

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 19
98TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, February 12, 2015, with recommendation that the Senate Committee Substitute do pass.

0149S.02C

ADRIANE D. CROUSE, Secretary.

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Section A. Section 143.451, RSMo, is repealed and one new section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
79 ultimate beneficiary of the service is located in this state and shall not
80 be in this state if the ultimate beneficiary of the service rendered by
81 the taxpayer or the taxpayer's designee is located outside this state;
82 and

83 d. In the case of intangible property:

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

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

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

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

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

105 (f) If the state or states of assignment under paragraph (e) of this
106 subdivision cannot be determined, the state or states of assignment
107 shall be reasonably approximated;

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

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

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

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

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

122 (c) "Distribution services" include, but are not limited to, the services of
123 advertising, servicing, marketing, underwriting or selling shares of an investment
124 company, but, in the case of advertising, servicing or marketing shares, only
125 where such service is performed by a person who is, or in the case of a closed end
126 company, was, either engaged in the services of underwriting or selling
127 investment company shares or affiliated with a person that is engaged in the
128 service of underwriting or selling investment company shares. In the case of an

129 open end company, such service of underwriting or selling shares must be
130 performed pursuant to a contract entered into pursuant to 15 U.S.C. Section
131 80a-15(b), as from time to time amended;

132 (d) "Investment company", any person registered under the federal
133 Investment Company Act of 1940, as amended from time to time, (the act) or a
134 company which would be required to register as an investment company under
135 the act except that such person is exempt to such registration pursuant to Section
136 80a-3(c)(1) of the act;

137 (e) "Investment funds service corporation" includes any corporation or S
138 corporation doing business in the state which derives more than fifty percent of
139 its gross income in the ordinary course of business from the provision directly or
140 indirectly of management, distribution or administration services to or on behalf
141 of an investment company or from trustees, sponsors and participants of employee
142 benefit plans which have accounts in an investment company. An investment
143 funds service corporation shall include any corporation or S corporation providing
144 management services as an investment advisory firm registered under Section
145 203 of the Investment Advisors Act of 1940, as amended from time to time,
146 regardless of the percentage of gross revenues consisting of fees from
147 management services provided to or on behalf of an investment company;

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

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

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

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

160 (g) "Qualifying sales", gross income derived from the provision directly or
161 indirectly of management, distribution or administration services to or on behalf
162 of an investment company or from trustees, sponsors and participants of employee
163 benefit plans which have accounts in an investment company. For purposes of
164 this section, "gross income" is defined as that amount of income earned from

165 qualifying sources without deduction of expenses related to the generation of such
166 income;

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

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

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

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

200 (c) To the extent an investment funds service corporation has sales which

201 are not qualifying sales, those nonqualified sales shall be apportioned to this
202 state based on the methodology utilized by the investment funds service
203 corporation without regard to this subdivision.

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

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

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

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

236 5. A corporation described in subdivision (3) of subsection 1 of section

237 143.441 shall include in its Missouri taxable income one-half of the net income
238 from the operation of a bridge between this and another state. If any such bridge
239 is owned or operated by a railroad corporation or corporations, or by a corporation
240 owning a railroad corporation using such bridge, then the figures for operation
241 of such bridge may be included in the return of such railroad or railroads; or if
242 such bridge is owned or operated by any other corporation which may now or
243 hereafter be required to file an income tax return, one-half of the income or loss
244 to such corporation from such bridge may be included in such return by adding
245 or subtracting same to or from another net income or loss shown by the return.

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

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

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

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

269 8. If a corporation derives only part of its income from sources within
270 Missouri, its Missouri taxable income shall only reflect the effect of the following
271 listed deductions to the extent applicable to Missouri. The deductions are: (a)
272 its deduction for federal income taxes pursuant to section 143.171, and (b) the

273 effect on Missouri taxable income of the deduction for net operating loss allowed
274 by Section 172 of the Internal Revenue Code. The extent applicable to Missouri
275 shall be determined by multiplying the amount that would otherwise affect
276 Missouri taxable income by the ratio for the year of the Missouri taxable income
277 of the corporation for the year divided by the Missouri taxable income for the year
278 as though the corporation had derived all of its income from sources within
279 Missouri. For the purpose of the preceding sentence, Missouri taxable income
280 shall not reflect the listed deductions.

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

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

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