

FIRST REGULAR SESSION

# SENATE BILL NO. 19

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Pre-filed December 1, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0149S.011

## AN ACT

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

*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Section A. Section 143.451, RSMo, is repealed and one new section  
2 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  
2 income derived from sources within this state.

3 2. A corporation described in subdivision (1) of subsection 1 of section  
4 143.441 shall include in its Missouri taxable income all income from sources  
5 within this state, including that from the transaction of business in this state and  
6 that from the transaction of business partly done in this state and partly done in  
7 another state or states. However:

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

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

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

20 (b) The amount of sales which are transactions wholly in this state shall

21 be added to one-half of the amount of sales which are transactions partly within  
22 this state and partly without this state, and the amount thus obtained shall be  
23 divided by the total sales or in cases where sales do not express the volume of  
24 business, the amount of business transacted wholly in this state shall be added  
25 to one-half of the amount of business transacted partly in this state and partly  
26 outside this state and the amount thus obtained shall be divided by the total  
27 amount of business transacted, and the net income shall be multiplied by the  
28 fraction thus obtained, to determine the proportion of income to be used to arrive  
29 at the amount of Missouri taxable income. The investment or reinvestment of its  
30 own funds, or sale of any such investment or reinvestment, shall not be  
31 considered as sales or other business transacted for the determination of said  
32 fraction.

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

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

37 b. "Partly within this state and partly without this state" if the seller's  
38 shipping point is in this state and the purchaser's destination point is outside  
39 this state, or the seller's shipping point is outside this state and the purchaser's  
40 destination point is in this state;

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

44 (d) For purposes of this subdivision:

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

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

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

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

54 (b) The amount of sales which are transactions in this state shall be  
55 divided by the total sales, and the net income shall be multiplied by the fraction  
56 thus obtained, to determine the proportion of income to be used to arrive at the

57 amount of Missouri taxable income. The investment or reinvestment of its own  
58 funds, or sale of any such investment or reinvestment, shall not be considered as  
59 sales or other business transacted for the determination of said fraction;

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

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

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

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

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

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

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

78 c. In the case of sale of a service, if and to the extent the benefit  
79 of the service is delivered to a purchaser location in this state; and

80 d. In the case of intangible property:

81 (i) That is rented, leased, or licensed, if and to the extent the  
82 property is used in this state by the rentee, lessee, or licensee, provided  
83 that intangible property utilized in marketing a good or service to a  
84 consumer is "used in this state" if that good or service is purchased by  
85 a consumer who is in this state. Franchise fees or royalties received  
86 for the rent, lease, license, or use of a trade name, trademark, service  
87 mark, or franchise system or provides a right to conduct business  
88 activity in a specific geographic area are "used in this state" to the  
89 extent the franchise location is in this state; and

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

92 i. A contract right, government license, or similar intangible

93 **property that authorizes the holder to conduct a business activity in a**  
94 **specific geographic area is "used in this state" if the geographic area**  
95 **includes all or part of this state;**

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

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

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

105 **(g) If the state of assignment cannot be determined under**  
106 **paragraph (e) of this subdivision or reasonably approximated under**  
107 **paragraph (f) of this subdivision, such sales shall be excluded from the**  
108 **denominator of the sales factor;**

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

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

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

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

119 (c) "Distribution services" include, but are not limited to, the services of  
120 advertising, servicing, marketing, underwriting or selling shares of an investment  
121 company, but, in the case of advertising, servicing or marketing shares, only  
122 where such service is performed by a person who is, or in the case of a closed end  
123 company, was, either engaged in the services of underwriting or selling  
124 investment company shares or affiliated with a person that is engaged in the  
125 service of underwriting or selling investment company shares. In the case of an  
126 open end company, such service of underwriting or selling shares must be  
127 performed pursuant to a contract entered into pursuant to 15 U.S.C. Section  
128 80a-15(b), as from time to time amended;

129 (d) "Investment company", any person registered under the federal  
130 Investment Company Act of 1940, as amended from time to time, (the act) or a  
131 company which would be required to register as an investment company under  
132 the act except that such person is exempt to such registration pursuant to Section  
133 80a-3(c)(1) of the act;

134 (e) "Investment funds service corporation" includes any corporation or S  
135 corporation doing business in the state which derives more than fifty percent of  
136 its gross income in the ordinary course of business from the provision directly or  
137 indirectly of management, distribution or administration services to or on behalf  
138 of an investment company or from trustees, sponsors and participants of employee  
139 benefit plans which have accounts in an investment company. An investment  
140 funds service corporation shall include any corporation or S corporation providing  
141 management services as an investment advisory firm registered under Section  
142 203 of the Investment Advisors Act of 1940, as amended from time to time,  
143 regardless of the percentage of gross revenues consisting of fees from  
144 management services provided to or on behalf of an investment company;

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

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

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

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

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

164 (h) "Residence", presumptively the fund shareholder's mailing address on

165 the records of the investment company. If, however, the investment company or  
166 the investment funds service corporation has actual knowledge that the fund  
167 shareholder's primary residence or principal place of business is different than  
168 the fund shareholder's mailing address such presumption shall not control. To  
169 the extent an investment funds service corporation does not have access to the  
170 records of the investment company, the investment funds service corporation may  
171 employ reasonable methods to determine the investment company fund  
172 shareholder's residence.

173 (5) Notwithstanding other provisions of law to the contrary, qualifying  
174 sales of an investment funds service corporation, or S corporation, shall be  
175 considered wholly in this state only to the extent that the fund shareholders of  
176 the investment companies, to which the investment funds service corporation, or  
177 S corporation, provide services, are resided in this state. Wholly in this state  
178 qualifying sales of an investment funds service corporation, or S corporation, shall  
179 be determined as follows:

180 (a) By multiplying the investment funds service corporation's total dollar  
181 amount of qualifying sales from services provided to each investment company by  
182 a fraction, the numerator of which shall be the average of the number of shares  
183 owned by the investment company's fund shareholders resided in this state  
184 at the beginning of and at the end of the investment company's taxable year that  
185 ends with or within the investment funds service corporation's taxable year, and  
186 the denominator of which shall be the average of the number of shares owned by  
187 the investment company's fund shareholders everywhere at the beginning of and  
188 at the end of the investment company's taxable year that ends with or within the  
189 investment funds service corporation's taxable year;

190 (b) A separate computation shall be made to determine the wholly in this  
191 state qualifying sales from each investment company. The qualifying sales for  
192 each investment company shall be multiplied by the respective percentage of each  
193 fund, as calculated pursuant to paragraph (a) of this subdivision. The product of  
194 this equation shall result in the wholly in this state qualifying sales. The  
195 qualifying sales for each investment company which are not wholly in this state  
196 will be considered wholly without this state;

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

201           3. Any corporation described in subdivision (1) of subsection 1 of section  
202 143.441 organized in this state or granted a permit to operate in this state for the  
203 transportation or care of passengers shall report its gross earnings within the  
204 state on intrastate business and shall also report its gross earnings on all  
205 interstate business done in this state which report shall be subject to inquiry for  
206 the purpose of determining the amount of income to be included in Missouri  
207 taxable income. The previous sentence shall not apply to a railroad.

208           4. A corporation described in subdivision (2) of subsection 1 of section  
209 143.441 shall include in its Missouri taxable income all income arising from all  
210 sources in this state and all income from each transportation service wholly  
211 within this state, from each service where the only lines of such corporation used  
212 are those in this state, and such proportion of revenue from each service where  
213 the facilities of such corporation in this state and in another state or states are  
214 used, as the mileage used over the lines of such corporation in the state shall  
215 bear to the total mileage used over the lines of such corporation. The taxpayer  
216 may elect to compute the portion of income from all sources within this state in  
217 the following manner:

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

219           (2) The amount of investment of such corporation on December thirty-first  
220 of each year in this state in fixed transportation facilities, real estate and  
221 improvements, plus the value on December thirty-first of each year of any fixed  
222 transportation facilities, real estate and improvements in this state leased from  
223 any other railroad shall be divided by the sum of the total amount of investment  
224 of such corporation on December thirty-first of each year in fixed transportation  
225 facilities, real estate and improvements, plus the value on December thirty-first  
226 of each year, of any fixed transportation facilities, real estate and improvements  
227 leased from any other railroad. Where any fixed transportation facilities, real  
228 estate or improvements are leased by more than one railroad, such portion of the  
229 value shall be used by each railroad as the rental paid by each shall bear to the  
230 rental paid by all lessees. The income shall be multiplied by the fraction thus  
231 obtained to determine the proportion to be used to arrive at the amount of  
232 Missouri taxable income.

233           5. A corporation described in subdivision (3) of subsection 1 of section  
234 143.441 shall include in its Missouri taxable income one-half of the net income  
235 from the operation of a bridge between this and another state. If any such bridge  
236 is owned or operated by a railroad corporation or corporations, or by a corporation

237 owning a railroad corporation using such bridge, then the figures for operation  
238 of such bridge may be included in the return of such railroad or railroads; or if  
239 such bridge is owned or operated by any other corporation which may now or  
240 hereafter be required to file an income tax return, one-half of the income or loss  
241 to such corporation from such bridge may be included in such return by adding  
242 or subtracting same to or from another net income or loss shown by the return.

243           6. A corporation described in subdivision (4) of subsection 1 of section  
244 143.441 shall include in its Missouri taxable income all income arising from all  
245 sources within this state. Income shall include revenue from each telephonic or  
246 telegraphic service rendered wholly within this state; from each service rendered  
247 for which the only facilities of such corporation used are those in this state; and  
248 from each service rendered over the facilities of such corporation in this state and  
249 in other state or states, such proportion of such revenue as the mileage involved  
250 in this state shall bear to the total mileage involved over the lines of said  
251 company in all states. The taxpayer may elect to compute the portion of income  
252 from all sources within this state in the following manner:

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

254           (2) The amount of investment of such corporation on December thirty-first  
255 of each year in this state in telephonic or telegraphic facilities, real estate and  
256 improvements thereon, shall be divided by the amount of the total investment of  
257 such corporation on December thirty-first of each year in telephonic or telegraphic  
258 facilities, real estate and improvements. The income of the taxpayer shall be  
259 multiplied by fraction thus obtained to determine the proportion to be used to  
260 arrive at the amount of Missouri taxable income.

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

266           8. If a corporation derives only part of its income from sources within  
267 Missouri, its Missouri taxable income shall only reflect the effect of the following  
268 listed deductions to the extent applicable to Missouri. The deductions are: (a)  
269 its deduction for federal income taxes pursuant to section 143.171, and (b) the  
270 effect on Missouri taxable income of the deduction for net operating loss allowed  
271 by Section 172 of the Internal Revenue Code. The extent applicable to Missouri  
272 shall be determined by multiplying the amount that would otherwise affect

273 Missouri taxable income by the ratio for the year of the Missouri taxable income  
274 of the corporation for the year divided by the Missouri taxable income for the year  
275 as though the corporation had derived all of its income from sources within  
276 Missouri. For the purpose of the preceding sentence, Missouri taxable income  
277 shall not reflect the listed deductions.

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

Unofficial

Bill

Copy