional credit of four hundred dollars shall be granted for each twelve-month period that a new business facility employee is a resident of an enterprise zone;

(3) An additional credit of four hundred dollars shall be granted for each twelve-month period that the person employed as a new business facility employee is a person who, at the time of such employment by the new business facility, met the criteria as set forth in section 135.240;

(4) The credit otherwise allowed for new business facility investment shall be equal to the sum of ten percent of the first ten thousand dollars of such qualifying investment, plus five percent of the next ninety thousand dollars of such qualifying investment, plus two percent of all remaining qualifying investments within an enterprise zone;

(5) In the case of a small corporation described in section 143.471, RSMo, or a partnership, the credits granted by this section shall be apportioned in proportion to the share of ownership of the taxpayer on the last day of the taxpayer's tax period for which such tax credits are being claimed, to the following:

- (a) The shareholders of a small corporation described in section 143.471, RSMo;
- (b) The partners in a partnership;

(6) In the case of financial institutions described pursuant to the provisions of chapter 148, RSMo, the credits **[allowed in] authorized by** subdivisions (1), (2), (3) and (4) of this subsection and the credit **[allowed in] authorized by** section 135.235 may be used to offset the tax imposed by chapter 148, RSMo, and, in the case of an insurance company exempt from the thirty-percent employee requirement of section 135.230, any obligations imposed pursuant to section 375.916,

RSMo, subject to the same method of apportionment as prescribed for taxes imposed by chapter 143, RSMo, and as provided in subdivision [(6)] **(8)** of section 135.100 and subsections [2 and 3] **3 and 4** of section 135.110;

(7) If a facility within an enterprise zone, which does not constitute a new business facility, is expanded or improved by the taxpayer within the enterprise zone, the expansion or improvement shall be considered a separate facility eligible for the credits [allowed in] **authorized by** this section and section 135.235, and the exemption [allowed in] **authorized by** section 135.220, if:

(a) The new business facility investment in the expansion or improvement during the tax period in which such credits and the exemption are claimed exceeds one hundred thousand dollars or, if less than one hundred thousand dollars, is twenty-five percent of the investment in the original facility prior to expansion or improvement; and

(b) The expansion or improvement otherwise constitutes a new business facility; and

(c) The number of new business facility employees engaged or maintained in employment at the expanded or improved facility for the taxable year for which the credit is claimed equals or exceeds two and the total number of employees at the facility after expansion or improvement is at least two greater than the total number of employees before expansion or improvement. The taxpayer's investment in the expansion or improvement and in the original facility prior to expansion or improvement shall be determined in the manner provided in subdivision [(7)] **(9)** of section 135.100;

(8) For the purpose of sections 135.200 to 135.256, an office as defined in subdivision [(8)] **(10)** of section 135.100, when established, must create and maintain at least two new business facility employees as defined in subdivision [(5)] **(7)** of section 135.100;

(9) In the case where a person employed by the new business facility is a resident of the enterprise zone for less than a twelve-month period, or in the case where a person employed as a new business facility employee is a person who, at the time of such employment by the new business facility, met the criteria as set forth in section 135.240, is employed for less than a twelve-month period, the credits [allowed] **authorized** by subdivisions (2) and (3) of this subsection shall be determined by multiplying four hundred dollars by a fraction, the numerator of which is the number of calendar days during the taxpayer's tax year for which such credits are claimed, in which the person met the requirements prescribed in subdivision (2) or (3) of this subsection, and the denominator of which is three hundred and sixty-five, except that such credit shall not exceed four hundred dollars per employee in any one taxable year;

(10) The deferment of tax credit authorized in section 135.120 shall not be available to taxpayers establishing a new business facility in an enterprise zone;

(11) The allowance for additional ten-year periods to certain new business facilities as prescribed in subsection 1 of section 135.110 shall not be available to taxpayers expanding a new

business facility in an enterprise zone, except that any taxpayer who has been eligible to earn enterprise zone tax benefits for ten tax periods, or until the expiration of the fifteen-year period as prescribed in subsection 1 of section 135.230, or for the maximum period otherwise [allowed] **authorized** by law, may qualify for the tax credits [allowed in] **authorized by** section 135.110 if otherwise eligible, pursuant to the same terms and conditions prescribed in sections 135.100 to 135.150;

(12) Taxpayers who establish a new business facility by operating a revenue-producing enterprise as defined in paragraph (d) of subdivision (6) of section 135.200 shall not be required to create and maintain new business facility employees.

2. The tax credits described in subdivisions (1), (2), (3) and (4) of subsection 1 of this section, the training credit [allowed in] **authorized by** section 135.235, and the income exemption [allowed in] **authorized by** section 135.220, [shall be allowed] **may be granted by the director** to any taxpayer, under the same terms and conditions specified in such sections, who establishes a new business facility in an enterprise zone designated pursuant to subsection 5 of section 135.230, except that all such tax benefits shall be removed not later than seven years after the enterprise zone is designated as such.

3. Notwithstanding any provision of law to the contrary, any **approved** taxpayer who establishes a new business facility in an enterprise zone, may elect to forfeit the tax credits otherwise [allowed in] **authorized by** section 135.235 and this section and the exemptions otherwise [allowed in] **authorized by** sections 135.215 and 135.220 and the refund otherwise [allowed in] **authorized by** section 135.245, and in lieu thereof, claim the tax credits [allowed in] **authorized by** section 135.110, pursuant to the same terms and conditions prescribed in sections 135.100 to 135.150. To perfect the election, the taxpayer shall attach written notification of such election to the taxpayer's initial application for claiming tax credits. The election shall be irreversible once perfected.

4. [The right to receive the income exemption described in section 135.220, the tax credits described in subsection 1 of this section and the training credit allowed in section 135.235 shall vest in the taxpayer upon commencement of operations of the revenue-producing enterprise, but such vested right shall be waived by the taxpayer for any given year in which the terms and conditions of sections 135.100 to 135.268 are not met. Representations made by the department and relied upon in good faith by the taxpayer shall be binding upon the state of Missouri insofar as they are consistent with the provisions of this chapter. The provisions of this subsection shall apply to all revenue-producing enterprises which are eligible for incentives pursuant to this subsection and which commenced operation on or after January 1, 1996, to the extent such incentives do not exceed the fifteen-year limitation pursuant to subsection 1 of section 135.230 or the seven-year limitation pursuant to subsection 5 of section 135.230. The provisions of this subsection shall apply to all revenue-producing enterprises which are eligible for the incentives

set forth in this subsection, and which began operation after January 1, 1996, to the extent such incentives do not exceed the fifteen-year limitation set forth in subsection 1 of section 135.230, or the seven-year limit set forth in subsection 5 of section 135.230.] **For all revenue-producing enterprises which commenced operations on or after January 1, 1996, but before January 1, 2001, and are entitled to receive the income exemption described in section 135.220, the right to receive the tax credits described in subsection 1 of this section and the training credit described in section 135.235 shall vest in the taxpayer upon commencement of operations of the revenue-producing enterprise, to the extent such incentives do not exceed the fifteen-year limitation pursuant to subsection 1 of section 135.230 or the seven-year limitation pursuant to subsection 5 of section 135.230. The taxpayer shall waive this right for any given year in which the taxpayer fails to meet the terms and conditions of sections 135.200 to 135.257.**

5. For all revenue-producing enterprises commencing operations on or after January 1, 2001, and which have been approved for participation in the program pursuant to section 135.258, there is created in the taxpayer a vested right to receive the income exemption described in section 135.220, the tax credits described in subsection 1 of this section and the training credit described in section 135.235 in amounts calculated by applying the formulas set forth in the law at the time the approved applicant commenced operations, to the extent such incentives do not exceed the fifteen-year limitation pursuant to subsection 1 of section 135.230 or the seven-year limitation pursuant to subsection 5 of section 135.230. The taxpayer shall waive this right for any given year in which the taxpayer fails to meet the terms and conditions of sections 135.200 to 135.257.

135.230. 1. The exemption or credit [established and allowed] **authorized** by section 135.220 and the credits [allowed and established] **authorized** by subdivisions (1), (2), (3) and (4) of subsection 1 of section 135.225 [shall] **may** be granted with respect to any new business facility located within an enterprise zone for a vested period not to exceed ten years following the date upon which the new business facility commences operation within the enterprise zone [and such exemption shall be calculated, for each succeeding year of eligibility, in accordance with the formulas applied in the initial year in which the new business facility is certified as such,] subject, however, to the limitation that all such credits [allowed in] **authorized by** sections 135.225 and 135.235 and the exemption [allowed in] **authorized by** section 135.220 shall be removed not later than fifteen years after the enterprise zone is designated as such. No credits shall be allowed pursuant to subdivision (1), (2), (3) or (4) of subsection 1 of section 135.225 or section 135.235 and no exemption shall be allowed pursuant to section 135.220 unless the number of new business facility employees engaged or maintained in employment at the new business facility for the taxable year for which the credit is claimed equals or exceeds two or the new business facility is a revenue-producing enterprise as defined in paragraph (d) of subdivision (6) of section

135.200. In order to qualify for either the exemption pursuant to section 135.220 or the credit pursuant to subdivision (4) of subsection 1 of section 135.225, or both, it shall be required that at least thirty percent of new business facility employees, as determined by subsection ~~[4]~~ **5** of section 135.110, meet the criteria established in section 135.240 or are residents of an enterprise zone or some combination thereof, except taxpayers who establish a new business facility by operating a revenue-producing enterprise as defined in paragraph (d) of subdivision (6) of section 135.200 or any taxpayer that is an insurance company that established a new business facility satisfying the requirements of subdivision ~~[(8)]~~ **(10)** of section 135.100 located within an enterprise zone after June 30, 1993, and before December 31, 1994, and that employs in excess of three hundred fifty new business facility employees at such facility each tax period for which the credits allowable pursuant to subdivisions (1) to (4) of subsection 1 of section 135.225 are claimed shall not be required to meet such requirement. A new business facility described as SIC 3751 shall be required to employ fifteen percent of such employees instead of the required thirty percent. For the purpose of satisfying the thirty-percent requirement, residents must have lived in the enterprise zone for a period of at least ~~[one full calendar month]~~ **thirty days** and must have been employed at the new business facility for at least ~~[one full calendar month]~~ **thirty days**, and persons qualifying because they meet the requirements of section 135.240 must have satisfied such requirement at the time they were employed by the new business facility and must have been employed at the new business facility for at least ~~[one full calendar month]~~ **thirty days**. The director may temporarily reduce or waive this requirement for any business in an enterprise zone with ten or less full-time employees, and for businesses with eleven to twenty full-time employees this requirement may be temporarily reduced. No reduction or waiver may be granted for more than one tax period and shall not be renewable. The exemptions ~~[allowed in]~~ **authorized by** sections 135.215 and 135.220 and the credits ~~[allowed in]~~ **authorized by** sections 135.225 and 135.235 and the refund ~~[established and]~~ authorized ~~[in]~~ **by** section 135.245 shall not be ~~[allowed]~~ **granted** to any "public utility", as such term is defined in section 386.020, RSMo.

2. Notwithstanding the provisions of subsection 1 of this section, motor carriers, barge lines or railroads engaged in transporting property for hire or any interexchange telecommunications company that establish a new business facility ~~[shall be eligible to qualify for]~~ **may be approved by the director to receive** the exemptions ~~[allowed in]~~ **authorized by** sections 135.215 and 135.220, and the credits ~~[allowed in]~~ **authorized by** sections 135.225 and 135.235 and the refund ~~[established and]~~ authorized ~~[in]~~ **by** section 135.245, except that trucks, truck-trailers, truck semitrailers, rail or barge vehicles or other rolling stock for hire, track, switches, bridges, barges, tunnels, rail yards and spurs shall not constitute new business facility investment nor shall truck drivers or rail or barge vehicle operators constitute new business facility employees.

3. Notwithstanding any other provision of sections 135.200 to ~~[135.256]~~ **135.257** to the

contrary, motor carriers establishing a new business facility on or after January 1, 1993, but before January 1, 1995, may qualify for the tax credits available pursuant to sections 135.225 and 135.235 and the exemption provided in section 135.220, even if such new business facility has not satisfied the employee criteria, provided that such taxpayer employs an average of at least two hundred persons at such facility, exclusive of truck drivers and provided that such taxpayer maintains an average investment of at least ten million at such facility, exclusive of rolling stock, during the tax period for which such credits and exemption are being claimed.

4. Any governing authority having jurisdiction of an area that has been designated an enterprise zone may petition the department to expand the boundaries of such existing enterprise zone. The director may approve such expansion if the director finds that:

(1) The area to be expanded meets the requirements prescribed in section 135.207 or 135.210, whichever is applicable;

(2) The area to be expanded is contiguous to the existing enterprise zone;

(3) The number of expansions do not exceed three after August 28, 1994.

5. Notwithstanding the fifteen-year limitation as prescribed in subsection 1 of this section, any governing authority having jurisdiction of an area that has been designated as an enterprise zone by the director, except one designated pursuant to this subsection, may file a petition, as prescribed by the director, for redesignation of such area for an additional period not to exceed seven years following the fifteenth anniversary of the enterprise zone's initial designation date; provided:

(1) The petition is filed with the director within three years prior to the date the tax credits authorized [in] **by** sections 135.225 and 135.235 and the exemption [allowed in] **authorized by** section 135.220 are required to be removed pursuant to subsection 1 of this section;

(2) The governing authority identifies and conforms the boundaries of the area to be designated a new enterprise zone to the political boundaries established by the latest decennial census, unless otherwise approved by the director;

(3) The area satisfies the requirements prescribed in subdivisions (3), (4) and (5) of section 135.205 according to the latest decennial census or other appropriate source as approved by the director;

(4) The governing authority satisfies the requirements prescribed in sections 135.210, 135.215 and 135.255;

(5) The director finds that the area is unlikely to support reasonable tax assessment or to experience reasonable economic growth without such designation; and

(6) The director's recommendation that the area be designated as an enterprise zone, is approved by the joint committee on economic development policy and planning, as otherwise required in subsection 3 of section 135.210.

6. Any **approved** taxpayer having established a new business facility in an enterprise zone except one designated pursuant to subsection 5 of this section, who did not earn the tax credits authorized [in] **by** sections 135.225 and 135.235 and the exemption [allowed in] **authorized by** section 135.220 for the full ten-year period because of the fifteen-year limitation as prescribed in subsection 1 of this section, shall be granted such benefits for ten tax years, less the number of tax years the benefits were claimed or could have been claimed prior to the expiration of the original fifteen-year period, except that such tax benefits shall not be earned for more than seven tax periods during the ensuing seven-year period, provided the taxpayer continues to operate the new business facility in an area that is designated an enterprise zone pursuant to subsection 5 of this section. Any **approved** taxpayer who establishes a new business facility subsequent to the commencement of the ensuing seven-year period, as authorized in subsection 5 of this section, may qualify for the tax credits authorized in sections 135.225 and 135.235, and the exemptions authorized in sections 135.215 and 135.220, pursuant to the same terms and conditions as prescribed in sections 135.100 to 135.256. The designation of any enterprise zone pursuant to subsection 5 of this section shall not be subject to the fifty enterprise zone limitation imposed in subsection 4 of section 135.210.

135.235. To the extent that expenses incurred by a new business facility in an enterprise zone for the training of persons employed in the operation of the new business facility is not covered by an existing federal, state or local program, [such] a new business facility **approved by the director for participation in the program authorized by sections 135.200 to 135.257** shall be eligible for a full tax credit equal to eighty percent of that portion of such training expenses which are in excess of four hundred dollars for each trainee who is a resident of the enterprise zone or who was at the time of such employment at the new business facility unemployable or difficult to employ as defined in section 135.240, provided such credit shall not exceed four hundred dollars for each employee trained. In the case of a small corporation described in section 143.471, RSMo, or a partnership, all credits [allowed] **authorized** by this section shall be apportioned in proportion to the share of ownership of the business to the following:

- (1) The shareholders of the corporation described in section 143.471, RSMo; or
- (2) The partners in a partnership.

135.240. The provisions of subdivision (3) of section 135.225 and section 135.230 shall apply to employees determined to:

- (1) Be difficult to employ. For the purpose of this section, "a person difficult to employ" shall mean a person who was unemployed for at least [three months] **ninety days** immediately prior to being employed at the new business facility in the enterprise zone; or

- (2) Be eligible for [aid to families with dependent children] **temporary assistance for needy families, medical assistance for families** or general relief programs.

135.245. 1. Notwithstanding any other provision of Missouri law, some portion of the tax credits earned by a newly established new business facility **that has been approved by the director for participation in the program authorized by sections 135.200 to 135.257** within an enterprise zone [through the provisions of sections 135.200 to 135.256], except one designated pursuant to subsection 5 of section 135.230, which exceeds its total income tax liability shall be considered an overpayment of the income tax and shall be refunded to the taxpayer as provided by this section, except that such refund shall only apply to taxpayers subject to the tax imposed pursuant to chapter 143, RSMo. The refund [allowed] **authorized** by this section shall be limited to taxpayers who establish new facilities in enterprise zones. The refund shall not be allowed to a taxpayer who establishes a new business facility because it qualifies as a separate facility pursuant to subsection [6] **7** of section 135.110 or subdivision (7) of subsection 1 of section 135.225 or because it satisfies the requirements of paragraph (c) of subdivision [(4)] **(6)** of section 135.100 or subdivision [(10)] **(12)** of section 135.100. The provisions of this section shall have effect on all initial applications filed on or after August 28, 1992. The provisions of this section shall only be available to a taxpayer for the first two consecutive years during which the taxpayer is eligible for the credits provided by sections 135.200 to [135.256] **135.257**, and the portion of tax credit which is considered an overpayment of the income tax shall be limited to fifty percent or fifty thousand dollars, whichever is less, in the first year and twenty-five percent or twenty-five thousand dollars, whichever is less, in the second year in which the taxpayer is eligible. The overpayment of the income tax for the first year shall not be refunded to the taxpayer until the third taxable year of operation by the new business facility and the overpayment of the income tax for the second year shall not be refunded to the taxpayer until the fourth taxable year of operation by the new business facility.

2. The portion of tax credit which is considered an overpayment of the income tax by any taxpayer **who has been approved by the director for participation in the program authorized by sections 135.200 to 135.257** and who establishes a new business facility in an enterprise zone designated pursuant to subsection 5 of section 135.230 shall be limited to twenty-five percent or twenty-five thousand dollars, whichever is less, in the first year of the ensuing seven-year period. Such overpayment of tax shall not be refunded to the taxpayer until the third taxable year of operation by the new business facility.

3. Such refunds to [the] **an approved** taxpayer shall be made as otherwise provided by law. In the case of a small corporation described in section 143.471, RSMo, or a partnership, all refunds [allowed] **authorized** by this section shall be apportioned in proportion to the share of ownership of the business on the last day of the taxpayer's tax period for which such tax credits are being claimed, to the following:

- (1) The shareholders of the corporation described in section 143.471, RSMo; or
- (2) The partners in a partnership.

135.247. 1. Notwithstanding the provisions of sections 135.205, 135.207, and 135.210 or any other provisions to the contrary, any area having been designated by the United States Department of Housing and Urban Development as a federal empowerment zone or by the United States Department of Agriculture as an enterprise community pursuant to the federal Omnibus Budget Reconciliation Act of 1993, title XIII, chapter I, subchapter c, shall immediately upon such federal designation become and remain a state enterprise zone until the expiration of such federal designation.

2. The credits otherwise [provided] **authorized** by sections 135.225 and 135.235, the exemption [provided] **authorized** by section 135.220, and the refund [provided] **authorized** by section 135.245 shall be available to any taxpayer **who has been approved by the director for participation in the program authorized by sections 135.200 to 135.257 and** who establishes and operates a new business facility located within a federal empowerment zone or enterprise community on the same terms and conditions specified in sections 135.100 to [135.256] **135.257**. The exemption provided in section 135.215 shall be available to any taxpayer who makes improvements to real property after the date the area is designated as a federal empowerment zone or enterprise community pursuant to the same terms and conditions specified in section 135.215.

3. Notwithstanding any provision of law to the contrary, retail businesses, as defined by SICs 52 through 59, hotels and motels, as defined by SIC 7011, and recreational facilities as defined by SIC 7999, shall be **eligible for the exemption provided in section 135.215 pursuant to the same terms and conditions specified in section 135.215, and may, upon the approval of the director, be** eligible for [all benefits provided pursuant to the provisions of sections 135.200 to 135.256] **the credits otherwise authorized by sections 135.225 and 135.235, the exemption authorized by section 135.220, and the refund authorized by section 135.245, if:**

(1) In the case of a retail business, such business is located within a state-designated enterprise zone located wholly or partially within a federal empowerment zone or enterprise community; or

(2) Such business is located within a satellite enterprise zone, established pursuant to subdivision (1) or (3) of subsection 1 of section 135.207, whether or not such satellite zone is contained within a federal empowerment zone or enterprise community; and

(3) In the case of a hotel or motel, such business is located within an enterprise zone which is located within any county of the first classification with a population of at least five hundred thousand but less than seven hundred thousand inhabitants according to the last decennial census, or in an enterprise zone which is located within any city of the third classification which is partially located within a county of the first class with a population of one hundred fifty thousand or more which is adjacent to a county of the first classification with a population of at

least five hundred thousand but less than seven hundred thousand according to the last decennial census; and

(4) In the case of a recreational facility, such business is located within an area designated a satellite enterprise zone pursuant to subdivision (1) of subsection 1 of section 135.207, by the director after January 1, 1991, and before January 1, 1992, in any city not within a county, and further provided the director approves the eligibility of such recreational facility to claim tax benefits otherwise [allowed in] **authorized by** sections 135.200 to [135.256] **135.257**. When making such determination, the director shall consider the number and quality of new jobs to be created, the amount of payroll and investment to be generated from the proposed project, the extent to which such tax concessions are needed to induce the development, whether the area is unlikely to support reasonable tax assessment or to experience reasonable economic growth without such designation and the overall economic benefits to be realized from the proposed project.

4. For purposes of qualifying for benefits pursuant to this section, recreational facilities, as defined by SIC 7999, shall not include:

(1) An excursion gambling boat licensed pursuant to sections 313.800 to 313.850, RSMo, and the docking facility associated with such licensed excursion gambling boat; or

(2) An excursion gambling boat and docking facility as proposed on an application filed with the Missouri gaming commission.

135.250. 1. The director of the department of economic development may, subject to the requirements of section 536.021, RSMo, issue such rules and regulations as he deems necessary regarding the qualifications necessary for an area to be deemed an "enterprise zone" and for the continuation of such designation. [Beginning January 1, 1987,] The director shall prescribe the method for submitting applications for [claiming] **participation in the program authorized by sections 135.200 to 135.257 and for an approved taxpayer to claim** the tax credits [allowed in] **authorized by** sections 135.225 and 135.235 and the exemption [allowed in] **authorized by** section 135.220 and shall, if such [application is] **applications are** approved, certify same to the director of revenue that the taxpayer claiming the credits [allowed in] **authorized by** sections 135.225 and 135.235 and the exemption [allowed in] **authorized by** section 135.220 has satisfied all requirements prescribed in sections 135.200 to [135.255] **135.257**, and is therefore eligible to claim the credits and exemption. The director shall also calculate and specify the amount of the credits earned by the taxpayer during the taxpayer's first taxable year in which such credits are claimed and for each of the nine succeeding taxable years the credits are claimed by the taxpayer and shall certify such amounts to the director of revenue. The director shall certify the extent to which such earned credits and the exemption [allowed in] **authorized by** section 135.220 can be claimed to the director of revenue and shall notify the taxpayer in writing of such determination. The director may prescribe such rules and regulations necessary

to carry out the provisions of sections 135.200 to [135.255] **135.257**.

2. The director of revenue shall determine the amount of the taxpayer's refund, as [allowed in] **authorized by** section 135.245, if any, and shall notify the taxpayer in writing of any amount to be refunded. The director of revenue may, subject to the requirements of section 536.021, RSMo, prescribe rules and regulations necessary to process the credits [allowed in] **authorized by** sections 135.225 and 135.235 and the exemption [allowed in] **authorized by** section 135.220 and the refund allowed in section 135.245 following certification of eligibility by the director. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

3. Any taxpayer who **commenced operations before January 1, 2001, or any taxpayer who commences operations on or after January 1, 2001 and has been approved by the director of the department for participation in the program authorized by sections 135.200 through 135.257 and** has submitted an application for claiming tax credits as [allowed in] **authorized by** sections 135.225, 135.235, or the exemption [allowed in] **authorized by** section 135.220 or an application to be certified as a new business facility for the purpose of claiming the refund as [allowed in] **authorized by** section 135.245, may file with the director [of economic development], a protest within sixty days (one hundred fifty days if the taxpayer is outside the United States) after the date of such certification notice or the date of the notice denying such certification. The protest shall be in writing and shall set forth the grounds on which the protest is based.

4. If a protest is filed, the director [of economic development] shall consider the taxpayer's grounds for protest and make a determination concerning such protest. The director [of economic development] shall notify the taxpayer in writing of such determination within thirty days following the date in which the written protest was received. Such notice shall be mailed to the taxpayer by certified or registered mail and such notice shall set forth briefly the [director of economic development's] **director's** findings of fact and the basis of decision.

5. The decision of the director [of economic development] on the taxpayer's protest is final upon the expiration of thirty days from the date when [he] **the director** mails notice of his **or her** action to the taxpayer unless within this period, the taxpayer seeks review of the [director of economic development's] **director's** determination by the administrative hearing commission.

135.258. 1. A taxpayer shall not be entitled to receive the tax credits, the exemption and the refunds [respectively provided for in] **authorized by** sections 135.110, 135.220, 135.225, **135.235** and 135.245 solely because the taxpayer has met and maintained the new investment and new job creation criteria required by sections 135.100 through [135.256] **135.257**. In addition to meeting these criteria, the taxpayer must **meet the following requirements:**

(1) A taxpayer who commenced operations on or after January 1, 1999, but

before January 1, 2001, must be in receipt of an approved letter of intent as described in subsection 2 of this section to be eligible for the tax credits, exemptions and refunds authorized by sections 135.100, 135.220, 135.225, 135.235 and 135.245. The taxpayer shall make available such copies of the approved letter of intent, as may be required, to the department of revenue;

(2) A taxpayer who commences operations on or after January 1, 2001, must be in receipt of an approval letter as described in subsection 3 of this section to be eligible for the tax credits, exemptions and refunds authorized by sections 135.110, 135.220, 135.225, 135.235 and 135.245. The taxpayer shall make available copies of the approval letter, as may be required, to the department of revenue; and

(3) A taxpayer must file the initial application for claiming tax credits in the taxpayer's tax period immediately following the tax period in which commencement of commercial operations began at the new business facility.

2. [In order to be eligible for the tax credits, exemption and refunds specified in subsection 1 of this section, a taxpayer must submit a letter of intent to the director of the department of economic development.] The letter of intent shall be completed on a form that shall be prepared by the department. It need not contain an estimate of the amounts of the tax credits, exemption or refunds for which the taxpayer may become eligible. The letter of intent shall be submitted to the director at least fifteen days prior to the commencement of commercial operations as defined in subdivision (1) of section 135.100. The director shall approve or deny the letter of intent and return such to the taxpayer within fifteen days of its receipt.

3. The application for approval from the director shall be made on a form prepared by the department and shall include any information required by the department, including, but not limited to, information from which the department can calculate an estimate of the amounts of the tax credits, exemption or refunds which the taxpayer would expect to receive under the program. The application for approval for participation in either the program authorized by sections 135.100 to 135.150 or sections 135.200 to 135.257 shall be submitted to the director prior to the commencement of commercial operations as defined in subdivision (1) of section 135.100. Approval for participation in the program shall be effective only by written notification to the applicant by the director.

135.355. 1. The owner of a qualified Missouri project eligible for the Missouri low-income housing tax credit shall submit, at the time of filing the owner's return, an eligibility statement. In the case of failure to attach the eligibility statement, no credit under this section shall be allowed with respect to such project for that year until these copies are provided to the department of revenue.

2. If under section 42 of the 1986 Internal Revenue Code, as amended, a portion of any federal low-income housing credits taken on a low-income project is required to be recaptured

during the first ten years after a project is placed in service, the taxpayer claiming state credits with respect to such project shall also be required to recapture a portion of any state credits authorized by this section. The state recapture amount shall be equal to the proportion of the state credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal low-income housing credit amount subject to recapture.

135.400. As used in sections 135.400 to 135.430, the following terms mean:

(1) "Certificate", a tax credit certificate issued by the department of economic development in accordance with sections 135.400 to 135.430;

(2) "Community bank", either a bank community development corporation or development bank, which are financial organizations which receive investments from commercial financial institutions regulated by the federal reserve, the office of the comptroller of the currency, the office of thrift supervision, or the Missouri division of finance. Community banks, in addition to their other privileges, shall be allowed to make loans to businesses or equity investments in businesses or in real estate provided that such transactions have associated public benefits;

(3) "Community development corporation", [a not for profit corporation and a recipient of Community Development Block Grant (CDBG) funds pursuant to the Housing Community Development Act of 1974. Such corporations design specific, comprehensive programs to stimulate economic development, housing or other public benefits leading to the development of economically sustainable neighborhoods or communities] **a not-for-profit corporation whose board of directors is composed of business, civic and community leaders, and whose primary purpose is to encourage and promote the industrial, economic, entrepreneurial, commercial and civic development or redevelopment of a community or area, including the provision of housing and community economic development projects that benefit low-income individuals and communities;**

(4) "Department", the Missouri department of economic development;

(5) "Director", the director of the department of economic development, or a person acting under the supervision of the director;

(6) "Investment", a transaction in which a Missouri small business or a community bank receives a monetary benefit from an investor pursuant to the provisions of sections 135.403 to 135.414;

(7) "Investor", an individual, partnership, financial institution, trust or corporation meeting the eligibility requirements of sections 135.403 to 135.414. In the case of partnerships and nontaxable trusts, the individual partners or beneficiaries shall be treated as the investors;

(8) "Missouri small business", an independently owned and operated business as defined in Title 15 U.S.C. Section 632(a) and as described by Title 13 C.F.R. Part 121, which is headquartered in Missouri and which [employs] **has and retains for five years from the time of awarding credits pursuant to this section** at least eighty percent of its employees **working**

in Missouri, except that no such small business shall employ more than one hundred employees. Such businesses must be involved in interstate or intrastate commerce for the purpose of manufacturing, processing or assembling products, conducting research and development, or providing services in interstate commerce, but excluding retail, real estate, insurance or professional services. For the purpose of [qualifying] **eligibility** for the tax credit pursuant to sections 135.400 to 135.430, "Missouri small business" shall include cooperative marketing associations organized pursuant to chapter 274, RSMo, which are engaged in the business of producing and marketing fuels derived from agriculture commodities, without regard for whether a cooperative marketing association has more than one hundred employees. Cooperative marketing associations organized pursuant to chapter 274, RSMo, shall not be required to comply with the requirements of section 135.414;

(9) "Primary employment", work which pays at least the minimum wage and which is not seasonal or part-time;

(10) "Principal owners", one or more persons who own an aggregate of fifty percent or more of the Missouri small business and who are involved in the operation of the business as a full-time professional activity;

(11) "Project", any commercial or industrial business or other economic development activity undertaken in a target area, designed to reduce conditions of blight, unemployment or widespread reliance on public assistance which creates permanent primary employment opportunities;

(12) "State tax liability", any liability incurred by a taxpayer pursuant to the provisions of chapter 143, RSMo, chapter 147, RSMo, chapter 148, RSMo, section 375.916, RSMo, and chapter 153, RSMo, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265, RSMo, and related provisions[;

(13) "Target area", a group of blocks or a self-defined neighborhood where the rate of poverty in the area is greater than twice the national poverty rate and as defined by the department of social services in conjunction with the department of economic development. Areas of the state satisfying the criteria of this subdivision may be designated as a "target area" following appropriate findings made and certified by the departments of economic development and social services. In making such findings, the departments of economic development and social services may use any commonly recognized records and statistical indices published or made available by any agency or instrumentality of the federal or state government. No area of the state shall be a target area until so certified by the department of social services and the revitalization plan submitted pursuant to section 208.335, RSMo, has received approval].

135.403. 1. Any investor who makes a qualified investment in a Missouri small business [shall be entitled to] **may, at the discretion of the director**, receive a tax credit equal to forty percent of the amount of the investment or, in the case of a qualified investment in a Missouri

small business in a distressed community as defined by section 135.530, a credit equal to sixty percent of the amount of the investment, and any investor who makes a qualified investment in a community bank or a community development corporation shall be entitled to receive a tax credit equal to fifty percent of the amount of the investment if the investment is made in a community bank or community development corporation for direct investment [into a targeted area as defined in section 135.400]. The total amount of tax credits available for qualified investments in Missouri small businesses shall not exceed [thirteen] **nine** million dollars [and] **annually, with** at least four million dollars of the **annual** amount authorized by this section and certified by the department [of economic development shall be] **set aside** for investment in Missouri small businesses in distressed communities. Authorization for all or any part of this four million dollar amount shall in no way restrict the eligibility of Missouri small businesses in distressed communities, as defined in section 135.530, for the remaining amounts authorized within this section. No more than twenty percent of the tax credits available each year for investments in community banks or community development corporations for direct investment [into a targeted area] shall be certified for any one project, as defined in section 135.400. The tax credit shall be evidenced by a tax credit certificate in accordance with the provisions of sections 135.400 to 135.430 and may be used to satisfy the state tax liability of the owner of the certificate that becomes due in the tax year in which the qualified investment is made, or in any of the [ten] **five** tax years thereafter. When the qualified small business is in a distressed community, as defined in section 135.530, the tax credit may also be used to satisfy the state tax liability of the owner of the certificate that was due during each of the previous three years in addition to the year in which the investment is made and any of the [ten] **five** years thereafter. No investor may receive a tax credit pursuant to sections 135.400 to 135.430 unless that person presents a tax credit certificate to the department of revenue for payment of such state tax liability. The department of revenue shall grant tax credits in the same order as established by subsection 1 of section 32.115, RSMo. Subject to the provisions of sections 135.400 to 135.430, certificates of tax credit issued in accordance with these sections may be transferred, sold or assigned by **filing a** notarized endorsement thereof **with the department** which names the transferee **and the amount of tax credit transferred**.

2. The amount of qualified investments which can be made is limited so that the aggregate of all tax credits authorized pursuant to the provisions of sections 135.400 to 135.430 shall not exceed [nineteen] **ten** million dollars **annually**. [Six] **One** million dollars in tax credits shall be available **annually from the total amount of tax credits authorized by section 32.110 and subdivision 4 of subsection 2 of section 32.115** as a result of investments in community banks or community development corporations. Aggregate investments eligible for tax credits in any one Missouri small business shall not be more than one million dollars. Aggregate investments eligible for tax credits in any one Missouri small business shall not be less than five thousand dollars as of the date of issuance of the first tax credit certificate for investment in that business.

135.405. The total amount of tax credit evidenced by certificates of tax credit issued to or owned, directly or indirectly, by a single taxpayer authorized by the department who has invested in a Missouri small business shall be not less than one thousand five hundred dollars [nor more than an aggregate of one hundred thousand dollars in any one business,] except that this section shall not be interpreted to limit other investment. These limits shall not apply to investments in community banks or community development corporations or to investments in Missouri small businesses in distressed communities, as defined in section 135.530.

135.411. The amount of the qualified investment made in a Missouri small business must remain in that business for a minimum of five years. Withdrawal of the investment prior to the minimum five-year period shall result in revocation of the tax credit, and repayment of any amounts of the tax credit already applied against the investor's state tax liability. **The department may, in its discretion, pro-rate the revocation or repayment authorized by this section.**

135.420. The director shall be responsible for the administration and issuance of the certificates of tax credits authorized by sections 135.400 to 135.429. The director [shall] **may** issue a certificate of tax credit at the request of any qualified investor **in a Missouri small business approved by the director for participation in this program.** Each request **for a tax credit certificate** shall include a true copy of [the] documents [as defined by the administrative rules of the department. Each request] **required by the department as proof of investment and** shall be acknowledged under oath by the investor making the request for tax credits.

135.423. The department may revoke a tax credit certificate **or enforce repayment of any amounts of the tax credit already applied against the investor's state liability** if any representation to the department in connection with the application proves to have been false when made or if the application violates any conditions established by the department and stated in the tax credit certificate. The revocation may be in full or in part as the department may determine. **In the case of revocation,** the department shall specify the amount of credit being revoked and shall send notice of the revocation to the investor and to the state department of revenue.

[135.429. Except as otherwise specifically provided in sections 135.400 to 135.430, interest and penalty provisions and procedural matters under the provisions of sections 135.400 to 135.430 shall be determined pursuant to and in the manner prescribed in chapter 143, RSMo, chapter 147, RSMo, chapter 148, RSMo, or chapter 153, RSMo, whichever is applicable.]

[135.430. The department of social services shall promulgate such rules and regulations, pursuant to chapter 536, RSMo, and section 660.017, RSMo, as are necessary to define and certify target areas as defined in section 135.400. The department of economic development shall promulgate such rules and regulations, pursuant to chapter

536, RSMo, and subsection 20 of section 620.010, RSMo, as are necessary to implement the provisions of sections 135.400 to 135.440 after a target area has been defined and certified by the department of social services.]

135.478. As used in sections 135.481 to 135.487, the following terms mean:

(1) "Department", the department of economic development;

(2) "Director", the director of the department of economic development;

(3) "Distressed community", as defined in section 135.530;

(4) "Eligible costs for a new residence", expenses incurred for property acquisition, development, site preparation other than demolition, surveys, architectural and engineering services and construction and all other necessary and incidental expenses incurred for constructing a new market rate residence, which is or will be owner-occupied, which is not replacing a national register listed or local historic structure; except that, costs paid for by the taxpayer with grants or forgivable loans, other than tax credits, provided pursuant to state or federal governmental programs are ineligible;

(5) "Eligible costs for rehabilitation", expenses incurred for the renovation or rehabilitation of an existing residence including site preparation, surveys, architectural and engineering services, construction, modification, expansion, remodeling, structural alteration, replacements and alterations; except that, costs paid for by the taxpayer with grants or forgivable loans other than tax credits provided pursuant to state or federal governmental programs are ineligible;

(6) "Eligible residence", a single-family residence forty years of age or older, located in this state and not within a distressed community as defined by section 135.530, which is occupied or intended to be or occupied long-term by the owner or offered for sale at market rate for owner-occupancy and which is either located within a United States census block group which, if in a metropolitan statistical area, has a median household income of less than ninety percent, but greater than or equal to seventy percent of the median household income for the metropolitan statistical area in which the census block group is located, or which, if located within a United States census block group in a nonmetropolitan area, has a median household income of less than ninety percent, but greater than or equal to seventy percent of the median household income for the nonmetropolitan areas in the state;

(7) "Flood plain", any land or area susceptible to being inundated by water from any source or located in a one hundred-year flood plain area determined by Federal Emergency Management Agency mapping as subject to flooding;

(8) "New residence", a residence constructed on land which if located within a distressed community has either been vacant for at least two years or is or was occupied by a structure which has been condemned by the local entity in which the structure is located or which, if located outside of a distressed community but within a census block group as described in subdivision (6) or (10) of this section, either replaces a residence forty years of age or older demolished for purposes of

constructing a replacement residence, or which is constructed on vacant property which has been classified for not less than forty continuous years as residential or utility, commercial, railroad or other real property pursuant to article X, section 4(b) of the Missouri Constitution, as defined in section 137.016, RSMo; except that, no new residence shall be constructed in a flood plain or on property used for agricultural purposes. In a distressed community, the term "new residence" shall include condominiums, owner-occupied units or other units intended to be owner-occupied in multiple unit structures;

(9) "Project", new construction, rehabilitation or substantial rehabilitation of a residence that qualifies for a tax credit pursuant to sections 135.475 to 135.487;

(10) "Qualifying residence", a single-family residence, forty years of age or older, located in this state which is occupied or intended to be occupied long-term by the owner or offered for sale at market rate for owner-occupancy and which is located in a metropolitan statistical area or nonmetropolitan statistical area within a United States census block group which has a median household income of less than seventy percent of the median household income for the metropolitan statistical area or nonmetropolitan area, respectively, or which is located within a distressed community. A qualifying residence shall include a condominium or residence within a multiple residential structure or a structure containing multiple single-family residences which is located within a distressed community;

(11) "Substantial rehabilitation", rehabilitation the costs of which exceed fifty percent of either the purchase price or the cost basis of the structure immediately prior to rehabilitation; provided that, the structure is at least fifty years old notwithstanding any provision of sections 135.475 to 135.487 to the contrary;

(12) "Tax liability", the tax due pursuant to chapter 143, 147 or 148, RSMo, other than taxes withheld pursuant to **sections** 143.191 to 143.265, RSMo;

(13) "Taxpayer", any person, partnership, corporation, trust or limited liability company. **Not-for-profit entities, including but not limited to, corporations organized pursuant to chapter 355, RSMo, shall be ineligible for the tax credit authorized pursuant to sections 135.475 through 135.487.**

135.484. 1. Beginning January 1, 2000, tax credits shall be allowed pursuant to section 135.481 in an amount not to exceed sixteen million dollars per year. Of this total amount of tax credits in any given year, eight million dollars shall be set aside for projects [involving eligible residences involving qualifying residences] **in areas described in subdivision (6) of section 135.478**, and eight million dollars for projects **in areas described in subdivision (10) of section 135.478**, **except that the director of the department of economic development is authorized to assess the utilization of the tax credits in the areas described in subdivision (6) of section 135.478 and in areas described in subdivision (10) of section 135.478 and is authorized after August 1 of any year to reallocate the amount of credits**

set aside in the order the applications are received in a manner which would result in the greatest rehabilitation benefit for the state. The maximum tax credit for a project consisting of multiple-unit qualifying residences in a distressed community shall not exceed three million dollars.

2. Any amount of credit which exceeds the tax liability of a taxpayer for the tax year in which the credit is first claimed may be carried back to any of the taxpayer's three prior tax years and carried forward to any of the taxpayer's five subsequent tax years. A certificate of tax credit issued to a taxpayer by the department may be assigned, transferred, sold or otherwise conveyed. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the department specifying the name and address of the new owner of the tax credit and the value of the credit.

3. The tax credits allowed pursuant to sections 135.475 to 135.487 may not be claimed in addition to any other state tax credits, with the exception of the historic structures rehabilitation tax credit authorized pursuant to sections 253.545 to 253.559, RSMo, which insofar as sections 135.475 to 135.487 are concerned may be claimed only in conjunction with the tax credit allowed pursuant to subsection 4 of section 135.481. In order for a taxpayer eligible for the historic structures rehabilitation tax credit to claim the tax credit allowed pursuant to subsection 4 of section 135.481, the taxpayer must comply with the requirements of sections 253.545 to 253.559, RSMo, and in such cases, the amount of the tax credit pursuant to subsection 4 of section 135.481 shall be limited to the lesser of twenty percent of the taxpayer's eligible costs or forty thousand dollars.

135.487. 1. To obtain any credit allowed pursuant to sections 135.475 to 135.487, a taxpayer shall submit to the department, for preliminary approval, an application for tax credit. The director shall, upon final approval of an application and presentation of acceptable proof of substantial completion of construction, issue the taxpayer a certificate of tax credit. The director shall issue all credits allowed pursuant to sections 135.475 to 135.487 in the order the applications are received. In the case of a taxpayer other than an owner-occupant, the director shall not delay the issuance of a tax credit pursuant to sections 135.475 to 135.487 until the sale of a residence at market rate for owner-occupancy. A [taxpayer,] taxpayer other than an owner-occupant who receives a certificate of tax credit pursuant to sections 135.475 to 135.487 shall, within thirty days of the date of the sale of a residence, furnish to the director satisfactory proof that such residence was sold at market rate for owner-occupancy. If the director reasonably determines that a residence was not in good faith intended for long-term owner occupancy, the director make revoke any tax credits issued and seek recovery of any tax credits issued pursuant to section 620.017, RSMo.

2. The department may cooperate with a municipality or a county in which a project is located to help identify the location of the project, the type and eligibility of the project, the

estimated cost of the project and the completion date of the project.

3. The department may promulgate such rules or regulations or issue administrative guidelines as are necessary to administer the provisions of sections 135.475 to 135.487. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

4. The department shall conduct annually a comprehensive program evaluation illustrating where the tax credits allowed pursuant to sections 135.475 to 135.487 are being utilized, explaining the economic impact of such program and making recommendations on appropriate program modifications to ensure the program's success.

135.535. 1. A corporation, limited liability corporation, partnership or sole proprietorship[,] which moves its operations from outside Missouri or outside a distressed community into a distressed community, or which commences operations in a distressed community on or after January 1, 1999, and in either case has more than ~~[seventy-five]~~ **sixty** percent of its employees at the ~~[facility]~~ **facilities** in ~~[the]~~ distressed ~~[community]~~ **communities**, and which has fewer than one hundred **fifty** employees for whom payroll taxes are paid, and which is a manufacturing, biomedical, medical devices, scientific research, animal research, computer software design or development, computer programming, telecommunications or a professional firm shall receive a forty percent credit against income taxes owed pursuant to chapter 143, 147 or 148, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, for each of the three years after such move, if approved by the department of economic development, which shall issue a certificate of eligibility if the department determines that the taxpayer is eligible for such credit. The maximum amount of credits per taxpayer set forth in this subsection shall not exceed one hundred twenty-five thousand dollars for each of the three years for which the credit is claimed. The department of economic development, by means of rule or regulation promulgated pursuant to the provisions of chapter 536, RSMo, shall ~~[assign]~~ **specify which** appropriate standard industrial classification numbers **or North American Industrial Classification System numbers assigned to a business make the business** ~~[to the companies which are]~~ eligible for the tax credits provided for in this section. Such three-year credits shall be awarded only one time to any company which moves its operations from outside of Missouri or outside of a distressed community into a distressed community or to a company which commences operations within a distressed community. A taxpayer shall file an application for certification of the tax credits for the first year in which credits are claimed and for each of the two succeeding taxable years for which credits are claimed.

2. Employees of such facilities physically working and earning wages for that work within a distressed community whose employers have been approved for tax credits pursuant to subsection 1 of this section by the department of economic development for whom payroll taxes are paid shall, also be eligible to receive a tax credit against individual income tax, imposed pursuant to chapter

143, RSMo, equal to one and one-half percent of their gross salary paid at such facility earned for each of the three years that the facility receives the tax credit provided by this section, so long as they were qualified employees of such entity. The employer shall calculate the amount of such credit and shall report the amount to the employee and the department of revenue.

3. A tax credit against income taxes owed pursuant to chapter 143, 147 or 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, in lieu of the credit against income taxes as provided in subsection 1 of this section, may be taken by such an entity in a distressed community in an amount of forty percent of the amount of funds expended for **a capital lease or purchase of** computer equipment and its maintenance, medical laboratories and equipment, research laboratory equipment, manufacturing equipment, fiber optic equipment, high speed telecommunications, wiring or software development expense up to a maximum of seventy-five thousand dollars in tax credits for such equipment or expense per year per entity and for each of three years after commencement in or moving operations into a distressed community. A corporation, partnership or sole proprietorship, which has no more than one hundred employees for whom payroll taxes are paid, and which is already located in a distressed community, which expends funds for such equipment as set forth in this subsection in an amount exceeding its average of the prior two years for such equipment, shall be eligible to receive a twenty-five percent tax credit against income taxes owed pursuant to chapters 143, 147 and 148, RSMo, up to a maximum of ~~[seventy-five]~~ **one hundred fifty** thousand dollars in tax credits for such additional equipment and expense per such entity. Tax credits pursuant to this subsection or subsection 1 may be used to satisfy the state tax liability due in the tax year the credit is certified, and that was due during the previous three years, and in any of the five tax years thereafter.

4. Tax credits shall be approved for applicants meeting the requirements of this section in the order that such applications are received. Certificates of tax credits issued in accordance with this section may be transferred, sold or assigned by **filing a** notarized endorsement **thereof with the department** which names the transferee **and the amount of tax credits transferred**.

5. The tax credits allowed pursuant to subsections 1, 2 and 3 of this section shall be for an amount of no more than ten million dollars for each year beginning in 1999. The total maximum credit for all entities already located in distressed communities and claiming credits pursuant to subsection 3 of this section shall be seven hundred and fifty thousand dollars. The department of economic development in approving taxpayers for the credit as provided for in subsection 4 of this section shall use information provided by the department of revenue regarding taxes paid in the previous year, or projected taxes for those entities newly established in the state, as the method of determining when this maximum will be reached and shall maintain a record of the order of approval. Any tax credit not used in the period for which the credit was approved may be carried over until the full credit has been allowed.

6. A Missouri employer relocating into a distressed community and having employees covered by a collective bargaining agreement at the facility from which it is relocating shall not be eligible for the credits in subsection 1 or 3 of this section, and its employees shall not be eligible for the credit in subsection 2 of this section if the relocation violates or terminates a collective bargaining agreement covering employees at the facility, unless the affected collective bargaining unit concurs with the move.

7. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax credits allowed in this section and the tax credits otherwise allowed in section 135.110, or the tax credits, exemptions, and refund otherwise allowed in sections 135.200, 135.220, 135.225 and 135.245, respectively, for the same business for the same tax period.

8. An existing business located within a distressed community, that hires new employees within such distressed communities may be eligible for the tax credits provided in this section. In order to be eligible for such tax credits, the business located within the distressed community, during one of its tax years, must employ within such distressed communities at least twice as many workers as were employed at the beginning of that tax year. Prior to the addition of the new employees, the business shall have no more than one hundred employees. The provisions of this section shall apply only to a business which is a manufacturing, biomedical, medical devices, scientific research, animal research, computer software design or development, computer programming, or telecommunications business or a professional firm.

[135.535. 1. A corporation, limited liability corporation, partnership or sole proprietorship, which moves its operations from outside Missouri or outside a distressed community into a distressed community, or which commences operations in a distressed community on or after January 1, 1999, and in either case has more than seventy-five percent of its employees at the facility in the distressed community, and which has fewer than one hundred employees for whom payroll taxes are paid, and which is a manufacturing, biomedical, medical devices, scientific research, animal research, computer software design or development, computer programming, telecommunications or a professional firm shall receive a forty percent credit against income taxes owed pursuant to chapter 143, 147 or 148, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, for each of the three years after such move, if approved by the department of economic development, which shall issue a certificate of eligibility if the department determines that the taxpayer is eligible for such credit. The maximum amount of credits per taxpayer set forth in this subsection shall not exceed one hundred twenty-five thousand dollars for each of the three years for which the credit is claimed. The department of economic development, by means of rule or regulation promulgated pursuant to the provisions of chapter 536, RSMo, shall assign appropriate standard industrial classification numbers to the companies which are eligible for the tax credits

provided for in this section. Such three-year credits shall be awarded only one time to any company which moves its operations from outside of Missouri or outside of a distressed community into a distressed community or to a company which commences operations within a distressed community. A taxpayer shall file an application for certification of the tax credits for the first year in which credits are claimed and for each of the two succeeding taxable years for which credits are claimed.

2. Employees of such facilities physically working and earning wages for that work within a distressed community whose employers have been approved for tax credits pursuant to subsection 1 of this section by the department of economic development for whom payroll taxes are paid shall, also be eligible to receive a tax credit against individual income tax, imposed pursuant to chapter 143, RSMo, equal to one and one-half percent of their gross salary paid at such facility earned for each of the three years that the facility receives the tax credit provided by this section, so long as they were qualified employees of such entity. The employer shall calculate the amount of such credit and shall report the amount to the employee and the department of revenue.

3. A tax credit against income taxes owed pursuant to chapter 143, 147 or 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, in lieu of the credit against income taxes as provided in subsection 1 of this section, may be taken by such an entity in a distressed community in an amount of forty percent of the amount of funds expended for computer equipment and its maintenance, medical laboratories and equipment, research laboratory equipment, manufacturing equipment, fiber optic equipment, high speed telecommunications, wiring or software development expense up to a maximum of seventy-five thousand dollars in tax credits for such equipment or expense per year per entity and for each of three years after commencement in or moving operations into a distressed community.

4. A corporation, partnership or sole partnership, which has no more than one hundred employees for whom payroll taxes are paid, which is already located in a distressed community and which expends funds for such equipment pursuant to subsection 3 of this section in an amount exceeding its average of the prior two years for such equipment, shall be eligible to receive a tax credit against income taxes owed pursuant to chapters 143, 147 and 148, RSMo, in an amount equal to the lesser of seventy-five thousand dollars or twenty-five percent of the funds expended for such additional equipment per such entity. Tax credits allowed pursuant to this subsection or subsection 1 of this section may be carried back to any of the three prior tax years and carried forward to any of the five tax years.

5. An existing corporation, partnership or sole proprietorship that is located within a distressed community and that relocates employees from another facility outside of the

distressed community to its facility within the distressed community, and an existing business located within a distressed community that hires new employees for that facility may both be eligible for the tax credits allowed by subsections 1 and 3 of this section. To be eligible for such tax credits, such a business, during one of its tax years, shall employ within a distressed community at least twice as many employees as were employed at the beginning of that tax year. A business hiring employees shall have no more than one hundred employees before the addition of the new employees. This subsection shall only apply to a business which is a manufacturing, biomedical, medical devices, scientific research, animal research, computer software design or development, computer programming or telecommunications business, or a professional firm.

6. Tax credits shall be approved for applicants meeting the requirements of this section in the order that such applications are received. Certificates of tax credits issued in accordance with this section may be transferred, sold or assigned by notarized endorsement which names the transferee.

7. The tax credits allowed pursuant to subsections 1, 2, 3, 4 and 5 of this section shall be for an amount of no more than ten million dollars for each year beginning in 1999. The total maximum credit for all entities already located in distressed communities and claiming credits pursuant to subsection 4 of this section shall be seven hundred and fifty thousand dollars. The department of economic development in approving taxpayers for the credit as provided for in subsection 6 of this section shall use information provided by the department of revenue regarding taxes paid in the previous year, or projected taxes for those entities newly established in the state, as the method of determining when this maximum will be reached and shall maintain a record of the order of approval. Any tax credit not used in the period for which the credit was approved may be carried over until the full credit has been allowed.

8. A Missouri employer relocating into a distressed community and having employees covered by a collective bargaining agreement at the facility from which it is relocating shall not be eligible for the credits in subsection 1, 3, 4 or 5 of this section, and its employees shall not be eligible for the credit in subsection 2 of this section if the relocation violates or terminates a collective bargaining agreement covering employees at the facility, unless the affected collective bargaining unit concurs with the move.

9. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax credits allowed in this section and the tax credits otherwise allowed in section 135.110, or the tax credits, exemptions, and refund otherwise allowed in sections 135.200, 135.220, 135.225 and 135.245, respectively, for the same business for the same tax period.]

135.545. [A] **The director of the department of economic development may authorize a taxpayer [shall be allowed] to receive** a credit for taxes paid pursuant to chapter 143,

147 or 148, RSMo, in an amount equal to **up to** fifty percent of a **contribution to** qualified [investment in] transportation development [for] **projects, which can include** aviation, mass transportation, including parking facilities for users of mass transportation, railroads, ports, including parking facilities and limited access roads within ports, waterborne transportation, bicycle and pedestrian paths, or rolling stock located in a distressed community as defined in section 135.530, and which are part of a development plan approved by the appropriate local agency. If the department of economic development determines [the investment has been so approved] **that a project is eligible under this section**, the department [shall] **may** grant [the] tax [credit in order of date received] **credits to qualified taxpayers contributing to eligible projects. Not-for-profit entities, including but not limited to, corporations organized pursuant to chapter 355, RSMo, shall be ineligible for the tax credit authorized pursuant to this section.** A taxpayer may carry forward any unused tax credit for up to [ten] **five** years and may carry it back for the previous three years until such credit has been fully claimed. Certificates of tax credit issued in accordance with this section may be transferred, sold or assigned by **filing a** notarized endorsement **thereof with the department of economic development** which names the transferee **and the amount of tax credits transferred.** The tax credits allowed pursuant to this section shall be for an amount of no more than [ten] **five** million dollars for each year. [This credit shall apply to returns filed for all taxable years beginning on or after January 1, 1999.] Any unused portion of the tax credit authorized pursuant to this section shall be available for use in the future by those entities until fully claimed.

135.700. For all tax years beginning on or after January 1, 1999, **the director of the department of economic development may authorize** a grape grower or wine producer [shall be allowed] **to receive** a tax credit against the state tax liability incurred pursuant to chapter 143, RSMo, exclusive of the provisions relating to the withholding of tax as provided in sections 143.191 to 143.265, RSMo, in an amount equal to twenty-five percent of the purchase price of all new equipment and materials used directly in the growing of grapes or the production of wine in the state. Each grower or producer shall apply to the department of economic development and specify the total amount of such new equipment and materials purchased during the [calendar] year. The department of economic development shall certify to the department of revenue the amount of such tax credit to which **it authorizes** a grape grower or wine producer is entitled pursuant to this section. The provisions of this section notwithstanding, a grower or producer may only apply for and receive the credit authorized by this section for five tax periods.

[135.766. An eligible small business, as defined in Section 44 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due pursuant to chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo, in an amount equal to any amount paid by the eligible small business to the United States Small Business Administration as a guaranty fee pursuant to obtaining Small Business Administration

guaranteed financing and to programs administered by the United States Department of Agriculture for rural development or farm service agencies.]

178.892. As used in sections 178.892 to 178.896, the following terms mean:

(1) "Agreement", the agreement, between an employer and a junior college district, concerning a project. An agreement may be for a period not to exceed ten years when the program services associated with a project are not in excess of five hundred thousand dollars. For a project where associated program costs are greater than five hundred thousand dollars, the agreement may not exceed a period of eight years. No agreement shall be entered into between an employer and a community college district which involves the training of potential employees with the purpose of replacing or supplanting employees engaged in an authorized work stoppage;

(2) "Board of trustees", the board of trustees of a junior college district;

(3) "Certificate", industrial new jobs training certificates issued pursuant to section 178.895;

(4) "Date of commencement of the project", the date of the agreement;

(5) "Employee", the person employed in a new job;

(6) "Employer", the person providing new jobs in conjunction with a project;

(7) "Industry", a business located within the state of Missouri which enters into an agreement with a community college district and which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excluding retail[, health, or professional services]. "Industry" does not include a business which closes or substantially reduces its operation in one area of the state and relocates substantially the same operation in another area of the state. This does not prohibit a business from expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced;

(8) "New job", a job in a new or expanding industry not including jobs of recalled workers, or replacement jobs or other jobs that formerly existed in the industry in the state;

(9) "New jobs credit from withholding", the credit as provided in section 178.894;

(10) "New jobs training program" or "program", the project or projects established by a community college district for the creation of jobs by providing education and training of workers for new jobs for new or expanding industry in the state;

(11) "Program costs", all necessary and incidental costs of providing program services including payment of the principal of, premium, if any, and interest on certificates, including capitalized interest, issued to finance a project, funding and maintenance of a debt service reserve fund to secure such certificates and wages, salaries and benefits of employees participating in on-the-job training;

(12) "Program services" includes, but is not limited to, the following:

(a) New jobs training;

(b) Adult basic education and job-related instruction;

(c) Vocational and skill-assessment services and testing;

(d) Training facilities, equipment, materials, and supplies;

(e) On-the-job training;

(f) Administrative expenses [equal to] **of no less than ten and no more than** fifteen percent of the total training costs **as determined by the director of the department of economic development**;

(g) Subcontracted services with state institutions of higher education, private colleges or universities, or other federal, state, or local agencies;

(h) Contracted or professional services; and

(i) Issuance of certificates;

(13) "Project", a training arrangement which is the subject of an agreement entered into between the community college district and an employer to provide program services;

(14) "Total training costs", costs of training, including supplies, wages and benefits of instructors, subcontracted services, on-the-job training, training facilities, equipment, skill assessment and all program services excluding issuance of certificates.

208.750. 1. Sections 208.750 to 208.775 shall be known and may be cited as the "Family Development Account Program".

2. For purposes of sections 208.750 to 208.775, the following terms mean:

(1) "Account holder", a person who is the owner of a family development account;

(2) "Community-based organization", any [religious or charitable association formed pursuant to chapter 352, RSMo,] **not-for-profit organization** that is approved by the director of the department of economic development to implement the family development account program;

(3) "Department", the department of economic development;

(4) "Director", the director of the department of economic development;

(5) "Family development account", a financial instrument established pursuant to section 208.760;

(6) "Family development account reserve fund", the fund created by an approved community-based organization for the purposes of funding the costs incurred in the administration of the program and for providing matching funds for moneys in family development accounts;

(7) "Federal poverty level", the most recent poverty income guidelines published in the calendar year by the United States Department of Health and Human Services;

(8) "Financial institution", any bank, trust company, savings bank, credit union or savings and loan association as defined in chapter 362, 369 or 370, RSMo, and with an office in Missouri which is approved by the director for participation in the program;

(9) "Program", the Missouri family development account program established in sections 208.750 to 208.775;

(10) "Program contributor", a person or entity who makes a contribution to a family development account reserve fund and is not the account holder.

[348.300. As used in sections 348.300 to 348.318, the following terms mean:

(1) "Commercial activity located in Missouri", any research, development, prototype fabrication, and subsequent precommercialization activity, or any activity related thereto, conducted in Missouri for the purpose of producing a service or a product or process for manufacture, assembly or sale or developing a service based on such a product or process by any person, corporation, partnership, joint venture, unincorporated association, trust or other organization doing business in Missouri. Subsequent to January 1, 1999, a commercial activity located in Missouri shall mean only such activity that is located within a distressed community, as defined in section 135.530, RSMo;

(2) "Follow-up capital", capital provided to a commercial activity located in Missouri in which a qualified fund has previously invested seed capital or start-up capital and which does not exceed ten times the amount of such seed and start-up capital;

(3) "Qualified contribution", cash contribution to a qualified fund;

(4) "Qualified economic development organization", any corporation organized under the provisions of chapter 355, RSMo, which has as of January 1, 1991, obtained a contract with the department of economic development to operate an innovation center to promote, assist and coordinate the research and development of new services, products or processes in the state of Missouri; and the Missouri technology corporation organized pursuant to the provisions of sections 348.253 to 348.266;

(5) "Qualified fund", any corporation, partnership, joint venture, unincorporated association, trust or other organization which is established under the laws of Missouri after December 31, 1985, which meets all of the following requirements established by this subdivision. The fund shall have as its sole purpose and business the making of investments, of which at least ninety percent of the dollars invested shall be qualified investments. The fund shall enter into a contract with one or more qualified economic development organizations which shall entitle the qualified economic development organizations to receive not less than ten percent of all distributions of equity and dividends or other earnings of the fund. Such contracts shall require the qualified fund to transfer to the Missouri technology corporation organized pursuant to the provisions of sections 348.253 to 348.266, this interest and make corresponding distributions thereto in the event the qualified economic development organization holding such interest is dissolved or ceases to do business for a period of one year or more;

(6) "Qualified investment", any investment of seed capital, start-up capital, or follow-up capital in any commercial activity located in Missouri;

(7) "Person", any individual, corporation, partnership or other entity;

(8) "Seed capital", capital provided to a commercial activity located in Missouri for research, development and precommercialization activities to prove a concept for a new product or process or service, and for activities related thereto;

(9) "Start-up capital", capital provided to a commercial activity located in Missouri for use in preproduction product development or service development or initial marketing thereof, and for activities related thereto;

(10) "State tax liability", any state tax liability incurred by a taxpayer under the provisions of chapters 143, 147 and 148, RSMo, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265, RSMo, and related provisions;

(11) "Uninvested capital", the amount of any distribution, other than of earnings, by a qualified fund made within five years of the issuance of a certificate of tax credit as provided by sections 348.300 to 348.318; or the portion of all qualified contributions to a qualified fund which are not invested as qualified investments within five years of the issuance of a certificate of tax credit as provided by sections 348.300 to 348.318 to the extent that the amount not so invested exceeds ten percent of all such qualified contributions.]

[348.302. 1. Any person who makes a qualified contribution to a qualified fund shall be entitled to receive a tax credit equal to fifty percent of the amount of the qualified contribution. The tax credit shall be evidenced by a tax credit certificate in accordance with the provisions of sections 348.300 to 348.318 and may be used to satisfy the state tax liability of the owner of such certificate that becomes due in the tax year in which the qualified contribution is made, or in any of the ten tax years thereafter. No person may receive a tax credit pursuant to sections 348.300 to 348.318 unless that person presents a tax credit certificate to the department of revenue for payment of such state tax liability.

2. The amount of such qualified contributions which can be made is limited so that the aggregate of all tax credits authorized under the provisions of sections 348.300 to 348.318 shall not exceed nine million dollars. All tax credits authorized under the provisions of this section may be transferred, sold or assigned.]

[348.304. The total amount of credit evidenced by certificates of tax credit issued to taxpayers at the request of any one qualified economic development organization shall not exceed two million dollars; except that, this two-million-dollar limitation shall not apply to certificates of tax credit issued after January 1, 1996. Prior to January 1, 1996, any qualified economic development organization may enter into a contractual agreement with any other qualified economic development organization to allocate to the latter any portion of the two million dollars of tax credits which it is authorized to issue to taxpayers

under the provisions of this section. The certificate of tax credit may be issued in one aggregate certificate or in a reasonable number of multiple certificates in regard to one qualified contribution. Any issued certificate may be surrendered in exchange for new certificates not to exceed in value the value of the issued certificate. The number and denomination of multiple certificates, if issued, shall be determined by the director of the department of economic development.]

[348.306. No person shall receive, by issuance, transfer or assignment, certificates of tax credit issued under the provisions of sections 348.300 to 348.318 in an amount in excess of one million dollars. Subject to the provisions of this section, certificates of tax credit issued in accordance with sections 348.300 to 348.318 may be transferred or assigned by notarized endorsement thereof which names the transferee.]

[348.308. 1. The director of the department of economic development shall be responsible for the administration and issuance of the certificate of tax credits authorized by sections 348.300 to 348.318. The director of the department of economic development shall issue a certificate of tax credit at the request of any qualified economic development organization. Each request shall include a true copy of the documents creating the qualified fund and the interest of the qualified economic development organization in the qualified fund, the name of the person who is to receive a certificate of tax credit, the type of state tax liability, as specified in subdivision (10) of section 348.300, against which the tax credit is to be used, and the amount of the certificate of tax credit to be issued to the person making the qualified contribution. Each request shall be acknowledged under oath by the person making the qualified contribution and the president of the qualified economic development organization.

2. In the event that two or more qualified economic development organizations have an interest in a qualified fund, either or both of such qualified economic development organizations may request issuance of certificates of tax credit in accordance with the provisions of sections 348.300 to 348.318 to persons contributing to qualified funds.]

[348.310. The Missouri department of revenue shall accept a certificate of tax credit in lieu of other payment in such amount as is equal to the lesser of the amount of the tax or the remaining unused amount of the credit as indicated on the certificate of tax credit; and shall indicate on the certificate of tax credit the amount of tax thereby paid, the date of such payment, and the remainder of the unused credit available to the taxpayer after such payment. The certificate of tax credit shall be returned to the director of the department of economic development. The director of the department of economic development shall issue a new certificate to the proper owner for any unused balance.]

[348.312. No provision of sections 348.300 to 348.318 shall be construed to require a qualified economic development organization to accept an interest in any fund, nor shall

any provision of sections 348.300 to 348.318 be construed to limit or restrict the terms and conditions on which a qualified economic development organization may agree to accept an interest in any fund.]

[348.316. 1. Each qualified fund, on or before the due date of its federal income tax return, shall make a report for a period corresponding to the qualified fund's federal income tax year. The report shall be made on a form required by the department of economic development. It shall be verified by the affidavit of the fund's president, or another authorized officer, to the department of economic development. It shall state the amount of all uninvested capital, whether distributions of equity or funds not invested in qualified investments, and it shall contain other such information as may be required by the director of the department of economic development.

2. Upon the receipt of such returns, the director of the department of economic development shall verify the same and certify the amount of tax due from the various funds to the director of revenue within sixty days from the date of the return. The director of revenue shall send each qualified fund a notice of tax due within thirty days of the date of certification by the department of economic development. The qualified fund shall pay the tax as provided in the notice within thirty days of the date of such notice.]

[348.318. Except as otherwise specifically provided in sections 348.300 to 348.318, interest and penalty provisions and procedural matters under the provisions of sections 348.300 to 348.318 shall be determined pursuant to and in the manner prescribed in the following sections of the revised statutes of Missouri, the state income tax law, governing similar procedures thereunder: sections 143.271 to 143.301, 143.511, 143.551 to 143.571, 143.611 to 143.751, 143.771, 143.791 to 143.861, 143.881 to 143.971, and 143.986, RSMo.]

447.708. 1. For eligible projects, the director of the department of economic development, with notice to the directors of the departments of natural resources and revenue, and subject to the other provisions of sections 447.700 to 447.718, may not create a new enterprise zone but may decide that a prospective operator of a facility being remedied and renovated pursuant to sections 447.700 to 447.718 may receive the tax credits and exemptions pursuant to sections 135.100 to 135.150, RSMo, and **sections** 135.200 to [135.256] **135.257**, RSMo. The tax credits allowed pursuant to this subsection shall be used to offset the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo. For purposes of this subsection:

(1) For receipt of the ad valorem tax abatement pursuant to section 135.215, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs. The city, or county if the eligible project is not located in a city, must provide ad valorem tax abatement of at least fifty percent for a period not less than ten years and

not more than twenty-five years;

(2) For receipt of the income tax exemption pursuant to section 135.220, RSMo, and tax credit for new or expanded business facilities pursuant to sections 135.100 to 135.150, and 135.225, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs, or combination thereof. For purposes of sections 447.700 to 447.718, the tax credits described in section 135.225, RSMo, are modified as follows: the tax credit shall be four hundred dollars per employee per year, an additional four hundred dollars per year for each employee exceeding the minimum employment thresholds of ten and twenty-five jobs for new and existing businesses, respectively, an additional four hundred dollars per year for each person who is "a person difficult to employ" as defined by section 135.240, RSMo, and investment tax credits at the same amounts and levels as provided in subdivision (4) of **subsection 1 of** section 135.225, RSMo;

(3) For eligibility to receive the income tax refund pursuant to section 135.245, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs, or combination thereof, and otherwise comply with the provisions of section 135.245, RSMo, for application and use of the refund and the eligibility requirements of this section;

(4) The eligible project operates in compliance with applicable environmental laws and regulations, including permitting and registration requirements, of this state as well as the federal and local requirements;

(5) The eligible project operator shall file such reports as may be required by the director of economic development or the director's designee;

(6) The taxpayer may claim the state tax credits authorized by this subsection and the state income exemption for a period not in excess of ten consecutive tax years. For the purpose of this section, "taxpayer" means an individual proprietorship, partnership or corporation described in section 143.441 or 143.471, RSMo, who operates an eligible project. The director shall determine the number of years the taxpayer may claim the state tax credits and the state income exemption based on the projected net state economic benefits attributed to the eligible project;

(7) For the purpose of meeting the new job requirement prescribed in subdivisions (1), (2) and (3) of this subsection, it shall be required that at least ten new jobs be created and maintained during the taxpayer's tax period for which the credits are earned, in the case of an eligible project that does not replace a similar facility in Missouri. "New job" means a person who was not previously employed by the taxpayer or related taxpayer within the twelve-month period immediately preceding the time the person was employed by that taxpayer to work at, or in connection with, the eligible project on a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five hours per week during the taxpayer's tax period for which the tax credits are earned. For the purposes of this section, "related taxpayer" has the same

meaning as defined in subdivision [(9)] **(11)** of section 135.100, RSMo;

(8) For the purpose of meeting the existing job retention requirement, if the eligible project replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, it shall be required that at least twenty-five existing jobs be retained at, and in connection with the eligible project, on a full-time basis during the taxpayer's tax period for which the credits are earned. "Retained job" means a person who was previously employed by the taxpayer or related taxpayer, at a facility similar to the eligible project that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, within the tax period immediately preceding the time the person was employed by the taxpayer to work at, or in connection with, the eligible project on a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five hours per week during the taxpayer's tax period for which the tax credits are earned;

(9) In the case where an eligible project replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, the owner and operator of the eligible project shall provide the director with a written statement explaining the reason for discontinuing operations at the closed facility. The statement shall include a comparison of the activities performed at the closed facility prior to the date the facility ceased operating, to the activities performed at the eligible project, and a detailed account describing the need and rationale for relocating to the eligible project. If the director finds the relocation to the eligible project significantly impaired the economic stability of the area in which the closed facility was located, and that such move was detrimental to the overall economic development efforts of the state, the director may deny the taxpayer's request to claim tax benefits;

(10) Notwithstanding any provision of law to the contrary, for the purpose of this section, the number of new jobs created and maintained, the number of existing jobs retained, and the value of new qualified investment used at the eligible project during any tax year shall be determined by dividing by twelve, in the case of jobs, the sum of the number of individuals employed at the eligible project, or in the case of new qualified investment, the value of new qualified investment used at the eligible project, on the last business day of each full calendar month of the tax year. If the eligible project is in operation for less than the entire tax year, the number of new jobs created and maintained, the number of existing jobs retained, and the value of new qualified investment created at the eligible project during any tax year shall be determined by dividing the sum of the number of individuals employed at the eligible project, or in the case of new qualified investment, the value of new qualified investment used at the eligible project, on the last business day of each full calendar month during the portion of the tax year during which the eligible project was in operation, by the number of full calendar months during such period;

(11) For the purpose of this section, "new qualified investment" means new business facility investment as defined and as determined in subdivision [(7)] **(9)** of section 135.100, RSMo, which

is used at and in connection with the eligible project. "New qualified investment" shall not include small tools, supplies and inventory. "Small tools" means tools that are portable and can be hand held.

2. The determination of the director of economic development pursuant to subsection 1 of this section, shall not affect requirements for the prospective purchaser to obtain the approval of the granting of real property tax abatement by the municipal or county government where the eligible project is located.

3. **(1)** The director of the department of economic development, with the approval of the director of the department of natural resources, may, in addition to the tax credits allowed in subsection 1 of this section, grant a remediation tax credit to the applicant for up to one hundred percent of the costs of materials, supplies, equipment, labor, professional engineering, consulting and architectural fees, permitting fees and expenses, demolition [and], asbestos abatement, and direct utility charges for performing the voluntary remediation activities for the preexisting hazardous substance contamination and releases, including, but not limited to, the costs of performing operation and maintenance of the remediation equipment at the property beyond the year in which the systems and equipment are built and installed at the eligible project and the costs of performing the voluntary remediation activities over a period not in excess of four tax years following the taxpayer's tax year in which the system and equipment were first put into use at the eligible project, provided the remediation activities are the subject of a plan submitted to, and approved by, the director of natural resources pursuant to sections 260.565 to 260.575, RSMo.

(2) The director of the department of economic development, with the approval of the director of the department of natural resources, may, in addition to the tax credits otherwise allowed in this section, grant a demolition tax credit to the applicant for up to one hundred percent of the costs of demolition that is not part of the voluntary remediation activities, provided the demolition is part of a redevelopment plan approved by the local government entity and the department of economic development.

(3) The amount of remediation **and demolition** tax credits issued shall be limited to the least amount necessary to cause the project to occur, as determined by the director of the department of economic development.

(4) The director may, with the approval of the director of natural resources, extend the tax credits allowed for performing voluntary remediation maintenance activities, in increments of three-year periods, not to exceed five consecutive three-year periods. The tax credits allowed in this subsection shall be used to offset the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo. The remediation **and demolition** tax [credit] **credits** may be taken in the same tax year in which the tax credits are received or may be taken over a period not to exceed twenty years.

(5) The project facility [is] **must be** projected to create at least ten new jobs or at least twenty-five retained jobs, or a combination thereof, as determined by the department of economic development, **to be eligible for tax credits under this subsection.**

(6) No more than seventy-five percent of earned remediation tax credits may be issued when the remediation costs were paid, and the remaining percentage may be issued when the department of natural resources issues a "Letter of Completion" letter or covenant not to sue following completion of the voluntary remediation activities. It shall not include any costs associated with ongoing operational environmental compliance of the facility or remediation costs arising out of spills, leaks, or other releases arising out of the ongoing business operations of the facility.

4. In the exercise of the sound discretion of the director of the department of economic development or the director's designee, the tax credits and exemptions described in this section may be terminated, suspended or revoked, if the eligible project fails to continue to meet the conditions set forth in this section. In making such a determination, the director shall consider the severity of the condition violation, actions taken to correct the violation, the frequency of any condition violations and whether the actions exhibit a pattern of conduct by the eligible facility owner and operator. The director shall also consider changes in general economic conditions and the recommendation of the director of the department of natural resources, or his or her designee, concerning the severity, scope, nature, frequency and extent of any violations of the environmental compliance conditions. The taxpayer or person claiming the tax credits or exemptions may appeal the decision regarding termination, suspension or revocation of any tax credit or exemption in accordance with the procedures outlined in subsections 4 to 6 of section 135.250, RSMo. The director of the department of economic development shall notify the directors of the departments of natural resources and revenue of the termination, suspension or revocation of any tax credits as determined in this section or pursuant to the provisions of section 447.716.

5. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax credits, exemptions or refund otherwise allowed in subdivisions (2), (3) and (4) of subsection 1 of this section and the tax credits otherwise allowed in section 135.110, RSMo, or the tax credits, exemptions and refund otherwise allowed in sections 135.215, 135.220, 135.225 and 135.245, RSMo, respectively, for the same facility for the same tax period.

6. The total amount of the tax credits allowed in subsection 1 of this section may not exceed the greater of:

- (1) That portion of the taxpayer's income attributed to the eligible project; or
- (2) One hundred percent of the total business' income tax if the eligible facility does not replace a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, and further provided the taxpayer does not operate any other facilities besides the eligible project in Missouri; fifty percent of the total business' income

tax if the eligible facility replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the credits are earned, and further provided the taxpayer does not operate any other facilities besides the eligible project in Missouri; or twenty-five percent of the total business income if the taxpayer operates, in addition to the eligible facility, any other facilities in Missouri. In no case shall a taxpayer operating more than one eligible project in Missouri be allowed to offset more than twenty-five percent of the taxpayer's business income in any tax period. That portion of the taxpayer's income attributed to the eligible project as referenced in subdivision (1) of this subsection, for which the credits allowed in sections 135.110 and 135.225, RSMo, and subsection 3 of this section, may apply, shall be determined in the same manner as prescribed in subdivision [(6)] **(8)** of section 135.100, RSMo. That portion of the taxpayer's franchise tax attributed to the eligible project for which the remediation tax credit may offset, shall be determined in the same manner as prescribed in paragraph (a) of subdivision [(6)] **(8)** of section 135.100, RSMo.

7. Taxpayers claiming the state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use. Otherwise, the taxpayer's right to claim such state tax benefits shall be forfeited. Unused business facility and enterprise zone tax credits shall not be carried forward but shall be initially claimed for the tax period during which the eligible project was first capable of being used, and during any applicable subsequent tax periods.

8. Taxpayers claiming the remediation tax credit allowed in subsection 3 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use, or during the taxpayer's tax period immediately after the tax period in which the voluntary remediation activities were performed.

9. The recipient of remediation tax credits, for the purpose of this subsection referred to as assignor, may assign, sell or transfer, in whole or in part, the remediation tax credit allowed in subsection 3 of this section, to any other person, for the purpose of this subsection referred to as assignee. To perfect the transfer, the assignor shall provide written notice to the director of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address and the assignee's tax period and the amount of tax credits to be transferred. The number of tax periods during which the assignee may subsequently claim the tax credits shall not exceed twenty tax periods, less the number of tax periods the assignor previously claimed the credits before the transfer occurred.

10. In the case where an operator and assignor of an eligible project has been certified to claim state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section, and sells or otherwise transfers title of the eligible project to another taxpayer or assignee who continues the

same or substantially similar operations at the eligible project, the director shall allow the assignee to claim the credits for a period of time to be determined by the director; except that, the total number of tax periods the tax credits may be earned by the assignor and the assignee shall not exceed ten. To perfect the transfer, the assignor shall provide written notice to the director of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address, and the assignee's tax period, and the amount of tax credits to be transferred.

11. For the purpose of the state tax benefits described in this section, in the case of a corporation described in section 143.471, RSMo, or partnership, in computing Missouri's tax liability, such state benefits shall be allowed to the following:

- (1) The shareholders of the corporation described in section 143.471, RSMo;
- (2) The partners of the partnership. The credit provided in this subsection shall be apportioned to the entities described in subdivisions (1) and (2) of this subsection in proportion to their share of ownership on the last day of the taxpayer's tax period.

620.470. As used in sections 620.470 to 620.481, unless the context clearly requires otherwise, the following terms mean:

- (1) "Department", the Missouri department of economic development;
- (2) "Fund", the Missouri job development fund as established by section 620.478;
- (3) "Industry", an entity the objective of which is to supply a service or the objective of which is the commercial production and sale of an article of trade or commerce. **The term includes a consortium of such entities organized for the purpose of providing for common training to the member entities' employees, provided that the consortium as a whole meets the requirements for participation in this program;**

- (4) "Manufacturing", the making or processing of raw materials into a finished product, especially by means of large-scale machines of industry.

620.474. 1. The department shall establish a basic industry retraining program, the purpose of which is to provide assistance for industries in Missouri for the retraining and upgrading of employees' skills which are required to support new [capital] investment. Such program shall be operated with appropriations made by the general assembly from the fund.

2. Assistance under the basic industry retraining program may be made available for industries in Missouri which make new investments [in manufacturing] without the creation of new employment.

3. The department shall issue rules and regulations governing the awarding of funds administered through the basic industry retraining fund. When promulgating these rules and regulations, the department shall consider such factors as the number of jobs in jeopardy of being lost if retraining does not occur, the amount of private sector investment in new facilities and equipment, the ratio of jobs retained versus investment, the cost of normal, ongoing training

required for the industry, the economic need of the affected community, and the importance of the industry to the economic development of Missouri.

620.478. 1. There is hereby established in the state treasury a special fund to be known as the "Missouri Job Development Fund". The fund shall consist of all moneys which may be appropriated to it by the general assembly and also any gifts, contributions, grants or bequests received from federal, private or other sources. Appropriations made from the fund shall be for the purpose of providing contractual services through the department of elementary and secondary education for vocational related training or retraining provided by public or private training institutions within Missouri; and for contracted services through the department of economic development for vocational related training or retraining provided by public or private training institutions located outside of Missouri; and for vocational related training or retraining provided on site, within Missouri, by any proprietorship, partnership or corporate entity. Except for state-sponsored preemployment training, no applicant shall receive more than fifty percent of its project training or retraining costs from the development fund. Moneys to operate the new or expanding industry training program, the basic industry retraining program, the industry quality and productivity improvement program and assistance to community college business and technology centers shall be obtained from appropriations made by the general assembly from the fund. No funds shall be awarded or reimbursed to any industry for the training, retraining or upgrading of skills of potential employees with the purpose of replacing or supplanting employees engaged in an authorized work stoppage.

2. The Missouri job development fund shall be able to receive any block grant or other sources of funding relating to job training, school-to-work transition, welfare reform, vocational and technical training, housing, infrastructure development and human resource investment programs which may be provided by the federal government or other sources.

3. The department of elementary and secondary education and the department of economic development shall jointly develop and agree upon a plan for the administration of training resources pursuant to this section which will result in the most efficient and effective delivery of job training services to Missouri businesses. The plan must be submitted by March 31 of each year to the joint committee on job training oversight for its review and approval no later than May 15 of each year.

620.1039. 1. As used in this section, the term "taxpayer" means an individual, a partnership, or a corporation as described in section 143.441, 143.471, RSMo, or section 148.370, RSMo, and the term "qualified research expenses" has the same meaning as prescribed in 26 U.S.C. 41.

2. **For tax years beginning on or after January 1, [1994] 2001, the director of the department of economic development may authorize a taxpayer [may be allowed] to receive a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, or chapter 148, RSMo,**

other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, [if approved by the director of the department of economic development,] in an amount up to six and one-half percent of the excess of the taxpayer's qualified research expenses, as certified by the director of the department of economic development, within this state during the taxable year over the average of the taxpayer's qualified research expenses within this state over the immediately preceding three taxable years; except that, no tax credit shall be allowed on that portion of the taxpayer's qualified research expenses incurred within this state during the taxable year in which the credit is being claimed, to the extent such expenses exceed two hundred percent of the taxpayer's average qualified research expenses incurred during the immediately preceding three taxable years. [In order to receive a tax credit pursuant to this section, certification by the director of the department of economic development shall be required as proof that the taxpayer made qualified research expenses during the taxable year.]

3. The director of economic development shall prescribe the manner in which the tax credit may be [claimed] **applied for**. The tax credit [allowed] **authorized** by this section may be claimed by the taxpayer to offset the tax liability imposed by chapter 143, RSMo, or chapter 148, RSMo, that becomes due in the tax year during which such qualified research expenses were incurred. Where the amount of the credit exceeds the tax liability, the difference between the credit and the tax liability may only be carried forward for the next five succeeding taxable years or until the full credit has been claimed, whichever first occurs. The application for [claiming] tax credits [allowed in] **authorized by the director pursuant to** subsection 2 of this section shall be made [in] **no later than the end of** the taxpayer's tax period immediately following the tax period for which the credits are being claimed.

4. Certificates of tax credit issued pursuant to this section may be transferred, sold or assigned by filing a notarized endorsement thereof with the department which names the transferee and the amount of tax credit transferred. The director of economic development may allow a taxpayer to transfer, sell or assign up to forty percent of the amount of the certificates of tax credit issued to and not claimed by such taxpayer pursuant to this section during any tax year commencing on or after January 1, 1996, and ending not later than December 31, 1999. Such taxpayer shall file, by December 31, 2001, an application with the department which names the transferee, the amount of tax credit desired to be transferred, and a certification that the funds received by the applicant as a result of the transfer, sale or assignment of the tax credit shall be expended within three years at the state university for the sole purpose of conducting research activities agreed upon by the department, the taxpayer, and the state university. Failure to expend such funds in the manner prescribed pursuant to this section shall cause the applicant to be subject to the provisions of section 620.017.

5. No rule or portion of a rule promulgated under the authority of this section shall become

effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to June 27, 1997, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to June 27, 1997, if such rule complied with the provisions of chapter 536, RSMo. The provisions of this section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, including the ability to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule, are subsequently held unconstitutional, then the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void.

[4.] **6.** The aggregate of all tax credits authorized pursuant to this section shall not exceed [ten] **nine million seven hundred thousand** dollars in any [taxable] year.

620.1400. Sections 620.1400 to 620.1460 shall be known and may be cited as the "Missouri [Individual Training Account] **Skills Development Tax Credit** Program Act" and its provisions shall be effective only within distressed communities as defined by section 135.530, RSMo, **except for employers applying for the training of mature workers in high demand industries.**

620.1420. As used in sections 620.1400 to 620.1460, the following terms mean:

(1) "Costs of classroom training", the normal costs incurred in the provision of classroom training which may also include specifically identified costs incurred for instructors, classroom space and facilities, administrative support services, and directly related expenses, that together do not exceed the amount normally allowed for support of vocational and technical classes;

(2) "Department", the department of economic development;

(3) "Employee", a full-time or part-time employed worker [whose salary is equal to or less than two hundred percent of the federal poverty level];

(4) "Employee upgrade training", the progressive development of skills associated with the defined set of work processes. Such training shall be consistent with a career pattern of advancement, as measured by skill proficiency and the progressive earnings and related benefits, that are recognized within an occupation, trade or industry;

(5) **"High demand industry", the child care services industry and any other industry determined in the sole discretion of the director of the department of economic development to have a shortage of skilled workers;**

(6) "[Individual training] **Skills Development** account", an account funded by the tax credits provided for in section 620.1440 for the provision of employee upgrade training to employees **and mature workers** through their participation in classroom training provided by educational institutions;

[(6)] **(7)** "Local educational institution", a publicly funded or privately funded local educational institution which is certified by a recognized accrediting association as capable of providing adequate classroom training **or any not-for-profit corporation approved by the**

director to offer educational services to accomplish the purpose of sections 620.1400 to 620.1460;

(8) "Mature worker", an individual at least fifty years of age living anywhere in Missouri whose employer applies for his or her training for the provision of child care services or another high demand industry as determined by the director of the department of economic development. To be eligible for this program, a mature worker must meet any one of the following requirements:

- (a) The family income is at or below two hundred percent of the poverty level;**
- (b) The individual is receiving public support for the care of a foster child; or**
- (c) The individual faces serious barriers to employment, including displaced homemakers, dislocated workers, veterans or individuals who possess outdated skills.**

620.1430. 1. A Missouri employer **or group of employers** who [desires] **desire** to participate in the individual training account program shall provide the department of economic development with notification of intent to participate. The notification shall include, but need not be limited to, the names and occupations of employees **or mature workers** whom [the] **each** employer has selected to be trained, whether or not the employees **or mature workers** are currently working for the employer, the name of the local educational institution that will provide the training, and a brief description of the training to be given by the institution.

2. The employer **or group of employers** shall have complete discretion in the selection of the local educational institution or institutions to provide training and shall be responsible for the payment of the costs of classroom training.

620.1440. 1. Employers may be reimbursed for the costs of training provided pursuant to the provisions of the [individual training] **skills development** account program. Such reimbursement shall be in the form of tax credits as authorized in subsection 2 of this section. The tax credits may be claimed for courses provided in no more than two calendar years for each employee. For each year, the maximum amount of credit per employee which can be certified by the department of economic development shall be the lesser of fifty percent of the costs of classroom training or one thousand five hundred dollars **if the salary of such employee is more than two hundred percent of the federal poverty level, and the lesser of seventy percent of the costs of classroom training or two thousand five hundred dollars if the salary of such employee is equal to or less than two hundred percent of the federal poverty level or such employee is a mature worker.**

2. Tax credits may be claimed against any liability incurred by the employer pursuant to the provisions of chapter 143, RSMo, and chapter 148, RSMo, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265, RSMo. Earned tax credits may be carried forward for a period not to exceed five years [and may be sold or transferred]. **Certificates of tax credit issued in accordance with this program may be transferred,**

sold or assigned by filing a notarized endorsement thereof with the department of economic development which names the transferee and the amount of tax credits transferred.

3. No claim for tax credits submitted to the department by an employer shall be certified until the employer provides documentation that an employee **or mature worker** has successfully completed the employee's **or mature worker's** course training and has been employed by the employer in a new, full-time position for a period of at least three months **or in a new, part-time position for a mature worker in a high demand industry for a period of at least one month**. It must be demonstrated satisfactorily to the department that the new position in which the employee located is an upgrade in employment, in terms of salary and responsibilities, from the previously held position **or that the training of the person will improve the workforce in a high demand industry**. All such increases in salary shall be in addition to normal cost-of-living increases provided for in authorized labor-management contracts. If the employee was previously employed in a part-time position, the base salary for the position shall be calculated as if it were a full-time position.

620.1450. The maximum amount of tax credits allowable pursuant to the provisions of the [individual training] **skills development** account program shall not annually exceed [six] **seven** million dollars.

620.1470. Subject to appropriations and to the provisions of chapter 34, RSMo, the department of economic development shall provide for an independent evaluation of the program every two years. Based on this program evaluation, the department shall provide a comprehensive report on the program to the speaker of the house and the president pro tem of the senate by March first of each year, beginning in 2003.

620.1472. 1. The department shall submit an annual tax credit allocation plan to the joint committee on economic development policy and planning established in section 620.602, by November 1 of each year for programs administered pursuant to sections 135.100, 135.110, 135.115, 135.150, 135.200, 135.220, 135.225, 135.230, 135.235, 135.240, 135.245, 135.247, 135.250, 135.258, 135.400, 135.403, 135.405, 135.411, 135.420, 135.423, 135.545, 135.700 and 620.1039, RSMo.

2. Such report shall include, but is not limited to, information and recommendations regarding the utilization of credits for Missouri businesses pursuant to the programs in subsection 1 of this section and a forecast of the Missouri economy for the following year. The plan shall report the anticipated strengths and weaknesses of the economy and estimate how the department should prioritize its job creation and investment efforts within the state as they relate to the programs in subsection 1 of this section.

3. The department shall quarterly report to the joint committee on economic development policy and planning established in section 620.602. Such reports shall

include information regarding the authorization and issuance of tax credits pursuant to the programs administered under sections 135.100, 135.110, 135.115, 135.150, 135.200, 135.220, 135.225, 135.230, 135.235, 135.240, 135.245, 135.247, 135.250, 135.258, 135.400, 135.403, 135.405, 135.411, 135.420, 135.423, 135.545, 135.700 and 620.1039, RSMo.

[620.1560. 1. For purposes of this section, the following terms mean:

- (1) "Department", the department of economic development;
- (2) "Disadvantaged", an individual shall be considered disadvantaged and eligible to participate in the program if such individual meets any one of the following elements:
 - (a) The family income is at or below one hundred fifty percent of the poverty line;
 - (b) The individual is receiving public support for the care of a foster child;
 - (c) The individual faces serious barriers to employment including displaced homemakers; dislocated workers; veterans; or individuals who possess outdated skills;
- (3) "Program", the mature worker child care program.

2. There is hereby established within the department of economic development a program to be known as the "Mature Worker Child Care Program". The program will administer a statewide community service, in cooperation with the neighborhood assistance program, to enroll disadvantaged individuals, who are fifty years of age or older, to work in child-care assignments. Enrollees may include qualified individuals who are currently participating in existing community service programs.

3. The department shall solicit proposals from organizations seeking to contract to supervise the participants. Organizations that are awarded a contract will be responsible for recruiting and training participants, locating child-care assignments, and paying participants. Contract proposals shall include:

- (1) A requirement that participants in the program be paid the federal minimum wage;
- (2) A process that allows participants to work an average of twenty- four hours a week for public and not for profit day care providers and for school latch-key programs that provide before- and after-school care;
- (3) A description of the range of services to be performed by program participants, including, but not limited to, child care, food preparation, transportation, activity coordination, and clerical duties;
- (4) A requirement that the participating facilities provide proof of required licensure under sections 210.201 to 210.259, RSMo, with the exception of the public school system.

4. The program shall be implemented by July 1, 2000, and shall be funded through general revenue funds with no more than twelve percent of the funds to be used for

administrative purposes.

5. In addition to tax credits currently available under the neighborhood assistance program, a participating facility shall be allowed a credit against the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, and chapter 147, 148 or 153, RSMo, pursuant to this section. The amount of tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the taxable year that the credit is claimed. Taxpayers eligible for such tax credit may transfer, sell or assign them. Individual salaries up to ten thousand dollars per program participant each taxable year are eligible for the tax credit which shall not exceed twenty-five percent of the eligible salary amount. Total tax credits taken through the program shall not exceed two million dollars.

6. The department of economic development shall verify all tax credit claims by participating facilities. The tax credit allowed by this section shall apply to all taxable years beginning after December 31, 1999.

7. Subject to appropriations and to the provisions of chapter 34, RSMo, the oversight division of the committee on legislative research shall award up to thirty thousand dollars every two years for an independent evaluation of the program. Based on this program evaluation, the department shall provide a comprehensive report on the program to the speaker of the house and the president pro tem of the senate by March first of each year, beginning in 2001.]

Section B. The repeal, the repeal and reenactment and the enactment of sections contained in this act shall become effective January 1, 2001, and apply to tax years beginning on and after January 1, 2001.

✓
Copy