

FIRST REGULAR SESSION

SENATE BILL NO. 687

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS RUSSELL, VOGEL AND GOODE.

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TERRY L. SPIELER, Secretary.

1969S.011

AN ACT

To repeal sections 143.431 and 143.451, RSMo, and to enact in lieu thereof two new sections relating to corporate income tax.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 143.431 and 143.451, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 143.431 and 143.451, to read as follows:

143.431. 1. The Missouri taxable income of a corporation taxable under sections 143.011 to 143.996 shall be so much of its federal taxable income for the taxable year, with the modifications specified in subsections 2 and 3 of this section, as [is derived from sources within] **apportioned to** Missouri as provided in section 143.451. The tax of a corporation shall be computed on its Missouri taxable income at the rates provided in section 143.071.

2. There shall be added to or subtracted from federal taxable income, the modifications to adjusted gross income provided in section 143.121 and the applicable modifications to itemized deductions provided in section 143.141. There shall be subtracted the federal income tax deduction provided in section 143.171. There shall be subtracted, to the extent included in [federal] **Missouri** taxable income, corporate dividends [from sources within Missouri].

3. (1) If an affiliated group of corporations files a consolidated income tax return for the taxable year for federal income tax purposes [and fifty percent or more of its income is derived from sources within this state as determined in accordance with section 143.451], then it may elect to file a Missouri consolidated income tax return. The federal consolidated taxable income of the electing affiliated group for the taxable year shall be its federal taxable income.

(2) So long as a federal consolidated income tax return is filed, an election made by an

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

affiliated group of corporations to file a Missouri consolidated income tax return may be withdrawn or revoked only upon substantial change in the law or regulations adversely changing tax liability under this chapter; or, with permission of the director of revenue upon the showing of good cause for such action. After such a withdrawal or revocation with respect to an affiliated group, it may not file a Missouri consolidated income tax return for five years thereafter, except with the approval of the director of revenue, and subject to such terms and conditions as he may prescribe.

(3) No corporation which is part of an affiliated group of corporations filing a Missouri consolidated income tax return shall be required to file a separate Missouri corporate income tax return for the taxable year.

(4) For each taxable year an affiliated group of corporations filing a federal consolidated income tax return does not file a Missouri consolidated income tax return, for purposes of computing the Missouri income tax, the federal taxable income of each member of the affiliated group shall be determined as if a separate federal income tax return had been filed by each such member.

(5) The director of revenue may prescribe such regulations not inconsistent with the provisions of this chapter as he may deem necessary in order that the tax liability of any affiliated group of corporations making a Missouri consolidated income tax return, and of each corporation in the group, before, during, and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the Missouri taxable income [derived from sources within this state] and in order to prevent avoidance of such tax liability.

143.451. 1. Missouri taxable income of a corporation shall include all income [derived from sources within this state] **as apportioned pursuant to this section.**

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] **apportion** income [from all sources in this state] **to Missouri** in the following manner:

(a) [The] **All federal taxable** income [from all sources] **for the taxable year with the modifications specified in subsections 2 and 3 of section 143.431** 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 this state, and the amount thus obtained shall be divided by the total sales or in cases where sales do not express the volume of business, the amount of business transacted wholly in this state shall be added to one-half of the amount of business transacted partly in this state and partly outside this state and the amount thus obtained shall be divided by the total amount of business transacted, and [the net] **all federal taxable income for the taxable year with the modifications specified in subsections 2 and 3 of section 143.431** shall be multiplied by the fraction thus obtained, to determine the proportion of income to be used to arrive at the amount of Missouri taxable income. [The investment or reinvestment of its own funds, or sale of any such investment or reinvestment, shall not be considered as sales or other business transacted for the determination of said fraction.]

(3) For the purposes of this section, a transaction involving the sale of tangible property is:

(a) "Wholly in this state" if both the seller's shipping point and the purchaser's destination point are in this state;

(b) "Partly within this state and partly without this state" if the seller's shipping point is in this state and the purchaser's destination point is outside this state, or the seller's shipping point is outside this state and the purchaser's destination point is in this state;

(c) Not "wholly in this state" or not "partly within this state and partly without this state" only if both the seller's shipping point and the purchaser's destination point are outside this state;

(d) For purposes of this subdivision the purchaser's destination point shall be determined without regard to the FOB point or other conditions of the sale, and the seller's shipping point is determined without regard to the location of the seller's principle office or place of business.

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

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

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

(c) "Distribution services" include, but are not limited to, the services of advertising, servicing, marketing, underwriting or selling shares of an investment company, but, in the case of advertising, servicing or marketing shares, only where such service is performed by a person who is, or in the case of a closed end company, was, either engaged in the services of

underwriting or selling investment company shares or affiliated with a person that is engaged in the service of underwriting or selling investment company shares. In the case of an open end company, such service of underwriting or selling shares must be performed pursuant to a contract entered into pursuant to 15 U.S.C. Section 80a-15(b), as from time to time amended;

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

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

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

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

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

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

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

(h) "Residence", presumptively the fund shareholder's mailing address on the records of the investment company. If, however, the investment company or the investment funds service corporation has actual knowledge that the fund shareholder's primary residence or principal place

of business is different than the fund shareholder's mailing address such presumption shall not control. To the extent an investment funds service corporation does not have access to the records of the investment company, the investment funds service corporation may employ reasonable methods to determine the investment company fund shareholder's residence.

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

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

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

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

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

4. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall include in its Missouri taxable income all **federal taxable** income [arising from all sources in this

state and all income from each transportation service wholly within this state, from each service where the only lines of such corporation used are those in this state, and such proportion of revenue from each service where the facilities of such corporation in this state and in another state or states are used] **for the taxable year with the modifications specified in subsections 2 and 3 of section 143.431**, as the mileage used over the lines of such corporation in the state shall bear to the total mileage used over the lines of such corporation. The taxpayer may elect to [compute the portion of] **apportion** income [from all sources within this state] in the following manner:

(1) The income [from all sources] **apportioned to Missouri** shall be determined as provided;

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

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

6. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall include in its Missouri taxable income all **federal taxable** income [arising from all sources within this state. Income shall include revenue from each telephonic or telegraphic service rendered wholly within this state; from each service rendered for which the only facilities of such corporation used are those in this state; and from each service rendered over the facilities of such corporation in this state and in other state or states, such proportion of such revenue] as the

mileage involved in this state shall bear to the total mileage involved over the lines of said company in all states. The taxpayer may elect to [compute the portion of] **apportion** income [from all sources within this state] in the following manner:

(1) The income [from all sources] **apportioned to Missouri** shall be determined as provided;

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

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

8. If a corporation derives only part of its income from sources within] **If a corporation apportions to Missouri less than one hundred percent of its federal taxable income for the taxable year with modifications specified in subsections 2 and 3 of section 143.431,** its Missouri taxable income shall only reflect the effect of the following listed deductions to the extent applicable to Missouri. The deductions are: (a) its deduction for federal income taxes pursuant to section 143.171, and (b) the effect on Missouri taxable income of the deduction for net operating loss allowed by Section 172 of the Internal Revenue Code. The extent applicable to Missouri shall be determined by multiplying the amount that would otherwise affect Missouri taxable income by the ratio for the year of the Missouri taxable income of the corporation for the year divided by the Missouri taxable income for the year as though the corporation had [derived all of its income from sources within] **one hundred percent of its income apportioned to Missouri.** For the purpose of the preceding sentence, Missouri taxable income shall not reflect the listed deductions.

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