FIRST REGULAR SESSION

HOUSE BILL NO. 657

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH (155).

1263H.01I DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to a tax credit for qualified railroad infrastructure investments.

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 135.1210, to read as follows:

135.1210. 1. As used in this section, the following terms mean:

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

(2) "Eligible taxpayer":

(a) Any short line railroad company located wholly or partly in the state of Missouri that is classified by the United States Surface Transportation board as a Class II or Class III railroad; or

(b) Any owner or lessee of a rail siding, industrial spur, or industry track located on or adjacent to a Class II or Class III railroad in the state of Missouri, or located in a qualifying rural county in Missouri;

and subject to the state income tax imposed under chapter 143, 147, or 148, excluding the withholding tax imposed under sections 143.191 to 143.265, who made qualified railroad track expenditures in Missouri or qualified new rail infrastructure

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.

expenditures in Missouri during the tax year for which a credit under this section is claimed;

(3) "Eligible vendor", a person who provides railroad-related services directly to an eligible taxpayer;

(4) "Person", the same meaning as defined under section 1.020;

(5) "Qualified amount", for any qualified taxpayer in a given tax year, an amount equal to fifty percent of an eligible taxpayer's qualified railroad track expenditures or qualified new rail infrastructure expenditures; provided that:

(a) For qualified railroad track expenditures, the amount of tax credit shall not exceed an amount equal to the product of five thousand dollars multiplied by the number of miles of railroad track owned or leased in the state by a Class II or Class III railroad as of the close of the tax year; and

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

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

(7) "Qualified railroad expenditures", gross expenditures for maintenance, reconstruction, or replacement of railroad infrastructure, including track, roadbed, bridges, industrial leads and sidings, and track-related structures owned or leased by a Class II or Class III railroad located in Missouri. "Qualified railroad expenditures" does not include expenditures used to generate a federal tax credit or expenditures funded by a state or federal grant;

(8) "Qualifying rural county", the same definition as "rural area" under section 620.2005;

(9) "Railroad-related services", includes, but is not limited to, the following: transport of freight by rail; loading and unloading of freight transported by rail; railroad bridge services; railroad track construction; provision of railroad track material or equipment; locomotive or freight train car leasing or rental; provision of railroad financial services, including banking or insurance; maintenance of a railroad's right-of-way, including vegetation control; and freight train car repair, rehabilitation, or remanufacturing repair services;

(10) "Tax credit", a credit against the tax otherwise due under chapter 143, 147, or 148, excluding withholding tax imposed under sections 143.191 to 143.265.

2. For all tax years beginning on or after January 1, 2024, an eligible taxpayer shall be allowed to claim a nonrefundable tax credit for qualified railroad track expenditures in Missouri or for qualified new rail infrastructure expenditures in Missouri against the taxpayer's state tax liability in an amount equal to the taxpayer's qualified amount.

3. An eligible taxpayer who seeks to claim a tax credit under this section shall submit a certificate of eligibility to the Missouri department of economic development after completion of the qualified railroad expenditures or qualified new rail infrastructure expenditures. The certificate shall include the number of miles of railroad track owned or leased in this state and a description of the amount of qualified railroad expenditures or qualified new rail infrastructure expenditures completed. The certificate shall be made on forms and in the manner prescribed by the department and considered in the order received.

4. If the department of economic development determines that the taxpayer meets the requirements to claim a tax credit under this section, the department may issue a certificate of eligibility to the eligible taxpayer. The certificate shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed under this section.

5. (1) The cumulative amount of tax credits under this section authorized for qualified railroad track expenditures in this state shall not exceed four million five hundred thousand dollars per tax year. If the amount of tax credits claimed in a tax year under this section exceeds four million five hundred thousand dollars, tax credits shall be allowed based on the order in which they are claimed.

(2) The cumulative amount of tax credits under this section authorized for qualified new rail infrastructure expenditures in this state shall not exceed ten million dollars per tax year. If the amount of tax credits claimed in a tax year under this section exceeds ten million dollars, tax credits shall be allowed based on the order in which they are claimed.

6. Any unused portion of a tax credit claimed under this section may be carried forward for up to five subsequent tax years immediately following the tax year the credit was allowed.

7. (1) Subject to the requirements of this subsection, an eligible taxpayer who earns and is entitled to the credit or to an unused portion of the credit allowed by this section may transfer all or a portion of the unused credit by written agreement to any eligible customer, eligible vendor, or any taxpayer subject to tax imposed under chapter

143, 147, or 148, excluding withholding tax imposed under 143.191 to 143.265, at any time during the year in which the credit is earned and the five years following the year of the qualified expenditures. The taxpayer originally allowed the tax credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the department of revenue. The agreement shall include the name, address, and taxpayer identification number of the parties to the transfer; the amount of the credit being transferred; the year the credit was originally allowed to the transferring taxpayer; and the tax year or years for which the credit may be claimed. In the event of such a transfer, the transferee may claim the credit on the transferee's income tax return originally filed during the calendar year in which the transfer takes place and in the case of carryover of the credit, on the transferee's returns for the number of years of carryover available to the transferor at the time of the transfer unless earlier exhausted.

(2) In the event that after the transfer the department of revenue determines that the amount of credit properly available under this section is less than the amount claimed by the transferor of the credit or that the credit is subject to recapture, the department shall assess the amount of overstated or recaptured credit as taxes due from the transferor and not the transferee. The assessment shall be made in the manner provided for a deficiency in taxes under state law.

8. The department of economic development shall prepare an annual report for the general assembly outlining tax credit transfers that take place each calendar year, listing the qualified railroad expenditures and qualified new rail infrastructure expenditures for each eligible taxpayer and a statement summarizing the investments made by the eligible taxpayer.

9. The department of economic development may promulgate rules governing the allowance of the income tax credit provided for in this section, including provisions for the verification of the timeliness of a claim, the process and documentation required for the department of economic development to approve an income tax credit for qualified railroad expenditures or qualified new rail infrastructure expenditures, and any documentation that the department of economic development shall require in order to determine that an eligible taxpayer, eligible customer, or eligible vendor meets the requirements of this section. In addition to other needed rules, the department of economic development may promulgate rules prescribing, in the case of S corporations, partnerships, trusts, or estates, a method of attributing the credit under this section to the shareholders, partners, or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust, or estate.

10. The department of revenue and the department of economic development shall promulgate all necessary rules and regulations for the administration of this

section including, but not limited to, rules relating to the verification of a taxpayer's qualified amount. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2023, shall be invalid and void.

11. Under section 23.253 of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset December thirty-first, six years after the effective date unless reauthorized by an act of the general assembly;

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

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