

FIRST REGULAR SESSION

# SENATE BILL NO. 390

96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS SCHMITT, MUNZLINGER, AND STOUFFER.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1807S.011

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## AN ACT

To amend chapter 135, RSMo, by adding thereto eleven new sections relating to tax incentives to encourage foreign trade.

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

Section A. Chapter 135, RSMo, is amended by adding thereto eleven new  
2 sections, to be known as sections 135.1500, 135.1503, 135.1505, 135.1507,  
3 135.1509, 135.1511, 135.1513, 135.1515, 135.1517, 135.1519, and 135.1521, to  
4 read as follows:

**135.1500. 1. Sections 135.1500 to 135.1519, shall be known and  
2 may be cited as the "Aerotropolis Trade Incentive and Tax Credit Act".**

**3 2. As used in sections 135.1500 to 135.1519, unless the context  
4 clearly requires otherwise, the following terms shall mean:**

**5 (1) "Airport", an airport which is owned and operated by a city  
6 not within a county;**

**7 (2) "Air export tax credit", the tax credit against the taxes  
8 imposed under chapters 143, 147, and 148, except for sections 143.191  
9 to 143.265, to be issued by the department to a claiming freight  
10 forwarder for the shipment of air cargo on a qualifying outbound flight;**

**11 (3) "Cargo activity", the activities within an eligible facility  
12 relating to the storage and distribution of goods and products through  
13 all modes of multimodal commerce, including goods and products  
14 manufactured or assembled within an eligible facility;**

**15 (4) "Certificate of compliance", a certificate submitted with any  
16 application for a tax credit or tax incentive specified in section  
17 135.1513, that shall certify that all requisite requirements for the  
18 issuance of such tax credits and tax incentives have been satisfied for  
19 such eligible facility and shall provide evidence of such satisfaction;**

20 (5) "Certificate of occupancy", the certificate for permit issued by  
21 a municipality that permits the commercial use or occupancy of a  
22 building or structure;

23 (6) "Chargeable kilo", the shipment of a kilo of freight, as  
24 measured by the greater of:

25 (a) Actual weight; or

26 (b) A dimensional weight, as determined by the conversion  
27 factors promulgated by the International Air Transport Association, on  
28 a qualifying outbound flight or a qualifying inbound flight;

29 (7) "Claiming freight forwarder", the freight forwarder  
30 designated as the "agent" on the airway bill for the qualifying outbound  
31 flight for which such air export tax credit is sought;

32 (8) "Department", the Missouri department of economic  
33 development;

34 (9) "Direct all cargo aircraft flight", a flight that flies directly to  
35 its destination without stopping, except to receive fuel and  
36 maintenance;

37 (10) "Economic incentive laws", any provision of Missouri law  
38 pursuant to which economic incentives are provided to redevelopers of  
39 a parcel or parcels to redevelop the land, such as tax abatement or  
40 payments in lieu of taxes, or redevelopment plans or redevelopment  
41 projects approved or adopted which include the use of economic  
42 incentives to redevelop the land;

43 (11) "Eligible costs", the following costs associated with the  
44 development in construction of an eligible facility:

45 (a) Purchase price of real property on which is constructed the  
46 eligible facility;

47 (b) Purchase price of structures;

48 (c) Costs of construction of the eligible facility, including  
49 necessary site work;

50 (d) Costs of environmental assessments;

51 (e) Closing costs;

52 (f) Real estate brokerage fees;

53 (g) Demolition costs of vacant structures;

54 (h) Maintenance costs prior to the construction of the eligible  
55 facility;

56 (i) Costs of title insurance; and

57 (j) Attorneys' fees associated with the acquisition or development  
58 of an eligible facility;

59 (12) "Eligible facility", a qualifying gateway facility, qualifying  
60 cold-chain facility, or qualifying assembly and manufacturing facility;

61 (13) "Eligibility period", the time period, not to exceed eight  
62 years, during which an owner of, or tenant in, or entity operating  
63 within, an eligible facility may receive benefits under section  
64 135.1513. Such time period shall begin to run on the date the certificate  
65 of occupancy is issued for each eligible facility and shall continue for  
66 the next subsequent seven taxable years;

67 (14) "Freight forwarder", a person that assumes responsibility in  
68 the ordinary course of its business for the transportation of cargo from  
69 the place of receipt to the place of destination, including the utilization  
70 of a qualifying outbound flight;

71 (15) "Gateway zone", an area designated under the provisions of  
72 sections 135.1500 to 135.1519, which shall be within:

73 (a) A foreign trade zone located within fifty miles of an airport;

74 (b) A site of at least one hundred contiguous developable acres  
75 located within fifty miles of an airport; provided however, such one  
76 hundred developable acres need not be contiguous if the acreage is  
77 located within a larger designated urban renewal area or  
78 redevelopment area under economic incentive laws;

79 (c) An area within the boundaries of an airport; or

80 (d) Any area owned or managed by the port authority of a city  
81 not within a county;

82 (16) "Interest costs", interest, loan fees, and closing costs;

83 (17) "Level one air cargo activity", where at least sixty percent  
84 of the total cargo activity of an eligible facility consists of:

85 (a) Chargeable kilos shipped from such facility, on a qualifying  
86 outbound flight by the owner of, or any tenant in, such facility; or

87 (b) Chargeable kilos shipped on a qualifying inbound flight to  
88 the owner of, or any tenant in, an eligible facility, whether or not the  
89 inbound shipment is stored at any time within such facility;

90 (18) "Level two air cargo activity", where at least thirty percent  
91 of the total cargo activity of an eligible facility consists of:

92 (a) Chargeable kilos shipped from such facility, on a qualifying  
93 outbound flight by the owner of, or any tenant in, such facility; or

- 94           **(b) Chargeable kilos shipped on a qualifying inbound flight to**  
95 **the owner of, or any tenant in, an eligible facility, whether or not the**  
96 **inbound shipment is stored at any time within such facility;**
- 97           **(19) "Multimodal commerce", modes of commerce for the**  
98 **shipment of goods or products, including road transportation, railroad**  
99 **transportation, water transportation or aircraft transportation;**
- 100           **(20) "Municipality", any city, town, village, or county;**
- 101           **(21) "New building", a new structure or building for commercial**  
102 **activity, including furniture, fixtures, and equipment;**
- 103           **(22) "Perishable freight", agricultural products, including seeds,**  
104 **garden products, live animals and processed meat products, such as**  
105 **pork and beef;**
- 106           **(23) "Qualifying applicant", an owner of, or tenant in, an eligible**  
107 **facility or an entity operating in an eligible facility;**
- 108           **(24) "Qualifying assembly and manufacturing facility", a new**  
109 **building located within a gateway zone that is equipped for**  
110 **manufacturing or assembly and:**
- 111           **(a) In which a majority of its production components are**  
112 **received through at least two modes of multimodal commerce; or**
- 113           **(b) From which a majority of its finished products are shipped**  
114 **through at least two modes of such multimodal commerce;**
- 115           **(25) "Qualifying cargo activity", meeting or exceeding the**  
116 **requirements for level one air cargo activity or level two air cargo**  
117 **activity;**
- 118           **(26) "Qualifying cold-chain facility", a new building located**  
119 **within a gateway zone which has within it equipment for maintaining**  
120 **necessary temperatures for the processing, packaging, or distribution**  
121 **of temperature-sensitive products, provided that at least eighty percent**  
122 **of the usable square footage of such facility is refrigerated;**
- 123           **(27) "Qualifying gateway facility", a new building, located within**  
124 **a gateway zone, in which qualifying cargo activity occurs, provided**  
125 **that no more than twenty percent of the usable space within the**  
126 **qualifying gateway facility is devoted to office, retail, or residential**  
127 **use;**
- 128           **(28) "Qualifying inbound flight", an all cargo aircraft flight**  
129 **originating from an international destination to the airport;**
- 130           **(29) "Qualifying interest costs", interest costs incurred on a**

131 **qualifying loan provided, however, the interest rate on such loan shall**  
132 **not exceed seven percent per annum;**

133 **(30) "Qualifying loan amount", the principal amount of the loan**  
134 **or loans obtained in connection with the development and construction**  
135 **of an eligible facility not to exceed sixty percent of the eligible costs of**  
136 **such facility, without regard to the actual principal amount of such**  
137 **loan or loans;**

138 **(31) "Qualifying outbound flight", a direct all cargo aircraft flight**  
139 **from the airport to an international destination.**

**135.1503. The executive officer of any county or the mayor of a**  
2 **city not within a county may designate a gateway zone by notifying the**  
3 **department of such designation.**

**135.1505. 1. Any county or a city not within a county, with a**  
2 **designated gateway zone, shall establish a board of supervisors and**  
3 **shall select three members to serve on the board. The board shall**  
4 **annually levy special assessments on eligible facilities within the**  
5 **gateway zone, which receive benefits under sections 135.1500 to**  
6 **135.1519, and shall oversee the use of revenues derived from the special**  
7 **assessments.**

8 **2. The special assessment on an eligible facility, which receive**  
9 **benefits under sections 135.1500 to 135.1519, shall be twenty cents per**  
10 **rentable square foot of such facility.**

11 **3. After the payment of any fees related to the approval and**  
12 **collection of the special assessments, the remaining revenues collected**  
13 **from the special assessments shall be utilized as follows:**

14 **(a) Fifty percent of such revenues shall be annually transferred**  
15 **to the airport to be used to market and promote the cargo activities of**  
16 **the airport under an agreement between a city not within a county and**  
17 **the board. Such agreement shall, at a minimum, provide:**

18 **a. That the proceeds of the net special assessments shall be**  
19 **placed in a special fund for marketing and promotion of the airport;**  
20 **and**

21 **b. That the board shall review and approve the annual budget of**  
22 **the airport for such marketing and promotion.**

23 **(b) The remaining fifty percent of such revenues shall be**  
24 **annually transferred to a tax exempt regional economic development**  
25 **association or associations, selected by the board for the marketing and**

26 promotion of the gateway zone. The board shall enter into an  
27 agreement or agreements with such tax exempt economic development  
28 business association or associations for the marketing and promotion  
29 of the gateway zone and shall review and approve the annual budget of  
30 such association or associations for such marketing and promotion.

135.1507. 1. For all taxable years beginning on or after January  
2 1, 2011, a claiming freight forwarder shall be entitled to an air export  
3 tax credit for the shipment of cargo on a qualifying outbound flight in  
4 an amount equal to twenty-five cents per chargeable kilo.

5 2. For all taxable years beginning on or after January 1, 2011, a  
6 claiming freight forwarder shall be entitled to an air export tax credit  
7 for the shipment of perishable freight on a qualifying outbound flight  
8 in an amount equal to thirty cents per chargeable kilo.

9 3. No claiming freight forwarder shall receive air export tax  
10 credits under both subsections 1 and 2 of this section for a single  
11 shipment of goods.

12 4. The department shall index the amount of the air export tax  
13 credits to adjust each year depending upon fluctuations in the cost of  
14 fuel for over-the-road transportation.

135.1509. 1. To receive benefits provided under section 135.1507,  
2 a claiming freight forwarder shall file an application with the  
3 department. The documentation to be presented by the claiming  
4 freight forwarder in such an application shall consist of the master  
5 airway bill for the shipment on the qualifying outbound flight for which  
6 the claiming freight forwarder is seeking air export tax credits. The  
7 department shall establish procedures to allow claiming freight  
8 forwarders that file applications for air export tax credits to receive  
9 such tax credits within five business days of the departure of the  
10 qualifying outbound flight.

11 2. If the fiscal year cap on the issuance of air export tax credits  
12 provided under section 135.1511, is met in a given fiscal year, then the  
13 amount of such tax credits which have been authorized, but remain  
14 unissued, shall be carried forward and issued in the subsequent fiscal  
15 year.

16 3. No tax credits provided under this section shall be authorized  
17 after August 28, 2019. Any tax credits authorized on or before August  
18 28, 2019, but not issued, may be issued until all such authorized tax

19 credits have been issued.

135.1511. The total aggregate amount for air export tax credits  
2 authorized under section 135.1507 shall not exceed sixty million  
3 dollars. The amount of the air export tax credits issued under section  
4 135.1507 shall not exceed:

5 (1) Three million six hundred thousand dollars for the fiscal year  
6 beginning on or after July 1, 2011, but ending on or before June 30,  
7 2012;

8 (2) Four million two hundred thousand dollars for the fiscal year  
9 beginning on or after July 1, 2012, but ending on or before June 30,  
10 2013;

11 (3) Five million four hundred thousand dollars for the fiscal year  
12 beginning on or after July 1, 2013, but ending on or before June 30,  
13 2014; and

14 (4) The greater of one million two hundred thousand dollars per  
15 weekly qualifying outbound flight or three million six hundred  
16 thousand dollars for all fiscal years beginning on or after July 1, 2014.  
17 The department shall annually determine the number of weekly  
18 qualifying outbound flights, which shall be the average number of such  
19 flights per week during the month of September of the previous year.

135.1513. 1. For all taxable years beginning on or after January  
2 1, 2013, qualifying applicants shall be entitled to the following benefits:

3 (1) Any tenant or entity operating within an eligible facility shall  
4 be exempt from income tax under chapter 143 and franchise tax under  
5 chapter 148 for each year during the eligibility period if such facility  
6 satisfies the requirements of sections 135.1500 to 135.1519;

7 (2) Any tenant or entity operating within an eligible facility shall  
8 be entitled to retain fifty percent of the state income tax withheld on  
9 behalf of employees by such tenant or entity pursuant to section  
10 143.221, for each year during the eligibility period if such facility  
11 satisfies the requirements of sections 135.1500 to 135.1519 without  
12 regard to whether a municipality is to receive the other fifty percent  
13 of such state income tax from the supplemental tax increment financing  
14 fund with respect to such property pursuant to section 99.845.

15 (3) The owner of any eligible facility with level one air cargo  
16 activity shall be entitled, during the eligibility period, to receive tax  
17 credits against the taxes imposed under chapters 143, 147, and 148,

18 except for sections 143.191 to 143.265, equal to five percent of the  
19 eligible costs for such facility for each year that such facility meets or  
20 exceeds level one air cargo activity volumes. The total amount of tax  
21 credits issued for any such facility shall not exceed twenty-five percent  
22 of such facility's eligible costs;

23 (4) The owner of any qualifying gateway facility with level two  
24 air cargo activity, a qualifying assembly and manufacturing facility, or  
25 a qualifying cold-chain facility shall be entitled, during the eligibility  
26 period, to receive tax credits against the taxes imposed under chapters  
27 143, 147, and 148, except for sections 143.191 to 143.265, equal to three  
28 percent of the eligible costs for such facility for each year that such  
29 facility satisfies the requirements of sections 135.1500 to 135.1519. The  
30 total amount of tax credits issued for such facility shall not exceed  
31 fifteen percent of such facility's eligible costs;

32 (5) The owner of an eligible facility shall be entitled to receive  
33 tax credits against the taxes imposed under chapters 143, 147, and 148,  
34 except for sections 143.191 to 143.265, from the department equal to  
35 seventy-five percent of the qualifying interest costs for a period of  
36 three years during the eligibility period if during such three-year  
37 period each type of facility satisfies the requirements for that type of  
38 facility specified in sections 135.1500 to 135.1519, provided that the  
39 interest rate for such loans shall not exceed seven percent per year.

40 2. If an eligible facility receives a certificate of occupancy prior  
41 to the sunset of the program, the owners and tenants of an eligible  
42 facility and the entities operating within the eligible facility may apply  
43 for benefits provided under this section for the term of the eligibility  
44 period notwithstanding the sunset of the program prior to the end  
45 of the term of the eligibility period for such facility.

135.1515. 1. In order for the owners or tenants of an eligible  
2 facility or the entities operating within the eligible facility to receive  
3 benefits provided under section 135.1513, the eligible facility shall  
4 satisfy all applicable requirements provided under sections 135.1500 to  
5 135.1519 by September thirtieth of the calendar year in which an  
6 application is filed under subsection 2 of this section.

7 2. Owners of, or tenants in, eligible facilities and entities  
8 operating within an eligible facility, seeking benefits provided under  
9 section 135.1513, shall file applications for such benefits, accompanied



10 by a certificate of compliance, on or before December thirty-first of  
11 each year. If such facility, relating to which such owners, tenants, and  
12 entities are applying for such tax credits and tax incentives, satisfies  
13 the applicable requirements provided under 135.1500 to 135.1519, the  
14 department shall grant such benefits on or before July fifteenth of the  
15 next calendar year following such time period.

16 3. If the annual cap for any of such tax credits, provided under  
17 section 135.1517, is met in a year, then the amount of such tax credits  
18 authorized, but unissued, shall be carried forward and issued in the  
19 subsequent year.

20 4. No qualifying applicant shall be entitled to receive benefits  
21 provided under section 135.1513 unless a certificate of occupancy has  
22 been issued for the eligible facility prior to August 28, 2020. A  
23 qualifying applicant for which a certificate of occupancy has been  
24 issued prior to August 28, 2019, may be granted benefits under this  
25 section.

135.1517. 1. The total aggregate amount for all of the tax credits  
2 authorized under subdivisions (3) and (4) of subsection 1 of section  
3 135.1513 shall not exceed three hundred million dollars. The annual  
4 amount of the tax credits issued under subdivisions (3) and (4) of  
5 subsection 1 of section 135.1513 shall not exceed:

6 (1) Six million dollars for the taxable year beginning on or after  
7 January 1, 2013, and ending on or before December 31, 2013;

8 (2) Twelve million dollars for the taxable year beginning on or  
9 after January 1, 2014, and ending on or before December 31, 2014;

10 (3) Fifteen million dollars for the taxable year beginning on or  
11 after January 1, 2015, and ending on or before December 31, 2015;

12 (4) Twenty million dollars for all taxable years beginning on or  
13 after January 1, 2016, but ending on or before December 31, 2019;

14 (5) Thirty million dollars for all taxable years beginning on or  
15 after January 1, 2020, but ending on or before December 31, 2025; and

16 (6) Seven million dollars for the taxable year beginning on or  
17 after January 1, 2026, and ending on or before December 31, 2026.

18 2. The total aggregate amount for the tax credits authorized  
19 under subdivision (5) of subsection 1 of section 135.1513 shall not  
20 exceed one hundred twenty million dollars. The annual amount of the  
21 tax credits issued under subdivision (5) of subsection 1 of section

22 135.1513 shall not exceed:

23 (1) Three million dollars for the taxable year beginning on or  
24 after January 1, 2013, and ending on or before December 31, 2013;

25 (2) Six million dollars for the taxable year beginning on or after  
26 January 1, 2014, and ending on or before December 31, 2014;

27 (3) Nine million dollars for the taxable year beginning on or after  
28 January 1, 2015, and ending on or before December 31, 2015;

29 (4) Ten million dollars for all taxable years beginning on or after  
30 January 1, 2016, but ending on or before December 31, 2025; and

31 (5) Two million dollars for the taxable year beginning on or after  
32 January 1, 2026, and ending on or before December 31, 2026.

135.1519. 1. If the amount of any tax credit authorized under  
2 sections 135.1500 to 135.1519 exceeds the total tax liability for the year  
3 in which the applicant is entitled to receive a tax credit, the amount  
4 that exceeds the state tax liability may be carried forward for credit  
5 against the taxes imposed under chapters 143, 147, and 148, except  
6 sections 143.191 to 143.265, for the succeeding six years, or until the full  
7 credit is used, whichever occurs first. Tax credits authorized under the  
8 provisions of sections 135.1500 to 135.1519 may be transferred, sold, or  
9 otherwise assigned. Tax credits granted to a partnership, a limited  
10 liability company taxed as a partnership, or multiple owners of  
11 property shall be passed through to the partners, members, or owners  
12 respectively pro rata or pursuant to an executed agreement among the  
13 partners, members, or owners documenting an alternate distribution  
14 method.

15 2. A tenant or an entity, which under section 135.1513 retains  
16 state income tax withheld on behalf of employees pursuant to section  
17 143.221, may retain such state income tax under section 135.113 once  
18 such facility satisfies the requirements of sections 135.1500 to 135.1519  
19 and for each year thereafter during the eligibility period if such facility  
20 satisfies such requirements. No benefits shall be provided under this  
21 program until such facility satisfies such requirements. The retention  
22 of such state income tax shall be subject to the annual verification of  
23 the actual payroll of such tenant or entity and the state income tax  
24 associated with the actual payroll. In the event such facility does not  
25 meet the requirements provided under section 135.1513, the department  
26 may recapture the amount of such state income tax that has been

27 retained by such tenant or entity for such year.

28           3. An employee of a tenant or an entity, which under section  
29 135.113 is retaining state income tax withheld on behalf of employees  
30 by such tenant or entity pursuant to section 143.221, shall receive full  
31 credit for the amount of tax withheld as provided in section 143.211.

          135.1521. 1. The department may promulgate rules to implement  
2 the provisions of sections 135.1500 to 135.1519. Any rule or portion of  
3 a rule, as that term is defined in section 536.010 that is created under  
4 the authority delegated in this section shall become effective only if it  
5 complies with and is subject to all of the provisions of chapter 536, and,  
6 if applicable, section 536.028. This section and chapter 536 are  
7 nonseverable and if any of the powers vested with the general assembly  
8 pursuant to chapter 536 to review, to delay the effective date, or to  
9 disapprove and to annul a rule are subsequently held unconstitutional,  
10 then the grant of rulemaking authority and any rule proposed or  
11 adopted after August 28, 2011, shall be invalid and void.

12           2. Under section 23.253 of the Missouri sunset act:

13           (1) The provisions of the new programs authorized under  
14 sections 135.1500 to 135.1519 shall automatically sunset six years after  
15 August 28, 2011, unless reauthorized by an act of the general assembly;

16           (2) If such program is reauthorized, the program authorized  
17 under this section shall automatically sunset six years after the  
18 effective date of the reauthorization of this section; and

19           (3) This section shall terminate on September first of the  
20 calendar year immediately following the calendar year in which the  
21 programs authorized under sections 135.1500 to 135.1519 sunset.

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