

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 321**  
**98TH GENERAL ASSEMBLY**

1080H.03C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal section 143.451, RSMo, and to enact in lieu thereof one new section relating to allocation of corporate income.

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

Section A. Section 143.451, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 143.451, to read as follows:

143.451. 1. Missouri taxable income of a corporation shall include all income derived from sources within this state.

2. A corporation described in subdivision (1) of subsection 1 of section 143.441 shall include in its Missouri taxable income all income from sources within this state, including that from the transaction of business in this state and that from the transaction of business partly done in this state and partly done in another state or states. However:

(1) Where income results from a transaction partially in this state and partially in another state or states, and income and deductions of the portion in the state cannot be segregated, then such portions of income and deductions shall be allocated in this state and the other state or states as will distribute to this state a portion based upon the portion of the transaction in this state and the portion in such other state or states.

(2) The taxpayer may elect to compute the portion of income from all sources in this state in the following manner, or the manner set forth in subdivision (3) of this subsection:

(a) The income from all sources shall be determined as provided, excluding therefrom the figures for the operation of any bridge connecting this state with another state.

(b) The amount of sales which are transactions wholly in this state shall be added to one-half of the amount of sales which are transactions partly within this state and partly without this state, and the amount thus obtained shall be divided by the total sales or in cases where sales

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.

19 do not express the volume of business, the amount of business transacted wholly in this state  
20 shall be added to one-half of the amount of business transacted partly in this state and partly  
21 outside this state and the amount thus obtained shall be divided by the total amount of business  
22 transacted, and the net income shall be multiplied by the fraction thus obtained, to determine the  
23 proportion of income to be used to arrive at the amount of Missouri taxable income. The  
24 investment or reinvestment of its own funds, or sale of any such investment or reinvestment,  
25 shall not be considered as sales or other business transacted for the determination of said  
26 fraction.

27 (c) For the purposes of this subdivision, a transaction involving the sale of tangible  
28 property is:

29 a. "Wholly in this state" if both the seller's shipping point and the purchaser's destination  
30 point are in this state;

31 b. "Partly within this state and partly without this state" if the seller's shipping point is  
32 in this state and the purchaser's destination point is outside this state, or the seller's shipping point  
33 is outside this state and the purchaser's destination point is in this state;

34 c. Not "wholly in this state" or not "partly within this state and partly without this state"  
35 only if both the seller's shipping point and the purchaser's destination point are outside this state.

36 (d) For purposes of this subdivision:

37 a. The purchaser's destination point shall be determined without regard to the FOB point  
38 or other conditions of the sale; and

39 b. The seller's shipping point is determined without regard to the location of the seller's  
40 principle office or place of business.

41 (3) The taxpayer may elect to compute the portion of income from all sources in this  
42 state in the following manner:

43 (a) The income from all sources shall be determined as provided, excluding therefrom  
44 the figures for the operation of any bridge connecting this state with another state;

45 (b) The amount of sales which are transactions in this state shall be divided by the total  
46 sales, and the net income shall be multiplied by the fraction thus obtained, to determine the  
47 proportion of income to be used to arrive at the amount of Missouri taxable income. The  
48 investment or reinvestment of its own funds, or sale of any such investment or reinvestment,  
49 shall not be considered as sales or other business transacted for the determination of said  
50 fraction;

51 (c) For the purposes of this subdivision, a transaction involving the sale of tangible  
52 property is:

53 a. "In this state" if the purchaser's destination point is in this state;

54 b. Not "in this state" if the purchaser's destination point is outside this state;

55 (d) For purposes of this subdivision, the purchaser's destination point shall be determined  
56 without regard to the FOB point or other conditions of the sale and shall not be in this state if the  
57 purchaser received the tangible personal property from the seller in this state for delivery to the  
58 purchaser's location outside this state;

59 (e) **For the purposes of this subdivision, a transaction involving the sale other than**  
60 **the sale of tangible property is "in this state" if the taxpayer's market for the sales is in this**  
61 **state. The taxpayer's market for sales is in this state:**

62 a. **In the case of sale, rental, lease, or license of real property, if and to the extent**  
63 **the property is located in this state;**

64 b. **In the case of rental, lease, or license of tangible personal property, if and to the**  
65 **extent the property is located in this state;**

66 c. **In the case of sale of a service, if and to the extent the ultimate beneficiary of the**  
67 **service is located in this state and shall not be in this state if the ultimate beneficiary of the**  
68 **service rendered by the taxpayer of the taxpayer's designee is located outside this state;**  
69 **and**

70 d. **In the case of intangible property:**

71 (i) **That is rented, leased, or licensed, if and to the extent the property is used in this**  
72 **state by the rentee, lessee, or licensee, provided that intangible property utilized in**  
73 **marketing a good or service to a consumer is "used in this state" if that good or service is**  
74 **purchased by a consumer who is in this state. Franchise fees or royalties received for the**  
75 **rent, lease, license, or use of a trade name, trademark, service mark, or franchise system**  
76 **or provides a right to conduct business activity in a specific geographic area are "used in**  
77 **this state" to the extent the franchise location is in this state; and**

78 (ii) **That is sold, if and to the extent the property is used in this state, provided that:**

79 i. **A contract right, government license, or similar intangible property that**  
80 **authorizes the holder to conduct a business activity in a specific geographic area is "used**  
81 **in this state" if the geographic area includes all or part of this state;**

82 ii. **Receipts from intangible property sales that are contingent on the productivity,**  
83 **use, or disposition of the intangible property shall be treated as receipts from the rental,**  
84 **lease, or licensing of such intangible property under item (i) of this subparagraph; and**

85 iii. **All other receipts from a sales of intangible property shall be excluded from the**  
86 **numerator and denominator of the sales factor;**

87 (f) **If the state or states of assignment under paragraph (e) of this subdivision**  
88 **cannot be determined, the state or states of assignment shall be reasonably approximated;**

89 (g) If the state of assignment cannot be determined under paragraph (e) of this  
90 subdivision or reasonably approximated under paragraph (f) of this subdivision, such sales  
91 shall be excluded from the denominator of the sales factor;

92 (h) The director may prescribe such rules and regulations as necessary or  
93 appropriate to carry out the purposes of this section.

94 (4) For purposes of this subsection, the following words shall, unless the context  
95 otherwise requires, have the following meaning:

96 (a) "Administration services" include, but are not limited to, clerical, fund or  
97 shareholder accounting, participant record keeping, transfer agency, bookkeeping, data  
98 processing, custodial, internal auditing, legal and tax services performed for an investment  
99 company;

100 (b) "Affiliate", the meaning as set forth in 15 U.S.C. Section 80a-2(a)(3)(C), as may  
101 be amended from time to time;

102 (c) "Distribution services" include, but are not limited to, the services of  
103 advertising, servicing, marketing, underwriting or selling shares of an investment  
104 company, but, in the case of advertising, servicing or marketing shares, only where such  
105 service is performed by a person who is, or in the case of a closed end company, was, either  
106 engaged in the services of underwriting or selling investment company shares or affiliated  
107 with a person that is engaged in the service of underwriting or selling investment company  
108 shares. In the case of an open end company, such service of underwriting or selling shares  
109 must be performed pursuant to a contract entered into pursuant to 15 U.S.C. Section  
110 80a-15(b), as from time to time amended;

111 (d) "Investment company", any person registered under the federal Investment  
112 Company Act of 1940, as amended from time to time, (the act) or a company which would  
113 be required to register as an investment company under the act except that such person is  
114 exempt to such registration pursuant to Section 80a-3(c)(1) of the act;

115 (e) "Investment funds service corporation" includes any corporation or S  
116 corporation doing business in the state which derives more than fifty percent of its gross  
117 income in the ordinary course of business from the provision directly or indirectly of  
118 management, distribution or administration services to or on behalf of an investment  
119 company or from trustees, sponsors and participants of employee benefit plans which have  
120 accounts in an investment company. An investment funds service corporation shall include  
121 any corporation or S corporation providing management services as an investment  
122 advisory firm registered under Section 203 of the Investment Advisors Act of 1940, as  
123 amended from time to time, regardless of the percentage of gross revenues consisting of  
124 fees from management services provided to or on behalf of an investment company;

125 (f) "Management services" include but are not limited to, the rendering of  
126 investment advice directly or indirectly to an investment company making determinations  
127 as to when sales and purchases of securities are to be made on behalf of the investment  
128 company, or the selling or purchasing of securities constituting assets of an investment  
129 company, and related activities, but only where such activity or activities are performed:

130 a. Pursuant to a contract with the investment company entered into pursuant to 15  
131 U.S.C. Section 80a-15(a), as from time to time amended;

132 b. For a person that has entered into such contract with the investment company;

133 or

134 c. For a person that is affiliated with a person that has entered into such contract  
135 with an investment company;

136 (g) "Qualifying sales", gross income derived from the provision directly or  
137 indirectly of management, distribution or administration services to or on behalf of an  
138 investment company or from trustees, sponsors and participants of employee benefit plans  
139 which have accounts in an investment company. For purposes of this section, "gross  
140 income" is defined as that amount of income earned from qualifying sources without  
141 deduction of expenses related to the generation of such income;

142 (h) "Residence", presumptively the fund shareholder's mailing address on the  
143 records of the investment company. If, however, the investment company or the  
144 investment funds service corporation has actual knowledge that the fund shareholder's  
145 primary residence or principal place of business is different than the fund shareholder's  
146 mailing address such presumption shall not control. To the extent an investment funds  
147 service corporation does not have access to the records of the investment company, the  
148 investment funds service corporation may employ reasonable methods to determine the  
149 investment company fund shareholder's residence.

150 (5) Notwithstanding other provisions of law to the contrary, qualifying sales of an  
151 investment funds service corporation, or S corporation, shall be considered wholly in this state  
152 only to the extent that the fund shareholders of the investment companies, to which the  
153 investment funds service corporation, or S corporation, provide services, are resided in this  
154 state. Wholly in this state qualifying sales of an investment funds service corporation, or S  
155 corporation, shall be determined as follows:

156 (a) By multiplying the investment funds service corporation's total dollar amount of  
157 qualifying sales from services provided to each investment company by a fraction, the numerator  
158 of which shall be the average of the number of shares owned by the investment company's fund  
159 shareholders resided in this state at the beginning of and at the end of the investment  
160 company's taxable year that ends with or within the investment funds service corporation's

161 taxable year, and the denominator of which shall be the average of the number of shares owned  
162 by the investment company's fund shareholders everywhere at the beginning of and at the end  
163 of the investment company's taxable year that ends with or within the investment funds service  
164 corporation's taxable year;

165 (b) A separate computation shall be made to determine the wholly in this state qualifying  
166 sales from each investment company. The qualifying sales for each investment company shall  
167 be multiplied by the respective percentage of each fund, as calculated pursuant to paragraph (a)  
168 of this subdivision. The product of this equation shall result in the wholly in this state qualifying  
169 sales. The qualifying sales for each investment company which are not wholly in this state will  
170 be considered wholly without this state;

171 (c) To the extent an investment funds service corporation has sales which are not  
172 qualifying sales, those nonqualified sales shall be apportioned to this state based on the  
173 methodology utilized by the investment funds service corporation without regard to this  
174 subdivision.

175 3. Any corporation described in subdivision (1) of subsection 1 of section 143.441  
176 organized in this state or granted a permit to operate in this state for the transportation or care  
177 of passengers shall report its gross earnings within the state on intrastate business and shall also  
178 report its gross earnings on all interstate business done in this state which report shall be subject  
179 to inquiry for the purpose of determining the amount of income to be included in Missouri  
180 taxable income. The previous sentence shall not apply to a railroad.

181 4. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall  
182 include in its Missouri taxable income all income arising from all sources in this state and all  
183 income from each transportation service wholly within this state, from each service where the  
184 only lines of such corporation used are those in this state, and such proportion of revenue from  
185 each service where the facilities of such corporation in this state and in another state or states are  
186 used, as the mileage used over the lines of such corporation in the state shall bear to the total  
187 mileage used over the lines of such corporation. The taxpayer may elect to compute the portion  
188 of income from all sources within this state in the following manner:

189 (1) The income from all sources shall be determined as provided;

190 (2) The amount of investment of such corporation on December thirty-first of each year  
191 in this state in fixed transportation facilities, real estate and improvements, plus the value on  
192 December thirty-first of each year of any fixed transportation facilities, real estate and  
193 improvements in this state leased from any other railroad shall be divided by the sum of the total  
194 amount of investment of such corporation on December thirty-first of each year in fixed  
195 transportation facilities, real estate and improvements, plus the value on December thirty-first  
196 of each year, of any fixed transportation facilities, real estate and improvements leased from any

197 other railroad. Where any fixed transportation facilities, real estate or improvements are leased  
198 by more than one railroad, such portion of the value shall be used by each railroad as the rental  
199 paid by each shall bear to the rental paid by all lessees. The income shall be multiplied by the  
200 fraction thus obtained to determine the proportion to be used to arrive at the amount of Missouri  
201 taxable income.

202         5. A corporation described in subdivision (3) of subsection 1 of section 143.441 shall  
203 include in its Missouri taxable income one-half of the net income from the operation of a bridge  
204 between this and another state. If any such bridge is owned or operated by a railroad corporation  
205 or corporations, or by a corporation owning a railroad corporation using such bridge, then the  
206 figures for operation of such bridge may be included in the return of such railroad or railroads;  
207 or if such bridge is owned or operated by any other corporation which may now or hereafter be  
208 required to file an income tax return, one-half of the income or loss to such corporation from  
209 such bridge may be included in such return by adding or subtracting same to or from another net  
210 income or loss shown by the return.

211         6. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall  
212 include in its Missouri taxable income all income arising from all sources within this state.  
213 Income shall include revenue from each telephonic or telegraphic service rendered wholly within  
214 this state; from each service rendered for which the only facilities of such corporation used are  
215 those in this state; and from each service rendered over the facilities of such corporation in this  
216 state and in other state or states, such proportion of such revenue as the mileage involved in this  
217 state shall bear to the total mileage involved over the lines of said company in all states. The  
218 taxpayer may elect to compute the portion of income from all sources within this state in the  
219 following manner:

220             (1) The income from all sources shall be determined as provided;

221             (2) The amount of investment of such corporation on December thirty-first of each year  
222 in this state in telephonic or telegraphic facilities, real estate and improvements thereon, shall be  
223 divided by the amount of the total investment of such corporation on December thirty-first of  
224 each year in telephonic or telegraphic facilities, real estate and improvements. The income of  
225 the taxpayer shall be multiplied by fraction thus obtained to determine the proportion to be used  
226 to arrive at the amount of Missouri taxable income.

227         7. From the income determined in subsections 2, 3, 4, 5 and 6 of this section to be from  
228 all sources within this state shall be deducted such of the deductions for expenses in determining  
229 Missouri taxable income as were incurred in this state to produce such income and all losses  
230 actually sustained in this state in the business of the corporation.

231         8. If a corporation derives only part of its income from sources within Missouri, its  
232 Missouri taxable income shall only reflect the effect of the following listed deductions to the

233 extent applicable to Missouri. The deductions are: (a) its deduction for federal income taxes  
234 pursuant to section 143.171, and (b) the effect on Missouri taxable income of the deduction for  
235 net operating loss allowed by Section 172 of the Internal Revenue Code. The extent applicable  
236 to Missouri shall be determined by multiplying the amount that would otherwise affect Missouri  
237 taxable income by the ratio for the year of the Missouri taxable income of the corporation for the  
238 year divided by the Missouri taxable income for the year as though the corporation had derived  
239 all of its income from sources within Missouri. For the purpose of the preceding sentence,  
240 Missouri taxable income shall not reflect the listed deductions.

241 9. Any investment funds service corporation organized as a corporation or S corporation  
242 which has any shareholders resided in this state shall be subject to Missouri income tax as  
243 provided in this chapter.

244 **10. The provisions of this section do not impact any other apportionment election**  
245 **available to a taxpayer under Missouri statutes.**

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