

FIRST REGULAR SESSION

HOUSE BILL NO. 321

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JONES (50).

1080H.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 143.451, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 143.451, to read as follows: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

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.

18 this state, and the amount thus obtained shall be divided by the total sales or in cases where sales
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 benefit of the service is
67 delivered to a purchaser location in this state; and**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

144 (5) Notwithstanding other provisions of law to the contrary, qualifying sales of an
145 investment funds service corporation, or S corporation, shall be considered wholly in this state
146 only to the extent that the fund shareholders of the investment companies, to which the
147 investment funds service corporation, or S corporation, provide services, are resided in this
148 state. Wholly in this state qualifying sales of an investment funds service corporation, or S
149 corporation, shall be determined as follows:

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

159 (b) A separate computation shall be made to determine the wholly in this state qualifying
160 sales from each investment company. The qualifying sales for each investment company shall
161 be multiplied by the respective percentage of each fund, as calculated pursuant to paragraph (a)

162 of this subdivision. The product of this equation shall result in the wholly in this state qualifying
163 sales. The qualifying sales for each investment company which are not wholly in this state will
164 be considered wholly without this state;

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

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

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

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

184 (2) The amount of investment of such corporation on December thirty-first of each year
185 in this state in fixed transportation facilities, real estate and improvements, plus the value on
186 December thirty-first of each year of any fixed transportation facilities, real estate and
187 improvements in this state leased from any other railroad shall be divided by the sum of the total
188 amount of investment of such corporation on December thirty-first of each year in fixed
189 transportation facilities, real estate and improvements, plus the value on December thirty-first
190 of each year, of any fixed transportation facilities, real estate and improvements leased from any
191 other railroad. Where any fixed transportation facilities, real estate or improvements are leased
192 by more than one railroad, such portion of the value shall be used by each railroad as the rental
193 paid by each shall bear to the rental paid by all lessees. The income shall be multiplied by the
194 fraction thus obtained to determine the proportion to be used to arrive at the amount of Missouri
195 taxable income.

196 5. A corporation described in subdivision (3) of subsection 1 of section 143.441 shall
197 include in its Missouri taxable income one-half of the net income from the operation of a bridge

198 between this and another state. If any such bridge is owned or operated by a railroad corporation
199 or corporations, or by a corporation owning a railroad corporation using such bridge, then the
200 figures for operation of such bridge may be included in the return of such railroad or railroads;
201 or if such bridge is owned or operated by any other corporation which may now or hereafter be
202 required to file an income tax return, one-half of the income or loss to such corporation from
203 such bridge may be included in such return by adding or subtracting same to or from another net
204 income or loss shown by the return.

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

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

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

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

225 8. If a corporation derives only part of its income from sources within Missouri, its
226 Missouri taxable income shall only reflect the effect of the following listed deductions to the
227 extent applicable to Missouri. The deductions are: (a) its deduction for federal income taxes
228 pursuant to section 143.171, and (b) the effect on Missouri taxable income of the deduction for
229 net operating loss allowed by Section 172 of the Internal Revenue Code. The extent applicable
230 to Missouri shall be determined by multiplying the amount that would otherwise affect Missouri
231 taxable income by the ratio for the year of the Missouri taxable income of the corporation for the
232 year divided by the Missouri taxable income for the year as though the corporation had derived

233 all of its income from sources within Missouri. For the purpose of the preceding sentence,
234 Missouri taxable income shall not reflect the listed deductions.

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

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