

FIRST REGULAR SESSION

# SENATE BILL NO. 475

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MATHEWSON.

Read 1st time February 22, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S1948.011

## AN ACT

To repeal section 135.235, RSMo 1994, and sections 135.225 and 135.230, RSMo Supp. 1998, relating to tax credits, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Section 135.235, RSMo 1994, and sections 135.225 and 135.230, RSMo Supp. 1998, are repealed and three new sections enacted in lieu thereof, to be known as sections 135.225, 135.230 and 135.235, to read as follows:

135.225. 1. The credits otherwise provided by sections 135.100 to 135.150 shall, **upon proper application** be [available] **granted** to any taxpayer 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, 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;

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

(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 under the provisions of chapter 148, RSMo, the credits allowed in subdivisions (1), (2), (3) and (4) of this subsection and the credit allowed in 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) of section 135.100 and subsections 2 and 3 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 this section and section 135.235, and the exemption allowed in 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) of section 135.100;

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

(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 section 135.235, and the income exemption allowed in section 135.220, shall be allowed 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 taxpayer who establishes a new business facility in an enterprise zone, may elect to forfeit the tax credits otherwise allowed in section 135.235 and this section and the exemptions otherwise allowed in sections 135.215 and 135.220 and the refund otherwise allowed in section 135.245, and in lieu thereof, claim the tax credits allowed in section 135.110, under 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 may be waived by the taxpayer for any given year in which the terms and conditions of sections 135.100 to 135.160 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 the incentives set forth in this subsection, and which began operation after January 1, 1990, to the extent such incentives do not exceed the ten-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.**

135.230. 1. The exemption or credit established and allowed by section 135.220 and the credits allowed and established by subdivisions (1), (2), (3) and (4) of subsection 1 of section 135.225 shall be granted with respect to any new business facility located within an enterprise zone for a period [not to exceed] **of** ten years following the date upon which the new business facility commences operation within the enterprise zone, [provided] **and such exemption shall be calculated, for the succeeding nine years, 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 sections 135.225 and 135.235 and the exemption allowed in 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 under 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 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 paragraphs (a) and (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) 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 in paragraph (a) of subdivision (6) of section 135.200 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 and must have been employed at the new business facility for at least one full calendar month, 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. In addition, the taxpayer shall certify to the director that the taxpayer fulfills the requirements of this section each tax period such benefits are being claimed. 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 sections 135.215 and 135.220 and the credits allowed in sections 135.225 and 135.235 and the refund established and authorized in section 135.245 shall not be allowed 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 the exemptions allowed in sections 135.215 and 135.220, and the credits allowed in sections 135.225 and 135.235 and the refund established and authorized in 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 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 sections 135.225 and 135.235 and the exemption allowed in 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 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 sections 135.225 and 135.235 and the exemption allowed in section 135.220 for the full ten-year period because of the fifteen-year limitation as prescribed in subsection 1 of section 135.230, shall be [eligible to earn] **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 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, under 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 new business facility shall [be eligible for] **receive** 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 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.

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