

SENATE BILL NO. 385

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BEAN.

1659S.011

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to a tax credit for certain railroad construction expenses.

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

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be known as section 135.1500, to read as follows:

135.1500. 1. For the purposes of this section, the following terms shall mean:

(1) "Class II or III railroad", any rail carrier classified by the United States Surface Transportation Board, or successor agency, as a Class II or Class III railroad;

(2) "Department", the Missouri department of economic development;

(3) "Eligible customer", a person who uses any railroad or railroad-related property, facilities, or structures located wholly or partially within Missouri to directly or indirectly transport property, commodities, or goods, or who is served by a class II or III railroad, or who stores railcars on any railroad in Missouri;

(4) "Eligible taxpayer":

(a) Any short line railroad company located wholly or partially in Missouri that is a class II or III railroad;

18 (b) Any owner or lessee of a rail siding, industrial
19 spur, or industry track located on or adjacent to a class II
20 or III railroad in Missouri, or located in a qualifying
21 rural county in Missouri;

22 (5) "Eligible vendor", a person who provides railroad-
23 related services directly to an eligible taxpayer.

24 "Railroad-related services" shall include, but not be
25 limited to, transport of freight by rail; loading and
26 unloading of freight transported by rail; railroad bridge
27 services; railroad track construction; provision of railroad
28 track material or equipment; locomotive or freight train car
29 leasing or rental; provision of railroad financial services,
30 including banking or insurance; maintenance of a railroad's
31 right-of-way, including vegetation control; and freight
32 train car repair, rehabilitation, or remanufacturing repair
33 services;

34 (6) "Person", any individual, firm, partner in a firm,
35 corporation, or shareholder in an S corporation;

36 (7) "Qualified new rail infrastructure expenditures",
37 gross expenditures for new rail infrastructure by an
38 eligible taxpayer, which includes the construction of new
39 track infrastructure such as industrial leads, switches,
40 spurs, sidings, rail loading docks, and transloading
41 structures involved with servicing new customer locations or
42 expansions by a class II or III railroad or for projects
43 located in a qualifying rural county in Missouri;

44 (8) "Qualified railroad expenditures", gross
45 expenditures for maintenance, reconstruction, or replacement
46 of railroad infrastructure, including track, roadbed,
47 bridges, industrial leads and sidings, and track-related
48 structures owned or leased by a class II or III railroad
49 located in Missouri. "Qualified railroad expenditures"

50 shall not include expenditures used to generate a federal
51 tax credit or expenditures funded by a state or federal
52 grant;

53 (9) "Qualifying rural county", any county of the
54 second, third, or fourth classification;

55 (10) "Tax credit", a credit against the tax otherwise
56 due pursuant to chapter 143, excluding withholding tax
57 imposed pursuant to sections 143.191 to 143.265, or chapter
58 148.

59 2. (1) Subject to the limitations of this section,
60 for all tax years beginning on or after January 1, 2023, but
61 ending on or before December 31, 2028, an eligible taxpayer
62 shall be allowed to claim a tax credit against the eligible
63 taxpayer's state tax liability for qualified railroad
64 expenditures and qualified new rail infrastructure
65 expenditures in Missouri.

66 (2) The tax credit authorized pursuant to this section
67 shall be equal to fifty percent of an eligible taxpayer's
68 qualified railroad expenditures and qualified new rail
69 infrastructure expenditures, provided that:

70 (a) For qualified railroad expenditures, the amount of
71 the tax credit shall not exceed an amount equal to the
72 product of five thousand dollars multiplied by the number of
73 miles of railroad track owned or leased in the state by the
74 eligible taxpayer as of the close of the tax year in which
75 the tax credit is claimed; and

76 (b) For qualified new rail infrastructure
77 expenditures, the amount of the tax credit shall not exceed
78 five hundred thousand dollars for each new rail-served
79 customer project of the eligible taxpayer.

80 3. The total amount of tax credits authorized pursuant
81 to this section in any given calendar year shall not exceed
82 the following amounts:

83 (1) For qualified railroad expenditures, four million
84 five hundred thousand dollars; and

85 (2) For new rail infrastructure expenditures, ten
86 million dollars.

87 4. An eligible taxpayer who seeks to claim a tax
88 credit pursuant to this section shall submit a certificate
89 of eligibility to the department after completion of the
90 qualified railroad expenditures or qualified new rail
91 infrastructure expenditures. The certificate shall include
92 the number of miles of railroad track owned or leased in
93 this state and a description of the amount of qualified
94 railroad expenditures and qualified new rail infrastructure
95 expenditures completed. The certificate shall be made on
96 forms and in the manner prescribed by the department and
97 shall be considered in the order received.

98 5. If the department determines that the eligible
99 taxpayer meets the requirements to claim a tax credit
100 pursuant to this section, the department may issue a
101 certificate of eligibility to the eligible taxpayer. The
102 certificate shall be numbered for identification and shall
103 declare its date of issuance and the amount of the tax
104 credit allowed pursuant to this section.

105 6. Any tax credit allowed pursuant to this section
106 that exceeds the eligible taxpayer's state tax liability
107 shall not be refunded to the eligible taxpayer, but may be
108 carried forward for up to five subsequent tax years
109 immediately following the year that the credit was issued.

110 7. (1) Subject to the provisions of this subsection,
111 an eligible taxpayer who earns and is entitled to a tax

112 credit or to an unused portion of a tax credit authorized by
113 this section may transfer all or a portion of the unused tax
114 credit by written agreement to any eligible customer,
115 eligible vendor, or any other taxpayer subject to tax
116 imposed pursuant to chapter 143, excluding withholding tax
117 imposed under 143.191 to 143.265, or chapter 148 at any time
118 during the year in which the tax credit is earned or the
119 five subsequent tax years following the tax year that the
120 tax credit was initially issued. The eligible taxpayer
121 originally allowed the tax credit and the subsequent
122 transferee shall jointly file a copy of the written tax
123 credit transfer agreement with the Missouri department of
124 revenue. The agreement shall include the name, address, and
125 taxpayer identification number of the parties to the
126 transfer, the amount of the tax credit being transferred,
127 the year the tax credit was originally issued to the
128 transferring taxpayer, and the tax year or years for which
129 the tax credit may be claimed. A transferee may claim the
130 tax credit on the transferee's income tax return originally
131 filed during the tax year in which the transfer takes
132 place. Any amount of the tax credit that exceeds the
133 transferee's state tax liability shall not be refunded, but
134 may be carried forward for the amount of tax years that the
135 tax credit would have been allowed to be carried forward by
136 the transferor at the time of the transfer.

137 (2) If after the transfer the department of revenue
138 determines that the amount of tax credit properly available
139 pursuant to this section is less than the amount claimed by
140 the transferor of the tax credit, or that the tax credit is
141 subject to recapture, the department shall assess the amount
142 of overstated or recaptured tax credit as taxes due from the
143 transferor and not the transferee. The assessment shall be

144 made in the manner provided for a deficiency in taxes
145 pursuant to chapter 143.

146 8. The department shall prepare an annual report for
147 the general assembly outlining tax credit transfers that
148 take place each calendar year, listing the qualified
149 railroad expenditures for each eligible taxpayer, and a
150 statement summarizing the investments made by eligible
151 taxpayers.

152 9. The department may promulgate rules to implement
153 the provisions of this section, including provisions for the
154 verification of the timeliness of a claim, the process and
155 documentation required for the department to approve the tax
156 credit, and any documentation that the department shall
157 require in order to determine that an eligible taxpayer,
158 eligible customer, or eligible vendor meets the requirements
159 of this section. The department may also promulgate rules
160 prescribing, in the case of S corporations, partnerships,
161 trusts, or estates, a method of attributing the tax credit
162 authorized pursuant to this section to the shareholders,
163 partners, or beneficiaries in proportion to their share of
164 the income from the S corporation, partnership, trust, or
165 estate. Any rule or portion of a rule, as that term is
166 defined in section 536.010, that is created under the
167 authority delegated in this section shall become effective
168 only if it complies with and is subject to all of the
169 provisions of chapter 536 and, if applicable, section
170 536.028. This section and chapter 536 are nonseverable and
171 if any of the powers vested with the general assembly
172 pursuant to chapter 536 to review, to delay the effective
173 date, or to disapprove and annul a rule are subsequently
174 held unconstitutional, then the grant of rulemaking

175 authority and any rule proposed or adopted after August 28,
176 2023, shall be invalid and void.

177 10. Pursuant to section 23.253 of the Missouri Sunset
178 Act:

179 (1) The program authorized pursuant to this section
180 shall automatically sunset on December 31, 2028, unless
181 reauthorized by an act of the general assembly; and

182 (2) If such program is reauthorized, the program
183 authorized pursuant to this section shall automatically
184 sunset twelve years after the effective date of the
185 reauthorization;

186 (3) This section shall terminate on September first of
187 the calendar year immediately following the calendar year in
188 which the program authorized pursuant to this section is
189 sunset; and

190 (4) The provisions of this subsection shall not be
191 construed to limit or in any way impair the department of
192 revenue's ability to redeem tax credits authorized on or
193 before the date the program authorized pursuant to this
194 section expires, or a taxpayer's ability to redeem such tax
195 credits.

✓