Oversight Division

Committee On Legislative Research

SUNSET REVIEW

Qualified Rolling Stock Tax Credit Program

2019

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Prepared for the Committee on Legislative Research
by the Oversight Division

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Committee on Legislative Research Oversight Subcommittee

THE COMMITTEE ON LEGISLATIVE RESEARCH, Oversight Division, is an agency of the Missouri General Assembly as established in Chapter 23 of the Revised Statutes of Missouri. The legislature appropriates approximately $29.7 billion annually for programs and activities in the state. Each year the General Assembly enacts laws which add to, delete or change these programs. To meet the demands for more responsive and cost effective state government, legislators need to receive information regarding the status of the programs which they have created and the expenditure of funds which they have authorized. The work of the Oversight Division provides the General Assembly with a means to evaluate state agencies and state programs.

THE COMMITTEE ON LEGISLATIVE RESEARCH is a permanent joint committee of the Missouri General Assembly comprised of the chairman of the Senate Appropriations Committee and nine other members of the Senate and the chairman of the House Budget Committee and nine other members of the House of Representatives. Currently, there is one vacancy from the House of Representatives. No more than six members from the House and six members from the Senate may be of the same political party.

Sunset reviews are assigned to the Oversight Division pursuant to Sections 23.250 to 23.298, RSMo. After August 28, 2003, any new program authorized by the General Assembly shall sunset not more than six years after its effective date unless re-authorized by the General Assembly. The Oversight Division shall conduct a performance evaluation of the program as set forth in statute and prepare a written report. The report shall make recommendations on the sunset, continuation, or reorganization of a program.

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Members of the General Assembly:

The Joint Committee on Legislative Research is required by Section 23.259.1(3), RSMo to conduct a performance evaluation of the Qualified Rolling Stock Tax Credit program to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The report may include Oversight comments on (1) the sunset, continuation, or reorganization of the program, and on the need for the performance of the functions of the program; (2) the duplication of program functions; (3) the appropriation levels for each program for which sunset or reorganization is recommended; and (4) drafts of legislation necessary to carry out the committee's recommendations pursuant to (1) and (2) above.

We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates. You may obtain a copy of the report from the Oversight Division website at www.legislativeoversight.mo.gov.

Respectfully,

Chair

Purpose/Objectives

The Missouri Sunset Act requires the Joint Committee on Legislative Research, Oversight Division to conduct performance evaluations of various state programs. The committee shall consider the criteria as listed in Section 23.268, RSMo in determining whether a public need exists for the continuation of a program, or for the performance of the functions of the program. A sunset review is the regular assessment of the continuing need for a state program to exist. A sunset review answers the basic questions of what has happened to this program since its inception and does the State of Missouri continue to "need" the services provided by the program.

The Joint Committee on Legislative Research directed the Oversight Division to conduct a Sunset Review of the Qualified Rolling Stock Tax Credit program (program), Section 137.1018, RSMo. This report provides the status on the program as created by Senate Bill 711 (2008) and fulfills the requirements as established by Section 23.268, RSMo.

The Oversight Division review addressed, but was not limited to the following:

1. Compiling and reviewing data related to the program since its inception.
2. Analyzing related events and changes to the program since its inception.

Scope

The Oversight Division obtained and reviewed information from the Department of Revenue, the Missouri State Tax Commission, and the Missouri Tax Credit Review Commission on the program from 2008 through June 2019.

Methodology

The Oversight Division obtained information on the program through correspondence with the Department of Revenue and the Tax Commission as well as a review of the statutes and collection of the SAM II data related to the program.

Legislative History

Senate Bill 219 (1999) gave the State Tax Commission (Commission) the exclusive power of original assessment of the distributable property of freight line companies while the Department of Revenue (DOR) collects taxes on such property. This act also created the County Private Car Tax Trust Fund and requires apportionment of the tax revenues collected to each county in proportion to the mainline track mileage located within that county. Before the trust fund is distributed to the counties, a portion is retained by DOR for a collection fee and another portion is required to be transferred to the state's Blind Pension Fund (0621).

The Qualified Rolling Stock Tax Credit was created in Senate Bill 711 (2008) to provide an economic incentive to have private rail cars manufactured, maintained, and improved in the State of Missouri. Beginning January 1, 2009, subject to appropriation, a freight line company could receive a property tax credit for expenses incurred to manufacture, maintain, or improve their qualified rolling stock, up to the amount of their property tax liability. The state will then reimburse political subdivisions for any loss in property tax revenue resulting from utilization of this credit.

The provisions in Section 137.1018, RSMo included an automatic sunset six years from the effective date. The program was to sunset on August 28, 2014; however, Senate Bill 23 (2013) extended the sunset to August 28, 2020.

Program History

The tax credit can reduce a private car company's property tax liability while the state reimburses counties so they would not suffer a loss in revenues because of the tax credit.

An eligible private car company owns and/or leases rolling stock and does not own, control or lease the track or trackage rights. This rolling stock (railcars) is the property which is subject to the ad valorem tax and tax credit.

Private car companies' assessed values are certified by the Missouri State Tax Commission, and reported to the Missouri Department of Revenue for billing and central collection. The taxes collected by the Director of Revenue (less one percent for the cost of collection which is deposited in the state's general revenue fund and less six tenths of one percent which is transferred to the state's Blind Pension Fund) are apportioned to the counties in the state and placed in the "County Private Car Tax Trust Fund". The apportionment is based upon the ratio of the total track mileage of railroads which transport private car traffic within each county.

Upon receipt of the taxes from the state, the counties apportion seventy percent of the revenues to the county's school districts using the same basis of distribution as used in distributing receipts from the average school tax rate for that year, and the remaining thirty percent to the county general revenue fund. For calendar 2018, the Commission assessed approximately $4.7 million in personal property taxes on private rail cars.

Prior to the tax year the credit is claimed, private car companies can incur eligible expenses to qualify for the tax credits and submit schedules to the Commission, outlining their expenses incurred in Missouri. The documentation must be submitted to the Commission by May 1st of the current tax year in order to qualify for the tax credit.

Eligible expenses are defined in statute as any expense incurred in this state to manufacture, maintain, or improve a freight line company's qualified rolling stock. In effect, any and all expenses incurred in this state qualify as an eligible expense. The Commission provided examples of eligible expenses, which included brake connection pins, hose supports, knuckle throwers, crossover boards, and emergency reservoir pipes. This credit is not refundable and is subject to an annual appropriation.

Claims Processing

The Commission's Original Assessment Section receives annual mileage reports from eight railroad companies that move private car freight traffic across the State of Missouri. The information reflects the year prior to the tax year. The market value of the private car company's assets is determined by the original cost of the assets less depreciation. The total Missouri miles traveled are used to develop an allocation factor of the private car company's market value of its rolling stock assets. After determining the private car company's Missouri allocated market value, the prescribed personal property assessment ratio of 33.33% is applied to determine the Missouri allocated assessed value. The applicable tax rate on private cars is calculated each tax year based on the previous year's total operating property taxes paid by each railroad, less the surtax, divided by the total assessed value of operating property for all eight railroads that move private car freight traffic.

Prior to October 1st of each tax year, the Commission certifies to the Department of Revenue, the assessed valuation and statewide property tax rate for private car companies operating in Missouri. The Commission provides to the Department of Revenue the original tax liability, the amount of tax credit, if any, and the adjusted tax liability after the credit has been applied. The Department of Revenue submits the adjusted tax bill to the companies for collection.

The Department of Revenue distributes the collected taxes to counties based upon the ratio of track miles in a county compared to track miles statewide. The county then distributes seventy percent of the received funds to the school districts within the county and deposits thirty percent into the county's general revenue fund.

In any year in which the General Assembly does not appropriate sufficient funds to fully finance the tax credit (appropriated tax credit amount is less than the approximate $4.7 million in property taxes due), the Commission allocates the tax credit proportionately among the freight lines that timely requested the tax credit. The Commission has promulgated rules (12 CSR 30-2.018) outlining the procedure to accommodate a situation in which the tax credit appropriated is less than the total taxes due from all private car companies. The prorated amount of credit each individual private car company receives is calculated by taking the company's eligible expenses claimed (not to exceed the company's personal property taxes due) divided by all eligible expenses claimed (not to exceed all private car companies' personal taxes due) multiplied by the amount appropriated.

Prorated Tax Credit Formula:
(Company Eligible Expenses Claimed / All Eligible Expenses Claimed) * Amount Appropriated

The Commission collects all claims for the tax credit whether or not funding is appropriated. The Commission states they do not notify the companies regarding the appropriation status of the tax credit. This program has only received funding for fiscal years 2016, 2017, and 2020.

The Commission estimated that in tax year 2018, over 50 staff hours were expended for facilitating the tax credit alone. This estimate does not include the total time expended in the valuation of all Private Car Companies operating in the state.

Program Activity

The Rolling Stock tax credit is appropriated by the General Assembly through the budget process. Table 1 below shows the history of appropriation activity for the program. The program's final approved budget authority has not been above $291,000, even though appropriated authority reached as high as $3 million in FY 2010. Table 1 shows the tax credit is not consistently appropriated by the General Assembly, and when it is appropriated, the amount is not consistently approved by the Executive.

Table 1 - Appropriation history of the tax credit

Fiscal Year(s)	General Assembly appropriated	Amount Vetoed/ Reserved/Restricted	Tax credits available	Tax credits issued
2010	$3,000,000	($3,000,000)	$0	$0
2011 - 2014	$0	$0	$0	$0
2015	$2,000,000	($2,000,000)	$0	$0
2016	$300,000	($9,000)	$291,000	$291,000
2017	$600,000	($309,000)	$291,000	$291,000
2018	$0	$0	$0	$0
2019	$1	$0	$1	$0
2020	$200,000	($6,000)	$194,000	N.A.

Source: Missouri State Tax Commission, SAMII, Missouri General Assembly

Table 2 reflects information about the tax credits issued during fiscal years 2016 and 2017. Roughly half of the credits issued (each year's total credits issued were $291,000) were for under $100.

Table 2 - Facts regarding the tax credits issued in FY 2016 and FY 2017

Fiscal Year	Number of companies that received credits	Largest tax credit issued	2nd largest tax credit issued	Smallest tax credit issued	Median tax credit issued	Number of credits issued greater than $100	Number of credits issued smaller than $100	Total tax credits as a % of Total Private Car property taxes due
2016	101	$104,684	$36,599	$0.34	$119.95	51	50	6.2%
2017	99	$106,954	$37,574	$0.35	$126.06	57	42	6.7%

Source: Missouri State Tax Commission, Oversight Division

Table 3 reflects the reimbursement by the Commission to the counties (after the tax credit has been utilized by the private car companies) based on railroad mileage.

Table 3

Fiscal Year	Total amount reimbursed*	Number of counties reimbursed**	Average reimbursement per county	Largest reimbursement county	Smallest reimbursement county
2016	$286,361	90	$3,182	$11,028 (Jackson)	$303 (Camden)
2017	$286,361	90	$3,182	$11,028 (Jackson)	$303 (Camden)

Source: Missouri State Tax Commission

* This amount differs from $291,000 of tax credits issued total by a 1% DOR cost of collection fee retained and by the State's Blind Pension Fund portion (6/10ths of 1% of taxes collected per §137.1021)
**25 counties in Missouri do not have railroad mileage used in the calculations

The Missouri Tax Credit Review Commission was established in 2010 to review the state's tax credit programs and make recommendations to increase efficiency and enhance return on investment. In their November 30, 2010 report, the Missouri Tax Credit Review Commission stated:

> *"State tax credits are an important part of Missouri's business development toolkit. Changes in today's economy and the evolution of operations have highlighted areas where Missouri's business development tax credits fall short in providing the most effective means to promote business development, job creation and capital investment. To make the most effective use of Missouri's business development tax credits and the taxpayer dollars they utilize, Missouri's tool kit should contain business development tax credits that:*
>
> - *Complement and effectuate the strategic objectives developed through the Governor's Strategic Planning Initiative for Economic Growth by targeting high-growth industries to attract, retain and grow in the state*
> - *Incentivize targeted economic activity that would otherwise not occur without the tax credit;*
> - *Give priority to measurable job growth and capital investment; and*
> - *Bear a proportionate relationship to the industry sectors that make up our existing and emerging economic base."*

The Commission's final report recommended eliminating the Rolling Stock Tax Credit. The report stated the tax credit serves too narrow of an industry and fails to require a positive return on investment to the state. Oversight notes the Department of Revenue does not include a taxpayer return on investment calculation with the annual Tax Credit Analysis report for this tax credit.

The Commission has provided data for the history of the aggregate rolling stock tax credit claims as outlined in the below Table 4. As stated above, there was no appropriated funds for this tax credit prior to calendar 2015 (FY 2016). All private car companies that report mileage are eligible to submit claims; however, only private car companies submitting eligible expenses incurred in Missouri qualify for the tax credit.

Table 4 - credits issued compared to eligible expenses claimed

For Calendar Years	**2014**	**2015**	**2016**	**2017**	**2018**
Eligible expenses claimed	$23,832,192	$22,109,486	$23,372,795	$26,103,341	$31,136,885
Credit Amount approved	$0	$291,000	$291,000	$0	$0
Total number of PC companies reporting	346	348	341	334	328
Number of companies eligible	96	101	99	114	121
Number of companies making claims	96	101	99	114	121
Average credit per company	$0	$2,881	$2,939	$0	$0
Estimated staff hours required	24	25.75	24.75	28.5	30.25
Credit/eligible expenses claimed	$0	$0.013	$0.012	$0	$0

Source: Missouri State Tax Commission, Oversight

Summary

Possible options available to the Missouri General Assembly include letting the program expire or extending the sunset:

1. The General Assembly could allow the program to sunset on August 28, 2020 and terminate on September 1, 2021, by taking no further action. Based upon the current appropriation, this could save approximately $200,000 per year in tax credit redemptions.

2. The General Assembly could extend the sunset up to an additional twelve years (approximately until August 2031) by passing legislation. Based upon the current appropriation, this will continue to cost the state approximately $200,000 per year in tax credit redemptions.

3. The General Assembly could remove the sunset requirement. This would also require passing legislation. Based upon the current appropriation, this would continue to cost the state approximately $200,000 per year in tax credit redemptions.

Oversight agrees with the Missouri Tax Credit Review Commission that the Qualified Rolling Stock tax credit program should be allowed to sunset (be eliminated). This tax credit serves too narrow of a focus and fails to require a positive return on investment to the state. Oversight further notes that the program has had very sporadic and limited funding in its history. Therefore, Oversight recommends the program be allowed to sunset.