

HCS HB 321 -- INTERSTATE CORPORATE INCOME

SPONSOR: Jones

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Ways and Means by a vote of 10 to 2. Voted "Do Pass with HCS" by the Select Committee on Financial Institutions and Taxation by a vote of 7 to 3.

Currently, in determining what portion of a corporation's income is taxable in Missouri, the business may use a method whereby the ratio of instate sales to total sales is multiplied by the net income. A method for determining whether sales of tangible property are to be considered instate is already established in current law. This bill specifies a process for all other sales.

For sales of real property or rentals of tangible personal property, the portion of the property sold or rented that is located in this state must be considered an instate sale. For sales of service, the portion of the benefits delivered to purchasers in this state must be considered an instate sale.

For rentals or licenses of intangible property, the portion used in this state by the rentee or licensee must be considered an instate sale. Intangible property used for marketing must be considered used in this state if the good or service being marketed is purchased by a consumer in this state. Franchise fees or royalties for intangible property must be considered used in this state if the franchise is located in this state.

For sales of intangible property, the portion of the sale used in this state must be considered an instate sale. If the sale is for the right to conduct business activity in a certain geographic area, the sale must be considered instate if the geographic area is in this state. If receipts for sales of intangible property are dependent on use or productivity, the sale must be considered a lease or rental of intangible property. All sales of intangible property other than the right to conduct business in a specific area or sales with receipts contingent on productivity or use must be excluded from the sales factor when determining corporate income tax.

If it cannot be determined or reasonably approximated that a sale occurs in this state, the sale must be excluded from the sales factor for corporate income taxation.

PROPONENTS: Supporters say that in 2013, with HB 128, the apportionment process changed. The Department of Revenue (DOR) said services are not part of this new method. H & R block is an

example of a service-based company that does business in several states. Companies are required to pay Missouri income tax on services in other states. This makes businesses not want to come to Missouri. This bill clarifies the legislative intent of the law as originally passed two years ago. The changes made to the apportionment formula choices apply to all corporations, not just those that derive income solely from the sale of tangible personal property. DOR has sought to administratively limit the application of the changes to the statute in 2013 by issuing letters saying some corporations could not use the new choice. The bill provides more guidance as to what is a Missouri sale and what is an out-of-state sale. This bill provides businesses a new option for calculating the amount of income subject to tax in Missouri, based on the market of their goods and services (commonly referred to as "market-based sourcing") and removes the disincentive for employing labor and capital in the state. This is good tax policy for Missouri and encourages job creation and economic development.

Testifying for the bill were Representative Jones; Associated Industries of Missouri; Taxpayers Research Institute of Missouri; Daniel White, H & R Block; Greater Kansas City Chamber of Commerce; Missouri Chamber of Commerce and Industry; Missouri Society of CPAs; and Cerner Corporation.

OPPONENTS: There was no opposition voiced to the committee.