

FIRST REGULAR SESSION
[PERFECTED]
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 257
92ND GENERAL ASSEMBLY

Taken up for Perfection March 12, 2003.

House Substitute for House Committee Substitute for House Bill No. 257 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

0602L.06P

AN ACT

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

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

Section A. Sections 147.120, 148.330, 348.430, and 348.432, RSMo, are repealed and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

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

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

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.

12 RSMo.

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

21 4. If any corporation fails to pay any tax due within the time prescribed pursuant to
22 sections 147.010 to 147.120 or if any corporation makes errors and omissions in reports or
23 payments, and the director of revenue determines that such action is the result of mistake or is
24 due to circumstances beyond reasonable control and that such delinquency or inaccuracy was
25 unavoidable or devoid of any intent to evade the tax, the director of revenue may, at the director's
26 discretion, waive any penalty that would otherwise be imposed.

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

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

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

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

45 9. Any person who willfully makes a false corporation franchise tax report, or who
46 willfully makes a false statement in any report under oath or otherwise filed with or transmitted
47 to the director of revenue relating to the amount of any franchise tax due pursuant to sections

48 147.010 to 147.120 shall, in addition to other penalties provided by law and upon conviction
49 thereof, be fined not more than ten thousand dollars, or be imprisoned in the county jail for not
50 more than one year or by not less than two nor more than five years in the state penitentiary or
51 by both fine and imprisonment together with the cost of prosecution.

52 10. The director of revenue shall administer and enforce the tax imposed by sections
53 147.010 to 147.120, and the director is authorized to make such rules and regulations and to
54 require such facts and information to be reported as the director may deem necessary to enforce
55 the provisions of sections 147.010 to 147.120.

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

59 12. Except as otherwise specifically provided in sections 147.010 to 147.120 the
60 franchise tax shall be administered as prescribed in the following provisions of chapter 143,
61 RSMo: subsections 1 and 4 of section 143.551, RSMo, sections 143.561, 143.571, 143.621,
62 143.631, 143.641, 143.651, 143.661, 143.681, 143.691, 143.721 and 143.731, RSMo, subsection
63 1 of section 143.741, RSMo, subsections 1, 2 and 5 of section 143.751, RSMo, sections 143.771
64 and 143.791, RSMo, **subsections 1 and 2 of section 143.801, RSMo**, subsections 1, 2 and 4 of
65 section 143.811, RSMo, sections 143.831, 143.841 and 143.851, RSMo, subsections 2 and 3 of
66 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,
2 make a return, verified by the affidavit of its president and secretary, or other authorized officers,
3 to the director of the department of insurance stating the amount of all premiums received on
4 account of policies issued in this state by the company, whether in cash or in notes, during the
5 year ending on the thirty-first day of December, next preceding. Upon receipt of such returns
6 the director of the department of insurance shall verify the same and certify the amount of tax
7 due from the various companies on the basis and at the rates provided in section 148.320, and
8 shall certify the same to the director of revenue together with the amount of the quarterly
9 installments to be made as provided in subsection 2 of this section, on or before the thirtieth day
10 of April of each year.

11 2. Beginning January 1, 1983, the amount of the tax due for that calendar year and each
12 succeeding calendar year thereafter shall be paid in four approximately equal estimated quarterly
13 installments, and a fifth reconciling installment. The first four installments shall be based upon
14 the tax for the immediately preceding taxable year ending on the thirty-first day of December,
15 next preceding. The quarterly installments shall be made on the first day of March, the first day
16 of June, the first day of September and the first day of December. Immediately after receiving
17 certification from the director of the department of insurance of the amount of tax due from the

18 various companies the director of revenue shall notify and assess each company the amount of
19 taxes on its premiums for the calendar year ending on the thirty-first day of December, next
20 preceding. The director of revenue shall also notify and assess each company the amount of the
21 estimated quarterly installments to be made for the calendar year. If the amount of the actual tax
22 due for any year exceeds the total of the installments made for such year, the balance of the tax
23 due shall be paid on the first day of June of the year following, together with the regular quarterly
24 payment due at that time. If the total amount of the tax actually due is less than the total amount
25 of the installments actually paid, the amount by which the amount paid exceeds the amount due
26 shall be credited against the tax for the following year and deducted from the quarterly
27 installment otherwise due on the first day of June. If the March first quarterly installment made
28 by a company is less than the amount assessed by the director of revenue, the difference will be
29 due on June first, but no interest will accrue to the state on the difference unless the amount paid
30 by the company is less than eighty percent of one-fourth of the total amount of tax assessed by
31 the director of revenue for the immediately preceding taxable year. The state treasurer, upon
32 receiving the moneys paid as a tax upon such premiums to the director of revenue, shall place
33 the moneys to the credit of a fund to be known as "The County Stock Insurance Fund", which
34 is hereby created and established.

35 3. If the estimated quarterly tax installments are not so paid, the director of revenue shall
36 certify such fact to the director of the division of insurance who shall thereafter suspend such
37 delinquent company or companies from the further transaction of business in this state until such
38 taxes shall be paid and such companies shall be subject to the provisions of sections 148.410 to
39 148.461.

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

54 St. Louis.

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

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

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

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

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

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

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

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

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

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

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

28 3. For **all tax [year] years beginning on or after January 1, 1999**, a contributor who
29 contributes funds to the authority may receive a credit against the tax **or estimated quarterly**
30 **tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections
31 143.191 to 143.265, RSMo, chapter 148, RSMo, chapter 147, RSMo, in an amount of up to one
32 hundred percent of such contribution. **Tax credits claimed in a taxable year may be done so**
33 **on a quarterly basis and applied to the estimated quarterly tax pursuant to this subsection.**
34 The awarding of such credit shall be at the approval of the authority, based on the least amount
35 of credits necessary to provide incentive for the contributions. A contributor that receives tax

36 credits for a contribution to the authority shall receive no other consideration or compensation
37 for such contribution, other than a federal tax deduction, if applicable, and goodwill. A
38 contributor that receives tax credits for a contribution provided in this section may not be a
39 member, owner, investor or lender of an eligible new generation cooperative or eligible new
40 generation processing entity that receives financial assistance from the authority either at the time
41 the contribution is made or for a period of two years thereafter.

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

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

64 6. In any given year, at least ten percent of the funds granted to rural agricultural business
65 concepts shall be awarded to grant requests of twenty-five thousand dollars or less. No single
66 rural agricultural business concept shall receive more than two hundred thousand dollars in grant
67 awards from the authority. Agricultural businesses owned by minority members or women shall
68 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
2 Cooperative Incentive Tax Credit".

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

- 4 (1) "Authority", the agriculture and small business development authority as provided
5 in this chapter;
- 6 (2) "Development facility", a facility producing either a good derived from an
7 agricultural commodity or using a process to produce a good derived from an agricultural
8 product;
- 9 (3) "Eligible new generation cooperative", a nonprofit cooperative association formed
10 pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose
11 of operating a development facility or a renewable fuel production facility and approved by the
12 authority;
- 13 (4) "Eligible new generation processing entity", a partnership, corporation, cooperative,
14 or limited liability company organized or incorporated pursuant to the laws of this state
15 consisting of not less than twelve members, approved by the authority, for the purpose of owning
16 or operating within this state a development facility or a renewable fuel production facility in
17 which producer members:
- 18 (a) Hold a majority of the governance or voting rights of the entity and any governing
19 committee;
- 20 (b) Control the hiring and firing of management; and
- 21 (c) Deliver agricultural commodities or products to the entity for processing, unless
22 processing is required by multiple entities;
- 23 (5) "Employee-qualified capital project", an eligible new generation cooperative with
24 capital costs greater than fifteen million dollars which will employ at least [one hundred] **sixty**
25 employees;
- 26 (6) "Large capital project", an eligible new generation cooperative with capital costs
27 greater than one million dollars;
- 28 (7) "Producer member", a person, partnership, corporation, trust or limited liability
29 company whose main purpose is agricultural production that invests cash funds to an eligible
30 new generation cooperative or eligible new generation processing entity;
- 31 (8) "Renewable fuel production facility", a facility producing an energy source which is
32 derived from a renewable, domestically grown, organic compound capable of powering
33 machinery, including an engine or power plant, and any by-product derived from such energy
34 source;
- 35 (9) "Small capital project", an eligible new generation cooperative with capital costs of
36 no more than one million dollars.
- 37 3. [Beginning tax year 1999, and ending December 31, 2002, any producer member who
38 invests cash funds in an eligible new generation cooperative or eligible new generation
39 processing entity may receive a credit against the tax otherwise due pursuant to chapter 143,

40 RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, or chapter
41 148, RSMo, chapter 147, RSMo, in an amount equal to the lesser of fifty percent of such
42 producer member's investment or fifteen thousand dollars.

43 4.] For all tax years beginning on or after January 1, [2003] **1999**, any producer member
44 who invests cash funds in an eligible new generation cooperative **or eligible new generation**
45 **processing entity** may receive a credit against the tax **or estimated quarterly tax** otherwise due
46 pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to
47 143.265, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in an amount equal to the lesser of
48 fifty percent of such producer member's investment or fifteen thousand dollars. **In any fiscal**
49 **year in which the payments or grants authorized by Section 142.028, RSMo, are not made**
50 **or fully funded, any new generation cooperative incentive tax credits issued after the end**
51 **of such fiscal year to any producer member investing in a renewable fuel production**
52 **facility shall be increased in a percentage equal to the Consumer Price Index as reported**
53 **by the United States Department of Labor or three percent, whichever is greater. Tax**
54 **credits claimed in a taxable year may be done so on a quarterly basis and applied to the**
55 **estimated quarterly tax pursuant to this subsection.**

56 [5.] **4.** A producer member shall submit to the authority an application for the tax credit
57 authorized by this section on a form provided by the authority. If the producer member meets
58 all criteria prescribed by this section and is approved by the authority, the authority shall issue
59 a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section
60 [shall initially] **may** be claimed in the taxable year in which the producer member contributes
61 capital to an eligible new generation cooperative or eligible new generation processing entity.
62 [Any amount of credit that exceeds the tax due for a producer member's taxable year] **Tax**
63 **credits allowed pursuant to this section** may be carried back to any of the producer member's
64 three prior taxable years and carried forward to any of the producer member's five subsequent
65 taxable years. Tax credits issued pursuant to this section may be assigned, transferred, sold or
66 otherwise conveyed and the new owner of the tax credit shall have the same rights in the credit
67 as the producer member. Whenever a certificate of tax credit is assigned, transferred, sold or
68 otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the
69 name and address of the new owner of the tax credit or the value of the credit.

70 [6.] **5.** Ten percent of the tax credits authorized pursuant to this section initially shall be
71 offered in any fiscal year to small capital projects. If any portion of the ten percent of tax credits
72 offered to small capital costs projects is unused in any calendar year, then the unused portion of
73 tax credits may be offered to employee-qualified capital projects and large capital projects. If
74 the authority receives more applications for tax credits for small capital projects than tax credits
75 are authorized therefor, then the authority, by rule, shall determine the method of distribution of

76 tax credits authorized for small capital projects.

77 [7.] 6. Ninety percent of the tax credits authorized pursuant to this section initially shall
78 be offered in any fiscal year to employee-qualified capital projects and large capital projects. If
79 any portion of the ninety percent of tax credits offered to employee-qualified capital projects and
80 large capital costs projects is unused in any fiscal year, then the unused portion of tax credits may
81 be offered to small capital projects. The maximum tax credit allowed per employee-qualified
82 capital project is three million dollars and the maximum tax credit allowed per large capital
83 project is one million five hundred thousand dollars. If the authority approves the maximum tax
84 credit allowed for any employee-qualified capital project or any large capital project, then the
85 authority, by rule, shall determine the method of distribution of such maximum tax credit. In
86 addition, if the authority receives more tax credit applications for employee-qualified capital
87 projects and large capital projects than the amount of tax credits authorized therefor, then the
88 authority, by rule, shall determine the method of distribution of tax credits authorized for
89 employee-qualified capital projects and large capital projects.