

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 668**  
**92ND GENERAL ASSEMBLY**

---

Reported from the Committee on Agriculture, May 5, 2003, with recommendation that the House Committee Substitute for Senate Bill No. 668 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

1990L.06C

---

**AN ACT**

To repeal sections 143.121, 147.120, 148.330, 348.430, and 348.432, RSMo, and to enact in lieu thereof five new sections relating to agricultural tax credits.

---

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

Section A. Sections 143.121, 147.120, 148.330, 348.430, and 348.432, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 143.121, 147.120, 148.330, 348.430, and 348.432, to read as follows:

143.121. 1. The Missouri adjusted gross income of a resident individual shall be [his] **the taxpayer's** federal adjusted gross income subject to the modifications in this section.

2. There shall be added to [his] **the taxpayer's** federal adjusted gross income:

(a) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit;

(b) Interest on certain governmental obligations excluded from federal gross income by Section 103 of the Internal Revenue Code. The previous sentence shall not apply to interest on obligations of the state of Missouri or any of its political subdivisions or authorities and shall not apply to the interest described in subdivision (a) of subsection 3 of this section. The amount added [under] **pursuant to** this paragraph shall be reduced by the amounts applicable to such interest that would have been deductible in computing the taxable income of the taxpayer except only for the application of Section 265 of the Internal Revenue Code. The reduction shall only be made if it is at least five hundred dollars;

(c) The amount of any deduction that is included in the computation of federal taxable income

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

[under] **pursuant to** Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002 to the extent the amount deducted relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent the amount deducted exceeds the amount that would have been deductible [under] **pursuant to** Section 168 of the Internal Revenue Code of 1986 as in effect on January 1, 2002; and

(d) The amount of any deduction that is included in the computation of federal taxable income for net operating loss allowed by Section 172 of the Internal Revenue Code of 1986, as amended, [except for any deduction] **other than the deduction allowed by Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as amended,** for a net operating loss the taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a period [not to exceed] **of more than** twenty years and carries backward for [not] more than two years. **Any amount of net operating loss taken against federal income taxes but disallowed against Missouri income taxes pursuant to this paragraph since July 1, 2002, may be carried forward and taken against any loss on the Missouri income tax return for a period of not more than twenty years from the year of the initial loss.**

3. There shall be subtracted from [his] **the taxpayer's** federal adjusted gross income the following amounts to the extent included in federal adjusted gross income:

(a) Interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent exempt from Missouri income taxes [under] **pursuant to** the laws of the United States. The amount subtracted [under] **pursuant to** this paragraph shall be reduced by any interest on indebtedness incurred to carry the described obligations or securities and by any expenses incurred in the production of interest or dividend income described in this paragraph. The reduction in the previous sentence shall only apply to the extent that such expenses including amortizable bond premiums are deducted in determining [his] **the taxpayer's** federal adjusted gross income or included in [his] **the taxpayer's** Missouri itemized deduction. The reduction shall only be made if the expenses total at least five hundred dollars;

(b) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax purposes on December 31, 1972, that does not exceed such difference in basis. If a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to one-half of such portion of the gain;

(c) The amount necessary to prevent the taxation [under sections 143.011 to 143.996] **pursuant to this chapter** of any annuity or other amount of income or gain which was properly included in income or gain and was taxed [under] **pursuant to** the laws of Missouri for a taxable year prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income;

(e) The amount of any state income tax refund for a prior year which was included in the federal adjusted gross income;

(f) The portion of capital gain specified in [subsection 3 of section 144.747] **section 135.357**, RSMo, that would otherwise be included in federal adjusted gross income; and

(g) The amount that would have been deducted in the computation of federal taxable income [under] **pursuant to** Section 168 of the Internal Revenue Code as in effect on January 1, 2002, to the extent that amount relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent that amount exceeds the amount actually deducted [under] **pursuant to** Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002.

4. There shall be added to or subtracted from [his] **the taxpayer's** federal adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment provided in section 143.351. 5. There shall be added to or subtracted from [his] **the taxpayer's** federal adjusted gross income the modifications provided in section 143.411.

147.120. 1. If any corporation fails or refuses to pay the taxes (including interest and penalties) assessed against it after such assessment becomes final, the director of revenue shall certify a list of the corporations so delinquent to the attorney general who shall proceed forthwith to collect the taxes. Suits for the collection of the taxes may be brought in the name of the state in any court of competent jurisdiction and any judgment rendered in such court in favor of the state shall be a first lien on all properties and assets of the corporation within this state.

2. The director of revenue shall notify the secretary of state of any corporation that fails or refuses to pay the taxes, including interest and penalties, assessed against it after such assessment becomes final and the secretary of state shall then administratively dissolve any domestic corporation that is delinquent pursuant to section 351.486, RSMo, and shall revoke the certificate of authority of any foreign corporation that is delinquent pursuant to section 351.602, RSMo.

3. Any tax provided for pursuant to sections 147.010 to 147.120 not paid on or before the last day prescribed for payment pursuant to sections 147.010 to 147.120 (determined with regard to any extension of time for payment) shall be collected with a penalty of five percent per month or fractional part thereof until paid, not exceeding twenty-five percent in the aggregate. Interest at the rate determined by section 32.065, RSMo, shall be added to any tax not paid on or before the date due pursuant to sections 147.010 to 147.120 (determined without regard to any extension of time for payment). Nothing in sections 147.010 to 147.120 shall be construed so as to permit any officer of this state to remit or abate such interest.

4. If any corporation fails to pay any tax due within the time prescribed pursuant to sections 147.010 to 147.120 or if any corporation makes errors and omissions in reports or payments, and the director of revenue determines that such action is the result of mistake or is due to circumstances beyond reasonable control and that such delinquency or inaccuracy was unavoidable or devoid of any intent to

evade the tax, the director of revenue may, at the director's discretion, waive any penalty that would otherwise be imposed.

5. The director of revenue shall set the interest rate as determined in section 32.065, RSMo. Such interest rate shall be paid on all overpayments for the ensuing calendar year. The interest shall accrue from the due date or the date of overpayment, whichever is later. No interest shall be allowed or paid if overpayment is refunded within four months after the franchise tax report is filed.

6. Any notice of assessment of franchise tax due shall be mailed to the corporation within three years after the report was filed. The provisions of this subsection shall apply to all reports filed after December 31, 1981.

7. If no report is filed or if a false and fraudulent report is filed, a notice of assessment of franchise tax due may be mailed to the corporation at any time.

8. If fraud or evasion on the part of a corporation or anyone on behalf of a corporation is discovered, the director of revenue shall determine the amount of which the state has been defrauded, shall add to the amount so determined a penalty equal to fifty percent thereof, and shall assess the same against the corporation. The amount so assessed shall be immediately due and payable; except that, the director of revenue shall promptly thereafter give to such corporation written notice of such assessment and penalty, which notice shall be served by registered mail. Such corporation shall have the right to petition for hearing of such assessment, as is provided in sections 147.010 to 147.120.

9. Any person who willfully makes a false corporation franchise tax report, or who willfully makes a false statement in any report under oath or otherwise filed with or transmitted to the director of revenue relating to the amount of any franchise tax due pursuant to sections 147.010 to 147.120 shall, in addition to other penalties provided by law and upon conviction thereof, be fined not more than ten thousand dollars, or be imprisoned in the county jail for not more than one year or by not less than two nor more than five years in the state penitentiary or by both fine and imprisonment together with the cost of prosecution.

10. The director of revenue shall administer and enforce the tax imposed by sections 147.010 to 147.120, and the director is authorized to make such rules and regulations and to require such facts and information to be reported as the director may deem necessary to enforce the provisions of sections 147.010 to 147.120.

11. No rule or portion of a rule promulgated pursuant to the authority of sections 147.010 to 147.120 shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

12. Except as otherwise specifically provided in sections 147.010 to 147.120 the franchise tax shall be administered as prescribed in the following provisions of chapter 143, RSMo: subsections 1 and 4 of section 143.551, RSMo, sections 143.561, 143.571, 143.621, 143.631, 143.641, 143.651, 143.661, 143.681, 143.691, 143.721 and 143.731, RSMo, subsection 1 of section 143.741, RSMo, subsections 1, 2 and 5 of section 143.751, RSMo, sections 143.771 and 143.791, RSMo, **subsections**

**1 and 2 of section 143.801, RSMo,** subsections 1, 2 and 4 of section 143.811, RSMo, sections 143.831, 143.841 and 143.851, RSMo, subsections 2 and 3 of section 143.861, RSMo, and sections 143.901, 143.902, 143.971 and 143.986, RSMo.

148.330. 1. Every such company shall, on or before the first day of March in each year, make a return, verified by the affidavit of its president and secretary, or other authorized officers, to the director of the department of insurance stating the amount of all premiums received on account of policies issued in this state by the company, whether in cash or in notes, during the year ending on the thirty-first day of December, next preceding. Upon receipt of such returns the director of the department of insurance shall verify the same and certify the amount of tax due from the various companies on the basis and at the rates provided in section 148.320, and shall certify the same to the director of revenue together with the amount of the quarterly installments to be made as provided in subsection 2 of this section, on or before the thirtieth day of April of each year.

2. Beginning January 1, 1983, the amount of the tax due for that calendar year and each succeeding calendar year thereafter shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon the tax for the immediately preceding taxable year ending on the thirty-first day of December, next preceding. The quarterly installments shall be made on the first day of March, the first day of June, the first day of September and the first day of December. Immediately after receiving certification from the director of the department of insurance of the amount of tax due from the various companies the director of revenue shall notify and assess each company the amount of taxes on its premiums for the calendar year ending on the thirty-first day of December, next preceding. The director of revenue shall also notify and assess each company the amount of the estimated quarterly installments to be made for the calendar year. If the amount of the actual tax due for any year exceeds the total of the installments made for such year, the balance of the tax due shall be paid on the first day of June of the year following, together with the regular quarterly payment due at that time. If the total amount of the tax actually due is less than the total amount of the installments actually paid, the amount by which the amount paid exceeds the amount due shall be credited against the tax for the following year and deducted from the quarterly installment otherwise due on the first day of June. If the March first quarterly installment made by a company is less than the amount assessed by the director of revenue, the difference will be due on June first, but no interest will accrue to the state on the difference unless the amount paid by the company is less than eighty percent of one-fourth of the total amount of tax assessed by the director of revenue for the immediately preceding taxable year. The state treasurer, upon receiving the moneys paid as a tax upon such premiums to the director of revenue, shall place the moneys to the credit of a fund to be known as "The County Stock Insurance Fund", which is hereby created and established.

3. If the estimated quarterly tax installments are not so paid, the director of revenue shall certify such fact to the director of the division of insurance who shall thereafter suspend such delinquent company

or companies from the further transaction of business in this state until such taxes shall be paid and such companies shall be subject to the provisions of sections 148.410 to 148.461.

4. On or before the first day of September of each year the commissioner of administration shall apportion all moneys in the county stock insurance fund to the general revenue fund of the state, to the county treasurer and to the treasurer of the school district in which the principal office of the company paying the same is located. All premium tax credits described in sections 135.500 to 135.529, RSMo, **and sections 348.430 and 348.432, RSMo**, shall only reduce the amounts apportioned to the general revenue fund of the state and shall not reduce any moneys apportioned to the treasurer of the school district in which the principal office of the company paying the same is located. Apportionments shall be made in the same ratio which the rates of levy for the same year for state purposes, for county purposes, and for all school district purposes, bear to each other; provided that any proceeds from such tax for prior years remaining on hand in the hands of the county collector or county treasurer undistributed [on the effective date of sections 148.310 to 148.460] and any proceeds of such tax for prior years collected thereafter shall be distributed and paid in accordance with the provisions of such sections. Whenever the word "county" occurs herein it shall be construed to include the city of St. Louis.

348.430. 1. The tax credit created in this section shall be known as the "Agricultural Product Utilization Contributor Tax Credit".

2. As used in this section, the following terms mean:

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Contributor", an individual, partnership, corporation, trust, limited liability company, entity or person that contributes cash funds to the authority;

(3) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(4) "Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility;

(5) "Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:

(a) Hold a majority of the governance or voting rights of the entity and any governing committee;

(b) Control the hiring and firing of management; and

(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;

(6) "Renewable fuel production facility", a facility producing an energy source which is derived

from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source.

3. For **all** tax [year] years **beginning on or after January 1, 1999**, a contributor who contributes funds to the authority may receive a credit against the tax **or estimated quarterly tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 148, RSMo, chapter 147, RSMo, in an amount of up to one hundred percent of such contribution. **Tax credits claimed in a taxable year may be done so on a quarterly basis and applied to the estimated quarterly tax pursuant to this subsection.** The awarding of such credit shall be at the approval of the authority, based on the least amount of credits necessary to provide incentive for the contributions. A contributor that receives tax credits for a contribution to the authority shall receive no other consideration or compensation for such contribution, other than a federal tax deduction, if applicable, and goodwill. A contributor that receives tax credits for a contribution provided in this section may not be a member, owner, investor or lender of an eligible new generation cooperative or eligible new generation processing entity that receives financial assistance from the authority either at the time the contribution is made or for a period of two years thereafter.

4. A contributor shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the contributor meets all criteria prescribed by this section and the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section [shall initially] **may** be claimed in the taxable year in which the contributor contributes funds to the authority. [Any amount of credit that exceeds the tax due for a contributor's taxable year] **Tax credits allowed pursuant to this section may immediately be carried back to any of the contributor's five prior tax years and** may be carried forward to any of the contributor's five subsequent taxable years. Tax credits issued pursuant to this section may be assigned, transferred or sold. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

5. The funds derived from contributions in this section shall be used for financial assistance or technical assistance for the purposes provided in section 348.407, to rural agricultural business concepts as approved by the authority. The authority may provide or facilitate loans, equity investments, or guaranteed loans for rural agricultural business concepts, but limited to two million dollars per project or the net state economic impact, whichever is less. Loans, equity investments or guaranteed loans may only be provided to feasible projects, and for an amount that is the least amount necessary to cause the project to occur, as determined by the authority. The authority may structure the loans, equity investments or guaranteed loans in a way that facilitates the project, but also provides for a compensatory return on investment or loan payment to the authority, based on the risk of the project.

6. In any given year, at least ten percent of the funds granted to rural agricultural business concepts

shall be awarded to grant requests of twenty-five thousand dollars or less. No single rural agricultural business concept shall receive more than two hundred thousand dollars in grant awards from the authority. Agricultural businesses owned by minority members or women shall be given consideration in the allocation of funds.

348.432. 1. The tax credit created in this section shall be known as the "New Generation Cooperative Incentive Tax Credit".

2. As used in this section, the following terms mean:

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(3) "Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility and approved by the authority;

(4) "Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:

(a) Hold a majority of the governance or voting rights of the entity and any governing committee;

(b) Control the hiring and firing of management; and

(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;

(5) "Employee-qualified capital project", an eligible new generation cooperative with capital costs greater than fifteen million dollars which will employ at least [one hundred] **sixty** employees;

(6) "Large capital project", an eligible new generation cooperative with capital costs greater than one million dollars;

(7) "Producer member", a person, partnership, corporation, trust or limited liability company whose main purpose is agricultural production that invests cash funds to an eligible new generation cooperative or eligible new generation processing entity;

(8) "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source;

(9) "Small capital project", an eligible new generation cooperative with capital costs of no more than one million dollars.

3. Beginning tax year 1999, and ending December 31, 2002, any producer member who invests cash funds in an eligible new generation cooperative or eligible new generation processing entity may

receive a credit against the tax **or estimated quarterly tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, or chapter 148, RSMo, chapter 147, RSMo, in an amount equal to the lesser of fifty percent of such producer member's investment or fifteen thousand dollars.

4. For all tax years beginning on or after January 1, 2003, any producer member who invests cash funds in an eligible new generation cooperative **or eligible new generation processing entity** may receive a credit against the tax **or estimated quarterly tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in an amount equal to the lesser of fifty percent of such producer member's investment or fifteen thousand dollars. **Tax credits claimed in a taxable year may be done so on a quarterly basis and applied to the estimated quarterly tax pursuant to subsection 3 of this section.**

5. A producer member shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the producer member meets all criteria prescribed by this section and is approved by the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section [shall initially be claimed in the taxable year in which the producer member contributes capital to an eligible new generation cooperative or eligible new generation processing entity. Any amount of credit that exceeds the tax due for a producer member's taxable year] may be carried back to any of the producer member's three prior taxable years and carried forward to any of the producer member's five subsequent taxable years **regardless of the type of tax liability to which such credits are applied as authorized pursuant to subsection 3 of this section.** Tax credits issued pursuant to this section may be assigned, transferred, sold or otherwise conveyed and the new owner of the tax credit shall have the same rights in the credit as the producer member. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit. **Any entity acquiring a tax credit issued pursuant to this section and applying such credit to its estimated quarterly taxes pursuant to chapter 148, RSMo, shall not acquire the credit at less than one hundred percent of the amount of the credit issued.**

6. Ten percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to small capital projects. If any portion of the ten percent of tax credits offered to small capital costs projects is unused in any calendar year, then the unused portion of tax credits may be offered to employee-qualified capital projects and large capital projects. If the authority receives more applications for tax credits for small capital projects than tax credits are authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for small capital projects.

7. Ninety percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to employee-qualified capital projects and large capital projects. If any portion of the ninety percent of tax credits offered to employee-qualified capital projects and large capital costs projects is

unused in any fiscal year, then the unused portion of tax credits may be offered to small capital projects. The maximum tax credit allowed per employee-qualified capital project is three million dollars and the maximum tax credit allowed per large capital project is one million five hundred thousand dollars. If the authority approves the maximum tax credit allowed for any employee-qualified capital project or any large capital project, then the authority, by rule, shall determine the method of distribution of such maximum tax credit. In addition, if the authority receives more tax credit applications for employee-qualified capital projects and large capital projects than the amount of tax credits authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for employee-qualified capital projects and large capital projects.

Unofficial

Bill

Copy