

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 21, Page 19, Section 94.902, Line 119, by
2 inserting after said section and line the following:

3
4 "135.100. As used in sections 135.100 to 135.150 the following terms shall mean:

5 (1) "Commencement of commercial operations" shall be deemed to occur during the first
6 [taxable] tax year for which the new business facility is first available for use by the taxpayer, or
7 first capable of being used by the taxpayer, in the revenue-producing enterprise in which the
8 taxpayer intends to use the new business facility;

9 (2) "Existing business facility", any facility in this state which was employed by the
10 taxpayer claiming the credit in the operation of a revenue-producing enterprise immediately prior to
11 an expansion, acquisition, addition, or replacement;

12 (3) "Facility", any building used as a revenue-producing enterprise located within the state,
13 including the land on which the facility is located and all machinery, equipment and other real and
14 depreciable tangible personal property acquired for use at and located at or within such facility and
15 used in connection with the operation of such facility;

16 (4) "NAICS", the North American Industrial Classification System as such classifications
17 are defined in the 2007 edition of the North American Industrial Classification System;

18 (5) "New business facility", a facility which satisfies the following requirements:

19 (a) Such facility is employed by the taxpayer in the operation of a revenue-producing
20 enterprise. Such facility shall not be considered a new business facility in the hands of the taxpayer
21 if the taxpayer's only activity with respect to such facility is to lease it to another person or persons.
22 If the taxpayer employs only a portion of such facility in the operation of a revenue-producing
23 enterprise, and leases another portion of such facility to another person or persons or does not
24 otherwise use such other portions in the operation of a revenue-producing enterprise, the portion
25 employed by the taxpayer in the operation of a revenue-producing enterprise shall be considered a
26 new business facility, if the requirements of paragraphs (b), (c), (d) and (e) of this subdivision are
27 satisfied;

28 (b) Such facility is acquired by, or leased to, the taxpayer after December 31, 1983. A
29 facility shall be deemed to have been acquired by, or leased to, the taxpayer after December 31,
30 1983, if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract
31 to transfer title to the taxpayer, or the commencement of the term of the lease to the taxpayer occurs
32 after December 31, 1983, or, if the facility is constructed, erected or installed by or on behalf of the
33 taxpayer, such construction, erection or installation is commenced after December 31, 1983;

34 (c) If such facility was acquired by the taxpayer from another person or persons and such
35 facility was employed immediately prior to the transfer of title to such facility to the taxpayer, or to
36 the commencement of the term of the lease of such facility to the taxpayer, by any other person or

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persons in the operation of a revenue-producing enterprise, the operation of the same or a substantially similar revenue-producing enterprise is not continued by the taxpayer at such facility;

(d) Such facility is not a replacement business facility, as defined in subdivision (11) of this section; and

(e) The new business facility investment exceeds one hundred thousand dollars during the tax period in which the credits are claimed;

(6) "New business facility employee", a person employed by the taxpayer in the operation of a new business facility during the ~~[taxable]~~ tax year for which the credit allowed by section 135.110 is claimed, except that truck drivers and rail and barge vehicle operators shall not constitute new business facility employees. A person shall be deemed to be so employed if such person performs duties in connection with the operation of the new business facility on:

(a) A regular, full-time basis; or

(b) A part-time basis, provided such person is customarily performing such duties an average of at least twenty hours per week; or

(c) A seasonal basis, provided such person performs such duties for at least eighty percent of the season customary for the position in which such person is employed;

(7) "New business facility income", the Missouri taxable income, as defined in chapter 143, derived by the taxpayer from the operation of the new business facility. For the purpose of apportionment as prescribed in this subdivision, the term "Missouri taxable income" means, in the case of insurance companies, direct premiums as defined in chapter 148. If a taxpayer has income derived from the operation of a new business facility as well as from other activities conducted within this state, the Missouri taxable income derived by the taxpayer from the operation of the new business facility shall be determined by multiplying the taxpayer's Missouri taxable income, computed in accordance with chapter 143, or in the case of an insurance company, computed in accordance with chapter 148, by a fraction, the numerator of which is the property factor, as defined in paragraph (a) of this subdivision, plus the payroll factor, as defined in paragraph (b) of this subdivision, and the denominator of which is two:

(a) The property factor is a fraction, the numerator of which is the new business facility investment certified for the tax period, and the denominator of which is the average value of all the taxpayer's real and depreciable tangible personal property owned or rented and used in this state during the tax period. The average value of all such property shall be determined as provided in chapter 32;

(b) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as new business facility employees, as determined by subsection 4 of section 135.110, at the new business facility, and the denominator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in chapter 32. For the purpose of this subdivision, "other activities conducted within this state" shall include activities previously conducted at the expanded, acquired or replaced facility at any time during the tax period immediately prior to the tax period in which commencement of commercial operations occurred;

(8) "New business facility investment", the value of ~~[real and depreciable tangible personal]~~ property, acquired by the taxpayer as part of the new business facility, which is used by the taxpayer in the operation of the new business facility, during the ~~[taxable]~~ tax year for which the credit allowed by section 135.110 is claimed, except that trucks, truck-trailers, truck semitrailers, rail vehicles, barge vehicles, aircraft, and other rolling stock for hire, track, switches, barges, bridges, tunnels, and rail yards and spurs shall not constitute new business facility investments. For the purposes of sections 135.100 to 135.150, property may be acquired by the taxpayer by purchase, lease, or license, including the right to use software and hardware via on-demand network access to

1 a shared pool of configurable computing resources as long as the rights are used at the new business
 2 facility. The total value of such property during such ~~[taxable]~~ tax year shall be:

3 (a) Its original cost if owned by the taxpayer; or

4 (b) Eight times the net annual rental rate or license, if leased or licensed by the taxpayer.

5 The net annual rental or license rate shall be the annual rental or license rate paid by the taxpayer
 6 less any annual rental or license rate received by the taxpayer from subrentals or sublicenses. The
 7 new business facility investment shall be determined by dividing by twelve the sum of the total
 8 value of such property on the last business day of each calendar month of the ~~[taxable]~~ tax year. If
 9 the new business facility is in operation for less than an entire ~~[taxable]~~ tax year, the new business
 10 facility investment shall be determined by dividing the sum of the total value of such property on the
 11 last business day of each full calendar month during the portion of such ~~[taxable]~~ tax year during
 12 which the new business facility was in operation by the number of full calendar months during such
 13 period;

14 (9) "Office", a regional, national₂ or international headquarters, a telemarketing operation, a
 15 computer operation, an insurance company, a passenger transportation ticket/reservation system₂ or
 16 a credit card billing and processing center. For the purposes of this subdivision, "headquarters"
 17 means the administrative management of at least four integrated facilities operated by the taxpayer
 18 or related taxpayer. An office, as defined in this subdivision, when established must create and
 19 maintain positions for a minimum number of twenty-five new business facility employees as
 20 defined in subdivision (6) of this section;

21 (10) "Related taxpayer" shall mean:

22 (a) A corporation, partnership, trust₂ or association controlled by the taxpayer;

23 (b) An individual, corporation, partnership, trust₂ or association in control of the taxpayer; or

24 (c) A corporation, partnership, trust₂ or association controlled by an individual, corporation,
 25 partnership, trust₂ or association in control of the taxpayer. For the purposes of sections 135.100 to
 26 135.150, "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing
 27 at least fifty percent of the total combined voting power of all classes of stock entitled to vote;
 28 "control of a partnership or association" shall mean ownership of at least fifty percent of the capital
 29 or profits interest in such partnership or association; and "control of a trust" shall mean ownership,
 30 directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of
 31 such trust; ownership shall be determined as provided in Section 318 of the U.S. Internal Revenue
 32 Code;

33 (11) "Replacement business facility", a facility otherwise described in subdivision (3) of this
 34 section, hereafter referred to in this subdivision as "new facility", which replaces another facility,
 35 hereafter referred to in this subdivision as "old facility", located within the state, which the taxpayer
 36 or a related taxpayer previously operated but discontinued operating on or before the close of the
 37 first ~~[taxable]~~ tax year in which the credit allowed by this section is claimed. A new facility shall be
 38 deemed to replace an old facility if the following conditions are met:

39 (a) The old facility was operated by the taxpayer or a related taxpayer during the taxpayer's
 40 or related taxpayer's ~~[taxable]~~ tax period immediately preceding the ~~[taxable]~~ tax year in which
 41 commencement of commercial operations occurs at the new facility; and

42 (b) The old facility was employed by the taxpayer or a related taxpayer in the operation of a
 43 revenue-producing enterprise and the taxpayer continues the operation of the same or substantially
 44 similar revenue-producing enterprise at the new facility.

45
 46 Notwithstanding the preceding provisions of this subdivision, a facility shall not be considered a
 47 replacement business facility if the taxpayer's new business facility investment, as computed in
 48 subsection 5 of section 135.110, in the new facility during the tax period in which the credits
 49 allowed in sections 135.110, 135.225₂ and 135.235 and the exemption allowed in section 135.220

are claimed exceed one million dollars or, if less, two hundred percent of the investment in the old facility by the taxpayer or related taxpayer, and if the total number of employees at the new facility exceeds the total number of employees at the old facility by at least two except that the total number of employees at the new facility exceeds the total number of employees at the old facility by at least twenty-five if an office as defined in subdivision (9) of this section is established by a revenue-producing enterprise other than a revenue-producing enterprise defined in paragraphs (a) to (g) and (i) to (l) of subdivision (12) of this section;

(12) "Revenue-producing enterprise" means:

- (a) Manufacturing activities classified as NAICS 31-33;
- (b) Agricultural activities classified as NAICS 11;
- (c) Rail transportation terminal activities classified as NAICS 482;
- (d) Motor freight transportation terminal activities classified as NAICS 484 and NAICS 4884;
- (e) Public warehousing and storage activities classified as NAICS 493, miniwarehouse warehousing and warehousing self-storage;
- (f) Water transportation terminal activities classified as NAICS 4832;
- (g) Airports, flying fields, and airport terminal services classified as NAICS 481;
- (h) Wholesale trade activities classified as NAICS 42;
- (i) Insurance carriers activities classified as NAICS 524;
- (j) Research and development activities classified as NAICS 5417;
- (k) Farm implement dealer activities classified as NAICS 42382;
- (l) Interexchange telecommunications services as defined in subdivision (20) of section 386.020 or training activities conducted by an interexchange telecommunications company as defined in subdivision (19) of section 386.020;
- (m) Recycling activities classified as NAICS 42393;
- (n) Office activities as defined in subdivision (9) of this section, notwithstanding NAICS classification;
- (o) Mining activities classified as NAICS 21;
- (p) Computer programming, data processing, and other computer-related activities classified as NAICS 5415;
- (q) The administrative management of any of the foregoing activities; or
- (r) Any combination of any of the foregoing activities;

(13) "Same or substantially similar revenue-producing enterprise", a revenue-producing enterprise in which the nature of the products produced or sold, or activities conducted, are similar in character and use or are produced, sold, performed, or conducted in the same or similar manner as in another revenue-producing enterprise;

(14) "Taxpayer", an individual proprietorship, corporation described in section 143.441 or 143.471, and partnership or an insurance company subject to the tax imposed by chapter 148, or in the case of an insurance company exempt from the thirty-percent employee requirement of section 135.230, to any obligation imposed ~~[pursuant to]~~ under section 375.916."; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.