

FIRST REGULAR SESSION

HOUSE BILL NO. 1199

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GRISAMORE (Sponsor), YATES, KRAUS, DUSENBERG,
PRATT, LeVOTA, WOOD AND WILSON (119) (Co-sponsors).

1385L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 144 and 620, RSMo, by adding thereto eleven new sections relating to tax incentives for job growth.

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

Section A. Chapters 144 and 620, RSMo, are amended by adding thereto eleven new sections, to be known as sections 144.055, 620.2050, 620.2053, 620.2056, 620.2059, 620.2062, 620.2065, 620.2068, 620.2071, 620.2074, and 620.2077, to read as follows:

144.055. Beginning January 1, 2010, in addition to the exemptions granted under this chapter, there shall also be specifically exempted from state and local sales and use taxes defined, levied, or calculated under section 32.085, RSMo, sections 144.010 to 144.525, sections 144.600 to 144.761, or section 238.235, RSMo, all machinery, equipment, or computers used by data center and server farm facilities that are more than fifty thousand square feet of space.

620.2050. 1. Sections 620.2050 to 620.2077 shall be known and may be cited as the "Missouri Advantage Act".

2. As used in sections 620.2050 to 620.2077, the following words and phrases shall mean:

(1) "Base year", the year immediately preceding the year of application;

(2) "Base-year employee", any individual who was employed in Missouri and subject to the Missouri income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project;

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

9 (3) "Compensation", the wages and other payments subject to withholding for
10 federal income tax purposes;

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

12 (5) "Entitlement period", for a tier one or tier three project, the year during which
13 the required increases in employment and investment were met or exceeded and each year
14 thereafter until the end of the ninth year following the year of application or the sixth year
15 after the year the required increases were met or exceeded, whichever is sooner.
16 Entitlement period, for a tier two, tier four, or tier five project, means the year during
17 which the required increases in employment and investment were met or exceeded and
18 each year thereafter until the end of the sixth year after the year the required increases
19 were met or exceeded;

20 (6) "Equivalent employees", the number of employees computed by dividing the
21 total hours paid in a year by the product of forty times the number of weeks in a year;

22 (7) "Investment", the value of qualified property incorporated into or used at the
23 project. For qualified property owned by the taxpayer, the value shall be the original cost
24 of the property. For qualified property rented by the taxpayer, the average net annual rent
25 shall be multiplied by the number of years of the lease for which the taxpayer was
26 originally bound, not to exceed ten years. The rental of land included in and incidental to
27 the leasing of a building shall not be excluded from the computation;

28 (8) "Missouri average weekly wage", for any calendar year, the most recent
29 average weekly wage paid by all employers in all counties in Missouri as reported by the
30 department of labor and industrial relations by October first of the year prior to
31 application;

32 (9) "Motor vehicle", any self-propelled vehicle not operated exclusively upon
33 tracks, except farm tractors;

34 (10) "Number of new employees", for a tier one, tier two, tier three, or tier four
35 project, the number of equivalent employees that are employed at the project during a year
36 that are in excess of the number of equivalent employees during the base year, not to
37 exceed the number of equivalent employees employed at the project during a year who are
38 not base-year employees and who are paid wages at a rate equal to at least sixty percent
39 of the Missouri average weekly wage for the year of application;

40 (11) "Qualified business": (a) Includes the following:

41 a. For a tier two, tier three, tier four, or tier five project, any business engaged in:

42 (i) The conducting of research, development, or testing for scientific, agricultural,
43 animal husbandry, food product, or industrial purposes;

- 44 (ii) The performance of data processing, telecommunication, insurance, or financial
45 services;
- 46 (iii) The assembly, fabrication, manufacture, or processing of tangible personal
47 property;
- 48 (iv) The administrative management of the taxpayer's activities, including
49 headquarter facilities relating to such activities or the administrative management of any
50 of the activities of any business entity or entities in which the taxpayer or a group of its
51 shareholders holds any direct or indirect ownership interest of at least ten percent,
52 including headquarter facilities relating to such activities;
- 53 (v) The storage, warehousing, distribution, transportation, or sale of tangible
54 personal property;
- 55 (vi) The sale of software development services, computer systems design, product
56 testing services, or guidance or surveillance systems design services or the licensing of
57 technology if the taxpayer derives at least seventy-five percent of the sales or revenue
58 attributable to such activities relating to the project from sales or licensing either to
59 customers who are not related persons and located outside the state or to the United States
60 government;
- 61 (vii) The research, development, and maintenance of an Internet web portal. For
62 purposes of this item, Internet web portal means an Internet web site that allows users to
63 access, search, and navigate the Internet; or
- 64 (viii) Any combination of the activities listed in this subparagraph;
- 65 b. For a tier one project, any business engaged in:
- 66 (i) The conducting of research, development, or testing for scientific, agricultural,
67 animal husbandry, food product, or industrial purposes;
- 68 (ii) The assembly, fabrication, manufacture, or processing of tangible personal
69 property;
- 70 (iii) The sale of software development services, computer systems design, product
71 testing services, or guidance or surveillance systems design services or the licensing of
72 technology if the taxpayer derives at least seventy-five percent of the sales or revenue
73 attributable to such activities relating to the project from sales or licensing either to
74 customers who are not related persons and are located outside the state or to the United
75 States government; or
- 76 (iv) Any combination of activities listed in this subparagraph;
- 77 (b) Qualified business does not include any business activity in which eighty
78 percent or more of the total sales are sales to the ultimate consumer of food prepared for
79 immediate consumption or are sales to the ultimate consumer of tangible personal property

80 which is not assembled, fabricated, manufactured, or processed by the taxpayer or used
81 by the purchaser in any of the activities listed in subparagraphs a. and b. of this
82 subdivision;

83 (12) "Qualified employee leasing company", a company which places all employees
84 of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing
85 basis for a fee and, by written agreement between the employee leasing company and a
86 client-lessee, grants to the client-lessee input into the hiring and firing of the employees
87 leased to the client-lessee;

88 (13) "Qualified property", any tangible property of a type subject to depreciation,
89 amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or
90 the components of such property, that will be located and used at the project. Qualified
91 property does not include aircraft, barges, motor vehicles, railroad rolling stock, or
92 watercraft; or property that is rented by the taxpayer qualifying under the Missouri
93 advantage act to another person;

94 (14) "Related persons", any corporations, partnerships, limited liability companies,
95 or joint ventures which are or would otherwise be members of the same unitary group, if
96 incorporated, or any persons who are considered to be related persons under Sections
97 267(b) and 267(c) or Section 707(b) of the Internal Revenue Code of 1986, as amended;

98 (15) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143,
99 RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo;

100 (16) "Wages", compensation;

101 (17) "Year", the taxable year of the taxpayer;

102 (18) "Year of application", the year that a completed application is filed under the
103 Missouri advantage act.

620.2053. An employee of a qualified employee leasing company shall be considered
2 to be an employee of the client-lessee for purposes of the Missouri advantage act if the
3 employee performs services for the client-lessee. A qualified employee leasing company
4 shall provide the department access to the records of employees leased to the client-lessee.

620.2056. 1. Applicants may qualify for benefits under the Missouri advantage act
2 in one of five tiers:

3 (1) Tier one, investment in qualified property of at least one million dollars and the
4 hiring of at least ten new employees;

5 (2) Tier two, investment in qualified property of at least three million dollars and
6 the hiring of at least thirty new employees;

7 (3) Tier three, the hiring of at least thirty new employees;

8 (4) Tier four, investment in qualified property of at least ten million dollars and the
9 hiring of at least one hundred new employees; or

10 (5) Tier five, investment in qualified property of at least thirty million dollars.

11

12 Failure to maintain an average number of equivalent employees greater than or equal to
13 the number of equivalent employees in the base year shall result in a partial recapture of
14 benefits;

15 2. Any taxpayer who qualifies for a tier one, tier two, tier three, or tier four project
16 shall be entitled to a credit equal to three percent times the average wage of new employees
17 times the number of new employees if the average wage of the new employees equals at
18 least sixty percent of the Missouri average annual wage for the year of application. The
19 credit shall equal four percent times the average wage of new employees times the number
20 of new employees if the average wage of the new employees equals at least seventy-five
21 percent of the Missouri average annual wage for the year of application. The credit shall
22 equal five percent times the average wage of new employees times the number of new
23 employees if the average wage of the new employees equals at least one hundred percent
24 of the Missouri average annual wage for the year of application. The credit shall equal six
25 percent times the average wage of new employees times the number of new employees if
26 the average wage of the new employees equals at least one hundred twenty-five percent of
27 the Missouri average annual wage for the year of application. For computation of such
28 credit:

29 (1) Average annual wage means the total compensation paid to employees during
30 the year at the project who are not base-year employees and who are paid wages equal to
31 at least sixty percent of the Missouri average weekly wage for the year of application,
32 excluding any compensation in excess of one million dollars paid to any one employee
33 during the year, divided by the number of equivalent employees making up such total
34 compensation;

35 (2) Average wage of new employees means the average annual wage paid to
36 employees during the year at the project who are not base-year employees and who are
37 paid wages equal to at least sixty percent of the Missouri average weekly wage for the year
38 of application, excluding any compensation in excess of one million dollars paid to any one
39 employee during the year; and

40 (3) Missouri average annual wage means the Missouri average weekly wage times
41 fifty-two.

42 3. Any taxpayer who has met the required levels of employment and investment for
43 a tier two or tier four project shall receive a credit equal to ten percent of the investment

44 made in qualified property at the project. Any taxpayer who has met the required levels
45 of investment and employment for a tier one project shall receive a credit equal to three
46 percent of the investment made in qualified property at the project.

47 4. The credits prescribed in subsections 2 and 3 of this section shall be allowable
48 for compensation paid and investments made during each year of the entitlement period
49 that the taxpayer is at or above the required levels of employment and investment.

50 5. The credit prescribed in subsection 3 of this section shall also be allowable
51 during the first year of the entitlement period for investment in qualified property at the
52 project after the date of the application and before the required levels of employment and
53 investment were met.

54 4. A taxpayer who has met the required levels of employment and investment for
55 a tier four project shall receive the incentive provided in this subsection. A taxpayer who
56 has a project for an Internet web portal and who has met the required level of investment
57 for a tier five project shall receive the incentive provided in this subsection for computer
58 systems, made up of equipment that is interconnected in order to enable the acquisition,
59 storage, manipulation, management, movement, control, display, transmission, or reception
60 of data involving computer software and hardware, used for business information
61 processing which require environmental controls of temperature and power and which are
62 capable of simultaneously supporting more than one transaction and more than one user.
63 A computer system includes peripheral components which require environmental controls
64 of temperature and power connected to such computer systems. Peripheral components
65 shall be limited to additional memory units, tape drives, disk drives, power supplies,
66 cooling units, data switches, and communication controllers. Such investment and hiring
67 of new employees shall be considered a required level of investment and employment for
68 this subsection and for the recapture of benefits under this subsection only.

620.2059. 1. In order to utilize the incentives set forth in the Missouri advantage
2 act, the taxpayer shall file an application, on a form developed by the department,
3 requesting an agreement with the department.

4 2. The application shall contain:

5 (1) A written statement describing the plan of employment and investment for a
6 qualified business in this state;

7 (2) Sufficient documents, plans, and specifications as required by the department
8 to support the plan and to define a project;

9 (3) If more than one location within this state is involved, sufficient documentation
10 to show that the employment and investment at different locations are interdependent
11 parts of the plan. A headquarters shall be presumed to be interdependent with each other

12 location directly controlled by such headquarters. A showing that the parts of the plan
13 would be considered parts of a unitary business for corporate income tax purposes shall
14 not be sufficient to show interdependence for the purposes of this subdivision;

15 (4) A nonrefundable application fee of one thousand dollars for a tier one project,
16 two thousand five hundred dollars for a tier two, tier three, or tier five project, and five
17 thousand dollars for a tier four project. The fee shall be credited to the Missouri incentives
18 fund created in section 620.2068; and

19 (5) A timetable showing the expected sales tax refunds and what year they are
20 expected to be claimed. The timetable shall include both direct refunds due to investment
21 and credits taken as sales tax refunds as accurately as possible.

22

23 The application and all supporting information shall be confidential except for the name
24 of the taxpayer, the location of the project, the amounts of increased employment and
25 investment, and the information required to be reported by section 620.2071.

26 3. An application shall be complete to establish the date of the application. An
27 application shall be considered complete once it contains the items listed in subsection 2 of
28 this section, regardless of the department's additional needs pertaining to information or
29 clarification in order to approve or disapprove the application.

30 4. Once satisfied that the plan in the application defines a project consistent with
31 the purposes stated in the Missouri advantage act in one or more qualified business
32 activities within this state, that the taxpayer and the plan will qualify for benefits under
33 sections 620.2050 to 620.2077, and that the required levels of employment and investment
34 for the project will be met prior to the end of the fourth year after the year in which the
35 application was submitted for a tier one or tier three project or the end of the sixth year
36 after the year in which the application was submitted for a tier two, tier four, or tier five
37 project, the department shall approve the application.

38 5. After approval, the taxpayer and the department shall enter into a written
39 agreement. The taxpayer shall agree to complete the project, and the department, on
40 behalf of the state of Missouri, shall designate the approved plan of the taxpayer as a
41 project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to
42 use the incentives contained in the Missouri advantage act. The application, and all
43 supporting documentation, to the extent approved, shall be considered a part of the
44 agreement. The agreement shall state:

45 (1) The levels of employment and investment required by sections 620.2050 to
46 620.2077 for the project;

47 (2) The time period under sections 620.2050 to 620.2077 in which the required
48 levels must be met;

49 (3) The documentation the taxpayer will need to supply when claiming an incentive
50 under sections 620.2050 to 620.2077;

51 (4) The date the application was filed; and

52 (5) A requirement that the company update the department annually on any
53 changes in plans or circumstances which affect the timetable of sales tax refunds as set out
54 in the application. If the company fails to comply with this requirement, the department
55 may defer any pending sales tax refunds until the company does comply.

56 6. Any taxpayer receiving an incentive under sections 620.2050 to 620.2077 shall
57 not be allowed to simultaneously receive benefits under the Missouri quality jobs act under
58 sections 620.1875 to 620.1890 for any project.

59 7. A taxpayer and the department may enter into agreements for more than one
60 project and may include more than one project in a single agreement. The projects may
61 be either sequential or concurrent. A project may involve the same location as another
62 project. No new employment or new investment shall be included in more than one project
63 for either the meeting of the employment or investment requirements or the creation of
64 credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall
65 specify in which project the employment or investment belongs.

 620.2062. 1. (1) The credits prescribed in section 620.2056 shall be established by
2 filing the forms required by the department with the income tax return for the year. The
3 credits may be used and shall be applied in the order in which they were first allowed. The
4 credits may be used after any other nonrefundable credits to reduce the taxpayer's income
5 tax liability imposed by chapter 143, RSMo. Any decision on how part of the credit is
6 applied shall not limit how the remaining credit could be applied under this section.

7 (2) The taxpayer may use the credit provided in subsection 2 of section 620.2056
8 to reduce the taxpayer's income tax withholding to the extent such liability is attributable
9 to the number of new employees at the project. To the extent of the credit used, such
10 withholding shall not constitute public funds or state tax revenue and shall not constitute
11 a trust fund or be owned by the state. The use by the taxpayer of the credit shall not
12 change the amount that otherwise would be reported by the taxpayer to the employee as
13 income tax withheld and shall not reduce the amount that otherwise would be allowed by
14 the state as a refundable credit on an employee's income tax return as income tax withheld.
15 The amount of credits used against income tax withholding shall not exceed the
16 withholding attributable to new employees at the project. If the amount of credit used by
17 the taxpayer against income tax withholding exceeds this amount, the excess withholding

18 shall be returned to the department of revenue, such excess amount returned shall be
19 considered unused, and the amount of unused credits may be used as otherwise permitted
20 in this section.

21 (3) Credits may be used to obtain a refund of sales and use taxes which are not
22 otherwise refundable that are paid on purchases, including rentals, for use at the project
23 for a tier one, tier two, tier three, or tier four project.

24 (4) Credits may be carried over until fully utilized, except that such credits may not
25 be carried over more than nine years after the year of application for a tier one or tier
26 three project or fourteen years after the year of application for a tier two or tier four
27 project.

28 2. (1) No refund claims shall be filed until after the required levels of employment
29 and investment have been met.

30 (2) Refund claims shall be filed no more than once each quarter for refunds under
31 the Missouri advantage act, except that any claim for a refund in excess of twenty-five
32 thousand dollars may be filed at any time.

33 (3) Any refund claim for sales and use taxes on materials incorporated into real
34 estate as a part of the project shall be filed by and the refund paid to the owner of the
35 improvement to real estate. A refund claim for such materials purchased by a purchasing
36 agent shall include a copy of the purchasing agent appointment, the contract price, and a
37 certification by the contractor or repairperson of the percentage of the materials
38 incorporated into the project on which sales and use taxes were paid to Missouri after
39 appointment as purchasing agent.

40 (4) All refund claims shall be filed, processed, and allowed as any other claim,
41 except that the amounts allowed to be refunded under the Missouri advantage act shall be
42 deemed to be overpayments and shall be refunded notwithstanding any limitation to the
43 contrary. The refund may be allowed if the claim is filed within three calendar years from
44 the end of the year the required levels of employment and investment are met or within the
45 period.

46 (5) If a claim for a refund of sales and use taxes of more than twenty-five thousand
47 dollars is filed by June fifteenth of a given year, the refund shall be made on or after
48 November fifteenth of the same year. If such a claim is filed on or after June sixteenth of
49 a given year, the refund shall not be made until on or after November fifteenth of the
50 following year. The department shall notify the affected city, village, county, or municipal
51 county of the amount of refund claims of sales and use taxes that are in excess of
52 twenty-five thousand dollars on or before July first of the year before the claims will be
53 paid under this section.

54 (6) Interest shall not be allowed on any taxes refunded under the Missouri
55 advantage act.

56 3. The appointment of purchasing agents shall be recognized for the purpose of
57 changing the status of a contractor or repairperson as the ultimate consumer of tangible
58 personal property purchased after the date of the appointment which is physically
59 incorporated into the project and becomes the property of the owner of the improvement
60 to real estate. The purchasing agent shall be jointly liable for the payment of the sales and
61 use tax on the purchases with the owner of the improvement to real estate.

62 4. A determination that a taxpayer is not engaged in a qualified business or has
63 failed to meet or maintain the required levels of employment or investment for incentives,
64 exemptions, or recapture may be protested within sixty days after the mailing of the
65 written notice of the proposed determination. If the notice of proposed determination is
66 not protested within the sixty-day period, the proposed determination is a final
67 determination. If the notice is protested, the department shall issue a written order
68 resolving such protests. The written order of the department resolving a protest may be
69 appealed to the circuit court of Cole County within thirty days after the issuance of the
70 order.

620.2065. 1. If the taxpayer fails either to meet the required levels of employment
2 or investment for the applicable project by the end of the fourth year after the end of the
3 year the application was submitted for a tier one or tier three or by the end of the sixth
4 year after the end of the year the application was submitted for a tier two, tier four, or tier
5 five project or to utilize such project in a qualified business at employment and investment
6 levels at or above those required in the agreement for the entire entitlement period, all or
7 a portion of the incentives set forth in the Missouri advantage act shall be recaptured or
8 disallowed.

9 2. If the taxpayer receives any refunds or reduction in tax to which the taxpayer
10 was not entitled or which were in excess of the amount to which the taxpayer was entitled,
11 the refund or reduction in tax shall be recaptured separate from any other recapture
12 otherwise required by this section. Any amount recaptured under this subsection shall be
13 excluded from the amounts subject to recapture under other subsections of this section.

14 3. Any refunds or reduction in tax due, to the extent required to be recaptured,
15 shall be deemed to be an underpayment of the tax and shall be immediately due and
16 payable. When tax benefits were received in more than one year, the tax benefits received
17 in the most recent year shall be recovered first and then the benefits received in earlier
18 years up to the extent of the required recapture.

19 **4. Notwithstanding any other limitations contained in the laws of this state,**
20 **collection of any taxes deemed to be underpayments by this section shall be allowed for a**
21 **period of three years after the end of the entitlement period.**

22 **5. Any amounts due under this section shall be recaptured notwithstanding other**
23 **allowable credits and shall not be subsequently refunded under any provision of the**
24 **Missouri advantage act unless the recapture was in error.**

25 **6. The recapture required by this section shall not occur if the failure to maintain**
26 **the required levels of employment or investment was caused by an act of God or national**
27 **emergency.**

620.2068. There is hereby created in the state treasury the "Missouri Incentives
2 **Fund", which shall consist of money collected under section 620.2059. The state treasurer**
3 **shall be custodian of the fund and shall approve disbursements from the fund in**
4 **accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the**
5 **fund shall be used solely for the administration of sections 620.2050 to 620.2077.**
6 **Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys**
7 **remaining in the fund at the end of the biennium shall not revert to the credit of the**
8 **general revenue fund. The state treasurer shall invest moneys in the fund in the same**
9 **manner as other funds are invested. Any interest and moneys earned on such investments**
10 **shall be credited to the fund.**

620.2071. 1. The department shall submit an annual report to the general assembly
2 **no later than July fifteenth of each year.**

3 **2. The report shall list:**

- 4 **(1) The agreements which have been signed during the previous calendar year;**
5 **(2) The agreements which are still in effect;**
6 **(3) The identity of each taxpayer who is party to an agreement; and**
7 **(4) The location of each project.**

8 **3. The report shall also state, for taxpayers who are parties to agreements, by**
9 **industry group:**

- 10 **(1) The specific incentive options applied for under the Missouri advantage act;**
11 **(2) The refunds allowed on the investment;**
12 **(3) The credits earned;**
13 **(4) The credits used to reduce the corporate income tax and the credits used to**
14 **reduce the individual income tax;**
15 **(5) The credits used to obtain sales and use tax refunds;**
16 **(6) The credits used against withholding liability;**
17 **(7) The number of jobs created under sections 620.2050 to 620.2077;**

18 (8) The total number of employees employed in the state on the last day of the
19 calendar quarter prior to the application date and the total number of employees employed
20 in the state on subsequent reporting dates;

21 (9) The expansion of capital investment;

22 (10) The estimated wage levels of jobs created under sections 620.2050 to 620.2077
23 subsequent to the application date;

24 (11) The total number of qualified applicants;

25 (12) The projected future state revenue gains and losses;

26 (13) The sales tax refunds owed;

27 (14) The credits outstanding under sections 620.2050 to 620.2077.

28 4. In estimating the projected future state revenue gains and losses, the report shall
29 detail the methodology utilized, state the economic multipliers, and industry multipliers
30 used to determine the amount of economic growth and positive tax revenue; describe the
31 analysis used to determine the percentage of new jobs attributable to the Missouri
32 advantage act assumption; and identify limitations that are inherent in the analysis
33 method.

34 5. The report shall provide an explanation of the audit and review processes of the
35 department in approving and rejecting applications or the grant of incentives and in
36 enforcing incentive recapture. The report shall also specify the median period of time
37 between the date of application and the date the agreement is executed for all agreements
38 executed by December thirty-first of the prior year.

39 6. The report shall provide information on project-specific total incentives used
40 every two years for each approved project. The report shall disclose:

41 (1) The identity of the taxpayer;

42 (2) The location of the project; and

43 (3) The total credits used and refunds approved during the immediately preceding
44 two years expressed as a single, aggregated total.

45

46 The incentive information required to be reported under this subsection shall not be
47 reported for the first year the taxpayer attains the required employment and investment
48 thresholds. The information on first-year incentives used shall be combined with and
49 reported as part of the second year. Thereafter, the information on incentives used for
50 succeeding years shall be reported for each project every two years containing information
51 on two years of credits used and refunds approved. The incentives used shall include
52 incentives which have been approved by the department, but not necessarily received,
53 during the previous two calendar years.

54 **7. The report shall include an executive summary which shows aggregate**
55 **information for all projects for which the information on incentives used in subsection 6**
56 **of this section is reported as follows:**

57 **(1) The total incentives used by all taxpayers for projects detailed in subsection 6**
58 **of this section during the previous two years;**

59 **(2) The number of projects;**

60 **(3) The total number of employees of these taxpayers employed in the state on the**
61 **last day of the calendar quarter prior to the application date, the new jobs at the project**
62 **for which credits have been granted, and the total number of employees employed in the**
63 **state by these taxpayers on subsequent reporting dates;**

64 **(4) The average compensation paid employees in the state in the year of application**
65 **and for the new jobs at the project; and**

66 **(5) The total investment for which incentives were granted.**

67

68 **The executive summary shall summarize the number of states which grant investment tax**
69 **credits, job tax credits, and sales and use tax refunds for qualified investment, and the**
70 **investment and employment requirements under which they may be granted.**

71 **8. No information shall be provided in the report that is protected by state or**
72 **federal confidentiality laws.**

620.2074. 1. The incentives allowed under the Missouri advantage act shall not be
2 **transferable except in the following situations:**

3 **(1) Any credit allowable to a partnership, a limited liability company, a Subchapter**
4 **S corporation, a cooperative, including a cooperative exempt under Section 521 of the**
5 **Internal Revenue Code of 1986, as amended, or an estate or trust may be distributed to the**
6 **partners, members, shareholders, patrons, or beneficiaries in the same manner as income**
7 **is distributed for use against their income tax liabilities, and such partners, members,**
8 **shareholders, or beneficiaries shall be deemed to have made an underpayment of their**
9 **income taxes for any recapture required by section 620.2065. A credit distributed shall be**
10 **considered a credit used and the partnership, limited liability company, Subchapter S**
11 **corporation, cooperative, including a cooperative exempt under Section 521 of the Internal**
12 **Revenue Code of 1986, as amended, estate, or trust shall be liable for any repayment**
13 **required by section 620.2065; and**

14 **(2) The incentives previously allowed and the future allowance of incentives may**
15 **be transferred when a project covered by an agreement is transferred in its entirety by sale**
16 **or lease to another taxpayer or in an acquisition of assets qualifying under Section 381 of**
17 **the Internal Revenue Code of 1986, as amended.**

18 **2. The acquiring taxpayer, as of the date of notification of the department of the**
19 **completed transfer, shall be entitled to any unused credits and to any future incentives**
20 **allowable under sections 620.2050 to 620.2077.**

21 **3. The acquiring taxpayer shall be liable for any recapture that becomes due after**
22 **the date of the transfer for the repayment of any benefits received either before or after the**
23 **transfer.**

24 **4. If a taxpayer operating a project and allowed a credit under sections 620.2050**
25 **to 620.2077 dies and there is a credit remaining after the filing of the final return for the**
26 **taxpayer, the personal representative shall determine the distribution of the credit or any**
27 **remaining carryover with the initial fiduciary return filed for the estate. The**
28 **determination of the distribution of the credit may be changed only after obtaining the**
29 **permission of the department.**

620.2077. The department, in conjunction with the department of revenue shall
2 **promulgate rules to implement the provisions of sections 620.2050 to 620.2077. Any rule**
3 **or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under**
4 **the authority delegated in this section shall become effective only if it complies with and**
5 **is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**
6 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers**
7 **vested with the general assembly under chapter 536, RSMo, to review, to delay the effective**
8 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
9 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2009,**
10 **shall be invalid and void.**

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