

SECOND REGULAR SESSION

HOUSE BILL NO. 2638

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH (163).

6620H.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 taxable income of corporations.

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Section A. Section 143.451, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 143.451, to read as follows: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 the
60 sale of tangible property is "in this state" if the taxpayer's market for the sales is in this state. The
61 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 the
63 property is located in this state;

64 b. In the case of rental, lease, or license of tangible personal property, if and to the extent
65 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 or the taxpayer's designee is located outside this state; and

69 d. In the case of intangible property:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

122 (f) "Management services" include but are not limited to, the rendering of investment
123 advice directly or indirectly to an investment company making determinations as to when sales

124 and purchases of securities are to be made on behalf of the investment company, or the selling
125 or purchasing of securities constituting assets of an investment company, and related activities,
126 but only where such activity or activities are performed:

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

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

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

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

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

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

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

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

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

170 **(6) Notwithstanding the Multistate Tax Compact, sections 32.200 to 32.240; this**
171 **section; and section 143.461 to the contrary, sales and business transactions shall not**
172 **include any intercompany transactions, as that term is defined under 26 C.F.R. 1.1502-13,**
173 **between corporations that file a consolidated income tax return in this state.**

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

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

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

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

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

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

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

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

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

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

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

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

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

243 10. The provisions of this section do not impact any other apportionment election
244 available to a taxpayer under Missouri statutes **unless explicitly stated in this section.**

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