

SECOND REGULAR SESSION

SENATE BILL NO. 717

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS BRAY AND GRAHAM.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3656S.011

AN ACT

To repeal sections 143.091, 143.121, 143.225, 143.261, 143.431, 143.451, 143.461, 143.471, 144.010, 144.030, and 144.190, RSMo, and to enact in lieu thereof nine new sections relating to taxation, with an effective date.

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

Section A. Sections 143.091, 143.121, 143.225, 143.261, 143.431, 143.451, 143.461, 143.471, 144.010, 144.030, and 144.190, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 143.091, 143.121, 143.225, 143.431, 143.434, 143.471, 144.010, 144.030, and 144.190, to read as follows:

143.091. 1. Any term used in sections 143.011 to 143.996 shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the provisions of sections 143.011 to 143.996. Any reference in sections 143.011 to 143.996 to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, and amendments thereto **enacted on or before January 1, 2004**, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective[, at any time or from time to time] **on or before January 1, 2004**, for the taxable year.

2. Within sixty days after an amendment of the Internal Revenue Code of 1986, is enacted, the director of revenue shall prepare and submit to the governor, the speaker of the house of representatives, and the president pro tempore of the senate a report which outlines:

(1) The changes of the Internal Revenue Code of 1986;

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

16 **(2) The impact of those changes on state revenues; and**
17 **(3) The impact of those changes on the various classes and types**
18 **of taxpayers.**

 143.121. 1. The Missouri adjusted gross income of a resident individual
2 shall be the taxpayer's federal adjusted gross income subject to the modifications
3 in this section.

4 2. There shall be added to the taxpayer's federal adjusted gross income:

5 (a) The amount of any federal income tax refund received for a prior year
6 which resulted in a Missouri income tax benefit;

7 (b) Interest on certain governmental obligations excluded from federal
8 gross income by Section 103 of the Internal Revenue Code. The previous sentence
9 shall not apply to interest on obligations of the state of Missouri or any of its
10 political subdivisions or authorities and shall not apply to the interest described
11 in subdivision (a) of subsection 3 of this section. The amount added pursuant to
12 this paragraph shall be reduced by the amounts applicable to such interest that
13 would have been deductible in computing the taxable income of the taxpayer
14 except only for the application of Section 265 of the Internal Revenue Code. The
15 reduction shall only be made if it is at least five hundred dollars;

16 (c) The amount of any deduction that is included in the computation of
17 federal taxable income pursuant to Section 168 of the Internal Revenue Code as
18 amended by the Job Creation and Worker Assistance Act of 2002 to the extent the
19 amount deducted relates to property purchased on or after July 1, 2002, but
20 before July 1, 2003, and to the extent the amount deducted exceeds the amount
21 that would have been deductible pursuant to Section 168 of the Internal Revenue
22 Code of 1986 as in effect on January 1, 2002; [and]

23 **(d) The amount of any deduction that is included in the**
24 **computation of federal taxable income under Section 168 of the**
25 **Internal Revenue Code as amended by the Job Creation and Worker**
26 **Assistance Act of 2002, and the Jobs and Growth Tax Relief**
27 **Reconciliation Act of 2003, to the extent the amount deducted relates**
28 **to property purchased in any taxable year beginning after August 31,**
29 **2004, and to the extent the amount deducted exceeds the amount that**
30 **would have been deductible under Section 168 of the Internal Revenue**
31 **Code of 1986 as in effect on January 1, 2002; and**

32 **(e) The amount of any deduction that is included in the computation of**
33 **federal taxable income for net operating loss allowed by Section 172 of the**

34 Internal Revenue Code of 1986, as amended, other than the deduction allowed by
35 Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as
36 amended, for a net operating loss the taxpayer claims in the tax year in which the
37 net operating loss occurred or carries forward for a period of more than twenty
38 years and carries backward for more than two years. Any amount of net
39 operating loss taken against federal income taxes but disallowed against Missouri
40 income taxes pursuant to this paragraph since July 1, 2002, may be carried
41 forward and taken against any loss on the Missouri income tax return for a period
42 of not more than twenty years from the year of the initial loss.

43 3. There shall be subtracted from the taxpayer's federal adjusted gross
44 income the following amounts to the extent included in federal adjusted gross
45 income:

46 (a) Interest or dividends on obligations of the United States and its
47 territories and possessions or of any authority, commission or instrumentality of
48 the United States to the extent exempt from Missouri income taxes pursuant to
49 the laws of the United States. The amount subtracted pursuant to this
50 paragraph shall be reduced by any interest on indebtedness incurred to carry the
51 described obligations or securities and by any expenses incurred in the production
52 of interest or dividend income described in this paragraph. The reduction in the
53 previous sentence shall only apply to the extent that such expenses including
54 amortizable bond premiums are deducted in determining the taxpayer's federal
55 adjusted gross income or included in the taxpayer's Missouri itemized
56 deduction. The reduction shall only be made if the expenses total at least five
57 hundred dollars;

58 (b) The portion of any gain, from the sale or other disposition of property
59 having a higher adjusted basis to the taxpayer for Missouri income tax purposes
60 than for federal income tax purposes on December 31, 1972, that does not exceed
61 such difference in basis. If a gain is considered a long-term capital gain for
62 federal income tax purposes, the modification shall be limited to one-half of such
63 portion of the gain;

64 (c) The amount necessary to prevent the taxation pursuant to this chapter
65 of any annuity or other amount of income or gain which was properly included in
66 income or gain and was taxed pursuant to the laws of Missouri for a taxable year
67 prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose
68 death the taxpayer acquired the right to receive the income or gain, or to a trust
69 or estate from which the taxpayer received the income or gain;

70 (d) Accumulation distributions received by a taxpayer as a beneficiary of
71 a trust to the extent that the same are included in federal adjusted gross income;

72 (e) The amount of any state income tax refund for a prior year which was
73 included in the federal adjusted gross income;

74 (f) The portion of capital gain specified in section 135.357, RSMo, that
75 would otherwise be included in federal adjusted gross income;

76 (g) The amount that would have been deducted in the computation of
77 federal taxable income pursuant to Section 168 of the Internal Revenue Code as
78 in effect on January 1, 2002, to the extent that amount relates to property
79 purchased on or after July 1, 2002, but before July 1, 2003, and to the extent that
80 amount exceeds the amount actually deducted pursuant to Section 168 of the
81 Internal Revenue Code as amended by the Job Creation and Worker Assistance
82 Act of 2002; [and]

83 (h) For all tax years beginning on or after January 1, 2005, the amount
84 of any income received for military service while the taxpayer serves in a combat
85 zone which is included in federal adjusted gross income and not otherwise
86 excluded therefrom. As used in this section, "combat zone" means any area which
87 the President of the United States by Executive Order designates as an area in
88 which armed forces of the United States are or have engaged in combat. Service
89 is performed in a combat zone only if performed on or after the date designated
90 by the President by Executive Order as the date of the commencing of combat
91 activities in such zone, and on or before the date designated by the President by
92 Executive Order as the date of the termination of combatant activities in such
93 zone; and

94 (i) **The amount that would have been deducted in the**
95 **computation of federal taxable income under Section 168 of the**
96 **Internal Revenue Code as in effect on January 1, 2002, to the extent**
97 **that amount relates to property purchased in any taxable year**
98 **beginning after August 31, 2004, and to the extent that amount exceeds**
99 **the amount actually deducted under Section 168 of the Internal**
100 **Revenue Code as amended by the Job Creation and Worker Assistance**
101 **Act of 2002, and the Jobs and Growth Tax Relief Reconciliation Act of**
102 **2003.**

103 4. There shall be added to or subtracted from the taxpayer's federal
104 adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment
105 provided in section 143.351.

106 5. There shall be added to or subtracted from the taxpayer's federal
107 adjusted gross income the modifications provided in section 143.411.

143.225. 1. The director of revenue, by regulation, may require an
2 employer to timely remit the unpaid amount required to be deducted and
3 withheld by section 143.191 at the end of any quarter-monthly period, only if the
4 employer was required to deduct and withhold six thousand dollars or more in
5 each of at least two months during the prior twelve months.

6 2. The director may increase the monthly requirement to more than six
7 thousand dollars or otherwise narrow the application of the quarter-monthly
8 remittance system authorized by this section. The director may not require the
9 remittance of withheld taxes more often than monthly unless authorized by this
10 section.

11 3. A remittance shall be timely if mailed as provided in section 143.851
12 within three banking days after the end of the quarter-monthly period or if
13 received by the director or deposited in a depository designated by the director
14 within four banking days after the end of the quarter-monthly period.

15 4. [The unpaid amount shall be after a reduction for the compensation
16 provided by section 143.261.] The unpaid amount at the end of a
17 quarter-monthly period shall not include unpaid amounts for any prior
18 quarter-monthly period.

19 5. For purposes of this section, "quarter-monthly period" means:

- 20 (1) The first seven days of a calendar month;
21 (2) The eighth to fifteenth day of a calendar month;
22 (3) The sixteenth to twenty-second day of a calendar month; and
23 (4) The portion following the twenty-second day of a calendar month.

24 6. (1) In the case of an underpayment of any amount required to be paid
25 pursuant to this section, an employer shall be liable for a penalty in lieu of all
26 other penalties, interest or additions to tax imposed by this chapter for violating
27 this section. The penalty shall be five percent of the amount of the underpayment
28 determined under subdivision (2) of this subsection.

29 (2) The amount of the underpayment shall be the excess of:

30 (a) Ninety percent of the unpaid amount at the end of a quarter-monthly
31 period; over

32 (b) The amount, if any, of the timely remittance for the quarter-monthly
33 period.

34 7. (1) The penalty with respect to any quarter-monthly period shall not

35 be imposed if the employer's timely remittance for the quarter-monthly period
36 equals or exceeds one-fourth of the average monthly withholding tax liability of
37 the employer for the preceding calendar year. The month of highest liability and
38 the month of lowest liability shall be excluded in computing the average. This
39 subdivision shall apply only to an employer who had a withholding tax liability
40 for at least six months of the previous calendar year.

41 (2) The penalty shall not be imposed if the employer establishes that the
42 failure to make a timely remittance of at least ninety percent was due to
43 reasonable cause, and not due to willful neglect.

44 (3) The penalty shall not be imposed against any employer for the first
45 two months the employer is obligated to make quarter-monthly remittance of
46 withholding taxes.

47 8. Tax amounts remitted under this section shall be treated as payments
48 on the employer's monthly return required by subsection 2 of section
49 143.221. Tax amounts remitted under this section shall be deemed to have been
50 paid on the last day prescribed for filing the return. The preceding sentence shall
51 apply in computing [compensation under section 143.261,] interest, penalties and
52 additions to tax and for purposes of all sections of chapter 143, except this
53 section.

54 9. The director of revenue may prescribe the use of an electronic funds
55 payment system for the payment of withholding taxes by any employer subject to
56 the requirement of quarter-monthly remittance as provided in this section.

143.431. 1. The Missouri taxable income of a corporation taxable under
2 sections 143.011 to 143.996 shall be so much of its federal taxable income for the
3 taxable year, with the modifications specified in subsections 2 to 4 of this section,
4 as is derived from sources within Missouri as provided in section [143.451]
5 **32.200, RSMo**. The tax of a corporation shall be computed on its Missouri
6 taxable income at the rates provided in section 143.071.

7 2. There shall be added to or subtracted from federal taxable income the
8 modifications to adjusted gross income provided in section 143.121 and the
9 applicable modifications to itemized deductions provided in section
10 143.141. There shall be subtracted the federal income tax deduction provided in
11 section 143.171. There shall be subtracted, to the extent included in federal
12 taxable income, corporate dividends from sources within Missouri.

13 3. (1) If an affiliated group of corporations files a consolidated income tax
14 return for the taxable year for federal income tax purposes and fifty percent or

15 more of its income is derived from sources within this state as determined in
16 accordance with section [143.451] **32.200, RSMo**, then it may elect to file a
17 Missouri consolidated income tax return. The federal consolidated taxable income
18 of the electing affiliated group for the taxable year shall be its federal taxable
19 income.

20 (2) So long as a federal consolidated income tax return is filed, an election
21 made by an affiliated group of corporations to file a Missouri consolidated income
22 tax return may be withdrawn or revoked only upon substantial change in the law
23 or regulations adversely changing tax liability under this chapter, or with
24 permission of the director of revenue upon the showing of good cause for such
25 action. After such a withdrawal or revocation with respect to an affiliated group,
26 it may not file a Missouri consolidated income tax return for five years thereafter,
27 except with the approval of the director of revenue, and subject to such terms and
28 conditions as he may prescribe.

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

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

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

45 4. If a net operating loss deduction is allowed for the taxable year, there
46 shall be added to federal taxable income the amount of the net operating loss
47 modification for each loss year as to which a portion of the net operating loss
48 deduction is attributable. As used in this subsection, the following terms mean:

49 (1) "Loss year", the taxable year in which there occurs a federal net
50 operating loss that is carried back or carried forward in whole or in part to

51 another taxable year;

52 (2) "Net addition modification", for any taxable year, the amount by which
53 the sum of all required additions to federal taxable income provided in this
54 chapter, except for the net operating loss modification, exceeds the combined sum
55 of the amount of all required subtractions from federal taxable income provided
56 in this chapter;

57 (3) "Net operating loss deduction", a net operating loss deduction allowed
58 for federal income tax purposes under Section 172 of the Internal Revenue Code
59 of 1986, as amended, or a net operating loss deduction allowed for Missouri
60 income tax purposes under paragraph (d) of subsection 2 of section 143.121, but
61 not including any net operating loss deduction that is allowed for federal income
62 tax purposes but disallowed for Missouri income tax purposes under paragraph
63 (d) of subsection 2 of section 143.121;

64 (4) "Net operating loss modification", an amount equal to the lesser of the
65 amount of the net operating loss deduction attributable to that loss year or the
66 amount by which the total net operating loss in the loss year is less than the sum
67 of:

68 (a) The net addition modification for that loss year; and

69 (b) The cumulative net operating loss deductions attributable to that loss
70 year allowed for the taxable year and all prior taxable years.

71 5. For all tax years ending on or after July 1, 2002, federal taxable income
72 may be a positive or negative amount. Subsection 4 of this section shall be
73 effective for all tax years with a net operating loss deduction attributable to a loss
74 year ending on or after July 1, 2002, and the net operating loss modification shall
75 only apply to loss years ending on or after July 1, 2002.

143.434. 1. As used in this chapter, the following terms mean:

2 **(1) "Affiliated group", one or more chains of corporations that are**
3 **connected through stock ownership with a common parent corporation**
4 **that meet the following requirements:**

5 **(a) At least eighty percent of the stock of each of the**
6 **corporations in the group, excluding the common parent corporation,**
7 **is owned by one or more of the other corporations in the group; and**

8 **(b) The common parent directly owns at least eighty percent of**
9 **the stock of at least one of the corporations in the group. "Affiliated**
10 **group" does not include corporations that are qualified to do business**
11 **but are not otherwise doing business in this state. For purposes of this**

12 section, "stock" does not include nonvoting stock which is limited and
13 preferred as to dividends;

14 (2) "Common ownership", the direct or indirect control or
15 ownership of more than fifty percent of the outstanding voting stock of:

16 (a) A parent-subsidiary controlled group as defined in Section
17 1563 of the United States Internal Revenue Code of 1986, as amended,
18 except that the amount of fifty percent shall be substituted for all
19 references of "80 percent" in such definition;

20 (b) A brother-sister controlled group as defined in Section 1563
21 of the United States Internal Revenue Code of 1986, as amended, except
22 that the amount of fifty percent shall be substituted for all references
23 of "80 percent" in such definition; or

24 (c) Three or more corporations, each of which is a member of a
25 group of corporations described in subdivision (1) of this subsection,
26 and one of which is:

27 a. A common parent corporation included in a group of
28 corporations described in paragraph (a) of subdivision (1) of this
29 subsection; and

30 b. Included in a group of corporations described in paragraph (b)
31 of subdivision (1) of this subsection. Ownership of outstanding voting
32 stock shall be determined in accordance with Section 1563 of the
33 United States Internal Revenue Code of 1986, as amended;

34 (3) "Corporate return" or "return", includes a combined report;

35 (4) "Doing business", any transaction in the course of its business
36 by a domestic corporation, or by a foreign corporation qualified to do
37 or doing intrastate business in this state. "Doing business" includes:

38 (a) The right to do business through incorporation or
39 qualification;

40 (b) The owning, renting, or leasing of real or personal property
41 within this state; and

42 (c) The participation in joint ventures, working and operating
43 agreements, the performance of which takes place in this state;

44 (5) "Foreign corporation", a corporation that is not incorporated
45 or organized pursuant to the laws of this state;

46 (6) "Foreign operating company", a corporation that:

47 (a) Is incorporated in the United States; and

48 (b) Eighty percent or more of whose business activity is

49 conducted without the United States.

50 "Foreign operating company" does not include a corporation that
51 qualifies for the Puerto Rico and Possession Tax Credit provided
52 pursuant to Section 936 of the United States Internal Revenue Code of
53 1986, as amended;

54 (7) "Unitary group", a group of corporations that:

55 (a) Are related through common ownership; and

56 (b) By a preponderance of the evidence as determined by a court
57 of competent jurisdiction or the director, are economically
58 interdependent with one another as demonstrated by the following
59 factors:

60 a. Centralized management;

61 b. Functional integration; and

62 c. Economies of scale;

63 (8) "Water's edge combined report", a report combining the
64 income and activities of:

65 (a) All members of a unitary group that are:

66 a. Corporations organized or incorporated in the United States,
67 including those corporations qualifying for the Puerto Rico and
68 Possession Tax Credit as provided in Section 936 of the United States
69 Internal Revenue Code of 1986, as amended; and

70 b. Corporations organized or incorporated without the United
71 States that meet the threshold level of business activity; and

72 (b) An affiliated group electing to file water's edge combined
73 report pursuant to subdivision (1) of subsection 2 of this section.

74 2. (1) If any corporation is doing business in Missouri and is a
75 member of a unitary group, the unitary group shall file a water's edge
76 combined report. A group of corporations that are not otherwise a
77 unitary group may elect to file a water's edge combined report if each
78 member of the group is:

79 (a) Doing business in Missouri;

80 (b) Part of the same affiliate group; and

81 (c) Qualified pursuant to Section 1501 of the United States
82 Internal Revenue Code of 1986, as amended, to file a federal
83 consolidated return.

84 (2) Each corporation within the affiliated group that is doing
85 business in Missouri shall file a combined report. If an affiliated group

86 elects to file a combined report, each corporation within the affiliated
87 group that is doing business in Missouri shall file a combined report.

88 (3) A corporation that elects to file a water's edge combined
89 report pursuant to this section shall not thereafter elect to file a
90 separate return without the consent of the director.

91 3. If two or more corporations, whether or not organized or
92 doing business in this state, and whether or not affiliated, are owned
93 or controlled directly or indirectly by the same interests, the director
94 shall be authorized to distribute, apportion, or allocate gross income or
95 deductions between or among such corporations, if it determines that
96 such distribution, apportionment, or allocation is necessary in order to
97 prevent evasion of taxes or clearly to reflect the income of any such
98 corporations.

99 4. The director shall, by rule, prescribe for adjustments to
100 Missouri taxable income when, solely by reason of the enactment of this
101 section, a taxpayer would otherwise receive or have received a double
102 tax benefit or suffer or have suffered a double tax detriment. However,
103 the director may not make any adjustment pursuant to this section
104 which will result in an increase or decrease of tax liability that is less
105 than twenty-five dollars.

106 5. A group filing a combined report shall calculate federal
107 taxable income of the combined group by:

108 (1) Computing federal taxable income on a separate return basis;

109 (2) Combining income or loss of the members included in the
110 combined report; and

111 (3) Making appropriate eliminations and adjustments between
112 members included in the combined report.

113 For purposes of this subsection, if an entity does not calculate federal
114 taxable income, then the federal taxable income shall be calculated
115 based on the applicable federal tax laws.

116 6. For purposes of the apportionment provisions within section
117 32.200, RSMo, corporations filing a combined report shall not include
118 intercompany sales or other transactions between the corporations
119 included in the combined report when determining the sales
120 factor. Intercompany rents between members of a combined report
121 shall not be considered in the computation of the property factor.

122 7. The director of revenue may prescribe such regulations not

123 inconsistent with the provisions of this chapter as the director may
124 deem necessary in order that the tax liability of any affiliated group of
125 corporations making a Missouri consolidated income tax return, and of
126 each corporation in the group, before, during, and after the period of
127 affiliation, may be returned, determined, computed, assessed, collected,
128 and adjusted, in such manner as clearly to reflect the Missouri taxable
129 income derived from sources within the state and in order to prevent
130 avoidance of such tax liability.

131 8. Any rule or portion of a rule, as that term is defined in section
132 536.010, RSMo, that is created under the authority delegated in this
133 section shall become effective only if it complies with and is subject to
134 all of the provisions of chapter 536, RSMo, and, if applicable, section
135 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
136 and if any of the powers vested with the general assembly pursuant to
137 chapter 536, RSMo, to review, to delay the effective date, or to
138 disapprove and annul a rule are subsequently held unconstitutional,
139 then the grant of rulemaking authority and any rule proposed or
140 adopted after the effective date of this act, shall be invalid and void.

143.471. 1. An S corporation, as defined by Section 1361 (a)(1) of the
2 Internal Revenue Code, shall not be subject to the taxes imposed by section
3 143.071, or other sections imposing income tax on corporations.

4 2. A shareholder of an S corporation shall determine such shareholder's
5 S corporation modification and pro rata share, including its character, by
6 applying the following:

7 (1) Any modification described in sections 143.121 and 143.141 which
8 relates to an item of S corporation income, gain, loss, or deduction shall be made
9 in accordance with the shareholder's pro rata share, for federal income tax
10 purposes, of the item to which the modification relates. Where a shareholder's
11 pro rata share of any such item is not required to be taken into account
12 separately for federal income tax purposes, the shareholder's pro rata share of
13 such item shall be determined in accordance with his pro rata share, for federal
14 income tax purposes, of S corporation taxable income or loss generally;

15 (2) Each item of S corporation income, gain, loss, or deduction shall have
16 the same character for a shareholder pursuant to sections 143.005 to 143.998 as
17 it has for federal income tax purposes. Where an item is not characterized for
18 federal income tax purposes, it shall have the same character for a shareholder

19 as if realized directly from the source from which realized by the S corporation
20 or incurred in the same manner as incurred by the S corporation.

21 3. A nonresident shareholder of an S corporation shall determine such
22 shareholder's Missouri nonresident adjusted gross income and his or her
23 nonresident shareholder modification by applying the provisions of this
24 subsection. Items shall be determined to be from sources within this state
25 pursuant to regulations of the director of revenue in a manner consistent with the
26 division of income provisions of [section 143.451, section 143.461, or] section
27 32.200, RSMo (Multistate Tax Compact). In determining the adjusted gross
28 income of a nonresident shareholder of any S corporation, there shall be included
29 only that part derived from or connected with sources in this state of the
30 shareholder's pro rata share of items of S corporation income, gain, loss or
31 deduction entering into shareholder's federal adjusted gross income, as such part
32 is determined pursuant to regulations prescribed by the director of revenue in
33 accordance with the general rules in section 143.181. Any modification described
34 in subsections 2 and 3 of section 143.121 and in section 143.141, which relates to
35 an item of S corporation income, gain, loss, or deduction shall be made in
36 accordance with the shareholder's pro rata share, for federal income tax purposes,
37 of the item to which the modification relates, but limited to the portion of such
38 item derived from or connected with sources in this state.

39 4. The director of revenue shall permit S corporations to file composite
40 returns and to make composite payments of tax on behalf of its nonresident
41 shareholders not otherwise required to file a return. If the nonresident
42 shareholder's filing requirements result solely from one or more interests in any
43 other partnerships or subchapter S corporations, that nonresident shareholder
44 may be included in the composite return.

45 5. If an S corporation pays or credits amounts to any of its nonresident
46 individual shareholders as dividends or as their share of the S corporation's
47 undistributed taxable income for the taxable year, the S corporation shall either
48 timely file with the department of revenue an agreement as provided in
49 subsection 6 of this section or withhold Missouri income tax as provided in
50 subsection 7 of this section. An S corporation that timely files an agreement as
51 provided in subsection 6 of this section with respect to a nonresident shareholder
52 for a taxable year shall be considered to have timely filed such an agreement for
53 each subsequent taxable year. An S corporation that does not timely file such an
54 agreement for a taxable year shall not be precluded from timely filing such an

55 agreement for subsequent taxable years. An S corporation is not required to
56 deduct and withhold Missouri income tax for a nonresident shareholder if:

57 (1) The nonresident shareholder not otherwise required to file a return
58 agrees to have the Missouri income tax due paid as part of the S corporation's
59 composite return;

60 (2) The nonresident shareholder not otherwise required to file a return
61 had Missouri assignable federal adjusted gross income from the S corporation of
62 less than twelve hundred dollars;

63 (3) The S corporation is liquidated or terminated;

64 (4) Income was generated by a transaction related to termination or
65 liquidation; or

66 (5) No cash or other property was distributed in the current and prior
67 taxable year.

68 6. The agreement referred to in subdivision (1) of subsection 5 of this
69 section is an agreement of a nonresident shareholder of the S corporation to:

70 (1) File a return in accordance with the provisions of section 143.481 and
71 to make timely payment of all taxes imposed on the shareholder by this state
72 with respect to income of the S corporation; and

73 (2) Be subject to personal jurisdiction in this state for purposes of the
74 collection of income taxes, together with related interest and penalties, imposed
75 on the shareholder by this state with respect to the income of the S corporation.
76 The agreement will be considered timely filed for a taxable year, and for all
77 subsequent taxable years, if it is filed at or before the time the annual return for
78 such taxable year is required to be filed pursuant to section 143.511.

79 7. The amount of Missouri income tax to be withheld is determined by
80 multiplying the amount of dividends or undistributed income allocable to
81 Missouri that is paid or credited to a nonresident shareholder during the taxable
82 year by the highest rate used to determine a Missouri income tax liability for an
83 individual, except that the amount of the tax withheld may be determined based
84 on withholding tables provided by the director of revenue if the shareholder
85 submits a Missouri withholding allowance certificate.

86 8. An S corporation shall be entitled to recover for a shareholder on whose
87 behalf a tax payment was made pursuant to this section, if such shareholder has
88 no tax liability.

89 9. With respect to S corporations that are banks or bank holding
90 companies, a pro rata share of the tax credit for the tax payable pursuant to

91 chapter 148, RSMo, shall be allowed against each S corporation shareholders'
92 state income tax as follows, provided the bank otherwise complies with section
93 148.112, **RSMo**:

94 (1) The credit allowed by this subsection shall be equal to the bank tax
95 calculated pursuant to chapter 148, RSMo, based on bank income in 1999 and
96 after, on a bank that makes an election pursuant to 26 U.S.C. Section 1362, and
97 such credit shall be allocated to the qualifying shareholder according to stock
98 ownership, determined by multiplying a fraction, where the numerator is the
99 shareholder's stock, and the denominator is the total stock issued by such bank
100 or bank holding company;

101 (2) The tax credit authorized in this subsection shall be permitted only to
102 the shareholders that qualify as S corporation shareholders, provided the stock
103 at all times during the taxable period qualifies as S corporation stock as defined
104 in 26 U.S.C. Section 1361, and such stock is held by the shareholder during the
105 taxable period. The credit created by this section on a yearly basis is available
106 to each qualifying shareholder, including shareholders filing joint returns. A
107 bank holding company is not allowed this credit, except that, such credit shall
108 flow through to such bank holding company's qualified shareholders, and be
109 allocated to such shareholders under the same conditions; and

110 (3) In the event such shareholder cannot use all or part of the tax credit
111 in the taxable period of receipt, such shareholder may carry forward such tax
112 credit for a period of the lesser of five years or until used, provided such credits
113 are used as soon as the taxpayer has Missouri taxable income.

144.010. 1. The following words, terms, and phrases when used in
2 sections 144.010 to 144.525 have the meanings ascribed to them in this section,
3 except when the context indicates a different meaning:

4 (1) "Admission", includes seats and tables, reserved or otherwise, and
5 other similar accommodations and charges made therefor and amount paid for
6 admission, exclusive of any admission tax imposed by the federal government or
7 by sections 144.010 to 144.525;

8 (2) "Business", includes any activity engaged in by any person, or caused
9 to be engaged in by him, with the object of gain, benefit or advantage, either
10 direct or indirect, and the classification of which business is of such character as
11 to be subject to the terms of sections 144.010 to 144.525. The isolated or
12 occasional sale of tangible personal property, service, substance, or thing, by a
13 person not engaged in such business, does not constitute engaging in business

14 within the meaning of sections 144.010 to 144.525 unless the total amount of the
15 gross receipts from such sales, exclusive of receipts from the sale of tangible
16 personal property by persons which property is sold in the course of the partial
17 or complete liquidation of a household, farm or nonbusiness enterprise, exceeds
18 three thousand dollars in any calendar year. The provisions of this subdivision
19 shall not be construed to make any sale of property which is exempt from sales
20 tax or use tax on June 1, 1977, subject to that tax thereafter;

21 (3) **"Common carriers", a person that receives more than fifty**
22 **percent of its annual revenues from fees charged to carry passengers**
23 **or goods for unrelated persons. A person is unrelated to a carrier if the**
24 **person is not directly or indirectly controlling, controlled by, or under**
25 **common control with the carrier;**

26 (4) "Gross receipts", except as provided in section 144.012, means the
27 total amount of the sale price of the sales at retail including any services other
28 than charges incident to the extension of credit that are a part of such sales made
29 by the businesses herein referred to, capable of being valued in money, whether
30 received in money or otherwise; except that, the term "gross receipts" shall not
31 include the sale price of property returned by customers when the full sale price
32 thereof is refunded either in cash or by credit. In determining any tax due under
33 sections 144.010 to 144.525 on the gross receipts, charges incident to the
34 extension of credit shall be specifically exempted. For the purposes of sections
35 144.010 to 144.525 the total amount of the sale price above mentioned shall be
36 deemed to be the amount received. It shall also include the lease or rental
37 consideration where the right to continuous possession or use of any article of
38 tangible personal property is granted under a lease or contract and such transfer
39 of possession would be taxable if outright sale were made and, in such cases, the
40 same shall be taxable as if outright sale were made and considered as a sale of
41 such article, and the tax shall be computed and paid by the lessee upon the
42 rentals paid;

43 [(4)] (5) "Livestock", cattle, calves, sheep, swine, ratite birds, including
44 but not limited to, ostrich and emu, aquatic products as defined in section
45 277.024, RSMo, llamas, alpaca, buffalo, elk documented as obtained from a legal
46 source and not from the wild, goats, horses, other equine, or rabbits raised in
47 confinement for human consumption;

48 [(5)] (6) "Motor vehicle leasing company" [shall be], a company obtaining
49 a permit from the director of revenue to operate as a motor vehicle leasing

50 company. Not all persons renting or leasing trailers or motor vehicles need to
51 obtain such a permit; however, no person failing to obtain such a permit may
52 avail itself of the optional tax provisions of subsection 5 of section 144.070, as
53 hereinafter provided;

54 **[(6)] (7)** "Person", includes any individual, firm, copartnership, joint
55 adventure, association, corporation, municipal or private, and whether organized
56 for profit or not, state, county, political subdivision, state department,
57 commission, board, bureau or agency, except the state transportation department,
58 estate, trust, business trust, receiver or trustee appointed by the state or federal
59 court, syndicate, or any other group or combination acting as a unit, and the
60 plural as well as the singular number;

61 **[(7)] (8)** "Purchaser" [means], a person who purchases tangible personal
62 property or to whom are rendered services, receipts from which are taxable under
63 sections 144.010 to 144.525;

64 **[(8)] (9)** "Research or experimentation activities" are the development of
65 an experimental or pilot model, plant process, formula, invention or similar
66 property, and the improvement of existing property of such type. Research or
67 experimentation activities do not include activities such as ordinary testing or
68 inspection of materials or products for quality control, efficiency surveys,
69 advertising promotions or research in connection with literary, historical or
70 similar projects;

71 **[(9)] (10)** "Sale" or "sales", includes installment and credit sales, and the
72 exchange of properties as well as the sale thereof for money, every closed
73 transaction constituting a sale, and means any transfer, exchange or barter,
74 conditional or otherwise, in any manner or by any means whatsoever, of tangible
75 personal property for valuable consideration and the rendering, furnishing or
76 selling for a valuable consideration any of the substances, things and services
77 herein designated and defined as taxable under the terms of sections 144.010 to
78 144.525;

79 **[(10)] (11)** "Sale at retail" [means], any transfer made by any person
80 engaged in business as defined herein of the ownership of, or title to, tangible
81 personal property to the purchaser, for use or consumption and not for resale in
82 any form as tangible personal property, for a valuable consideration; except that,
83 for the purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i)
84 purchases of tangible personal property made by duly licensed physicians,
85 dentists, optometrists and veterinarians and used in the practice of their

86 professions shall be deemed to be purchases for use or consumption and not for
87 resale; and (ii) the selling of computer printouts, computer output or microfilm
88 or microfiche and computer-assisted photo compositions to a purchaser to enable
89 the purchaser to obtain for his or her own use the desired information contained
90 in such computer printouts, computer output on microfilm or microfiche and
91 computer-assisted photo compositions shall be considered as the sale of a service
92 and not as the sale of tangible personal property. Where necessary to conform to
93 the context of sections 144.010 to 144.525 and the tax imposed thereby, the term
94 "sale at retail" shall be construed to embrace:

95 (a) Sales of admission tickets, cash admissions, charges and fees to or in
96 places of amusement, entertainment and recreation, games and athletic events;

97 (b) Sales of electricity, electrical current, water and gas, natural or
98 artificial, to domestic, commercial or industrial consumers;

99 (c) Sales of local and long distance telecommunications service to
100 telecommunications subscribers and to others through equipment of
101 telecommunications subscribers for the transmission of messages and
102 conversations, and the sale, rental or leasing of all equipment or services
103 pertaining or incidental thereto;

104 (d) Sales of service for transmission of messages by telegraph companies;

105 (e) Sales or charges for all rooms, meals and drinks furnished at any
106 hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist
107 camp, tourist cabin, or other place in which rooms, meals or drinks are regularly
108 served to the public;

109 (f) Sales of tickets by every person operating a railroad, sleeping car,
110 dining car, express car, boat, airplane, and such buses and trucks as are licensed
111 by the division of motor carrier and railroad safety of the department of economic
112 development of Missouri, engaged in the transportation of persons for hire;

113 [(11)] (12) "Seller" [means], a person selling or furnishing tangible
114 personal property or rendering services, on the receipts from which a tax is
115 imposed pursuant to section 144.020;

116 [(12)] (13) The noun "tax" [means], either the tax payable by the
117 purchaser of a commodity or service subject to tax, or the aggregate amount of
118 taxes due from the vendor of such commodities or services during the period for
119 which he or she is required to report his or her collections, as the context may
120 require;

121 [(13)] (14) "Telecommunications service", for the purpose of this chapter,

122 the transmission of information by wire, radio, optical cable, coaxial cable,
123 electronic impulses, or other similar means. As used in this definition,
124 "information" means knowledge or intelligence represented by any form of
125 writing, signs, signals, pictures, sounds, or any other
126 symbols. Telecommunications service does not include the following if such
127 services are separately stated on the customer's bill or on records of the seller
128 maintained in the ordinary course of business:

129 (a) Access to the Internet, access to interactive computer services or
130 electronic publishing services, except the amount paid for the telecommunications
131 service used to provide such access;

132 (b) Answering services and one-way paging services;

133 (c) Private mobile radio services which are not two-way commercial mobile
134 radio services such as wireless telephone, personal communications services or
135 enhanced specialized mobile radio services as defined pursuant to federal law; or

136 (d) Cable or satellite television or music services; and

137 **[(14)] (15)** "Product which is intended to be sold ultimately for final use
138 or consumption" **[means]**, tangible personal property, or any service that is
139 subject to state or local sales or use taxes, or any tax that is substantially
140 equivalent thereto, in this state or any other state.

141 2. For purposes of the taxes imposed under sections 144.010 to 144.525,
142 and any other provisions of law pertaining to sales or use taxes which incorporate
143 the provisions of sections 144.010 to 144.525 by reference, the term
144 "manufactured homes" shall have the same meaning given it in section 700.010,
145 RSMo.

146 3. Sections 144.010 to 144.525 may be known and quoted as the "Sales
147 Tax Law".

144.030. 1. There is hereby specifically exempted from the provisions of
2 sections 144.010 to 144.525 and from the computation of the tax levied, assessed
3 or payable pursuant to sections 144.010 to 144.525 such retail sales as may be
4 made in commerce between this state and any other state of the United States,
5 or between this state and any foreign country, and any retail sale which the state
6 of Missouri is prohibited from taxing pursuant to the Constitution or laws of the
7 United States of America, and such retail sales of tangible personal property
8 which the general assembly of the state of Missouri is prohibited from taxing or
9 further taxing by the constitution of this state.

10 2. There are also specifically exempted from the provisions of the local

11 sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and
12 sections 144.010 to 144.525 and 144.600 to 144.761 and from the computation of
13 the tax levied, assessed or payable pursuant to the local sales tax law as defined
14 in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525
15 and 144.600 to 144.745:

16 (1) Motor fuel or special fuel subject to an excise tax of this state, unless
17 all or part of such excise tax is refunded pursuant to section 142.824, RSMo; or
18 upon the sale at retail of fuel to be consumed in manufacturing or creating gas,
19 power, steam, electrical current or in furnishing water to be sold ultimately at
20 retail; or feed for livestock or poultry; or grain to be converted into foodstuffs
21 which are to be sold ultimately in processed form at retail; or seed, limestone or
22 fertilizer which is to be used for seeding, liming or fertilizing crops which when
23 harvested will be sold at retail or will be fed to livestock or poultry to be sold
24 ultimately in processed form at retail; economic poisons registered pursuant to
25 the provisions of the Missouri pesticide registration law (sections 281.220 to
26 281.310, RSMo) which are to be used in connection with the growth or production
27 of crops, fruit trees or orchards applied before, during, or after planting, the crop
28 of which when harvested will be sold at retail or will be converted into foodstuffs
29 which are to be sold ultimately in processed form at retail;

30 (2) Materials, manufactured goods, machinery and parts which when used
31 in manufacturing, processing, compounding, mining, producing or fabricating
32 become a component part or ingredient of the new personal property resulting
33 from such manufacturing, processing, compounding, mining, producing or
34 fabricating and which new personal property is intended to be sold ultimately for
35 final use or consumption; and materials, including without limitation, gases and
36 manufactured goods, including without limitation, slagging materials and
37 firebrick, which are ultimately consumed in the manufacturing process by
38 blending, reacting or interacting with or by becoming, in whole or in part,
39 component parts or ingredients of steel products intended to be sold ultimately
40 for final use or consumption;

41 (3) Materials, replacement parts and equipment purchased for use directly
42 upon, and for the repair and maintenance or manufacture of, motor vehicles,
43 watercraft, railroad rolling stock or aircraft engaged as common carriers of
44 persons or property;

45 (4) Replacement machinery, equipment, and parts and the materials and
46 supplies solely required for the installation or construction of such replacement

47 machinery, equipment, and parts, used directly in manufacturing, mining,
48 fabricating or producing a product which is intended to be sold ultimately for
49 final use or consumption; and machinery and equipment, and the materials and
50 supplies required solely for the operation, installation or construction of such
51 machinery and equipment, purchased and used to establish new, or to replace or
52 expand existing, material recovery processing plants in this state. For the
53 purposes of this subdivision, a "material recovery processing plant" means a
54 facility that has as its primary purpose the recovery of materials into a useable
55 product or a different form which is used in producing a new product and shall
56 include a facility or equipment which are used exclusively for the collection of
57 recovered materials for delivery to a material recovery processing plant but shall
58 not include motor vehicles used on highways. For purposes of this section, the
59 terms "motor vehicle" and "highway" shall have the same meaning pursuant to
60 section 301.010, RSMo. Material recovery is not the reuse of materials within a
61 manufacturing process or the use of a product previously recovered. The material
62 recovery processing plant shall qualify under the provisions of this section
63 regardless of ownership of the material being recovered;

64 (5) Machinery and equipment, and parts and the materials and supplies
65 solely required for the installation or construction of such machinery and
66 equipment, purchased and used to establish new or to expand existing
67 manufacturing, mining or fabricating plants in the state if such machinery and
68 equipment is used directly in manufacturing, mining or fabricating a product
69 which is intended to be sold ultimately for final use or consumption;

70 (6) Tangible personal property which is used exclusively in the
71 manufacturing, processing, modification or assembling of products sold to the
72 United States government or to any agency of the United States government;

73 (7) Animals or poultry used for breeding or feeding purposes;

74 (8) Newsprint, ink, computers, photosensitive paper and film, toner,
75 printing plates and other machinery, equipment, replacement parts and supplies
76 used in producing newspapers published for dissemination of news to the general
77 public;

78 (9) The rentals of films, records or any type of sound or picture
79 transcriptions for public commercial display;

80 (10) Pumping machinery and equipment used to propel products delivered
81 by pipelines engaged as common carriers;

82 (11) Railroad rolling stock for use in transporting persons or property in

83 interstate commerce and motor vehicles licensed for a gross weight of twenty-four
84 thousand pounds or more or trailers used by common carriers[, as defined in
85 section 390.020, RSMo,] solely in the transportation of persons or property in
86 interstate commerce;

87 (12) Electrical energy used in the actual primary manufacture, processing,
88 compounding, mining or producing of a product, or electrical energy used in the
89 actual secondary processing or fabricating of the product, or a material recovery
90 processing plant as defined in subdivision (4) of this subsection, in facilities
91 owned or leased by the taxpayer, if the total cost of electrical energy so used
92 exceeds ten percent of the total cost of production, either primary or secondary,
93 exclusive of the cost of electrical energy so used or if the raw materials used in
94 such processing contain at least twenty-five percent recovered materials as
95 defined in section 260.200, RSMo. For purposes of this subdivision, "processing"
96 means any mode of treatment, act or series of acts performed upon materials to
97 transform and reduce them to a different state or thing, including treatment
98 necessary to maintain or preserve such processing by the producer at the
99 production facility;

100 (13) Anodes which are used or consumed in manufacturing, processing,
101 compounding, mining, producing or fabricating and which have a useful life of
102 less than one year;

103 (14) Machinery, equipment, appliances and devices purchased or leased
104 and used solely for the purpose of preventing, abating or monitoring air pollution,
105 and materials and supplies solely required for the installation, construction or
106 reconstruction of such machinery, equipment, appliances and devices, and so
107 certified as such by the director of the department of natural resources, except
108 that any action by the director pursuant to this subdivision may be appealed to
109 the air conservation commission which may uphold or reverse such action;

110 (15) Machinery, equipment, appliances and devices purchased or leased
111 and used solely for the purpose of preventing, abating or monitoring water
112 pollution, and materials and supplies solely required for the installation,
113 construction or reconstruction of such machinery, equipment, appliances and
114 devices, and so certified as such by the director of the department of natural
115 resources, except that any action by the director pursuant to this subdivision may
116 be appealed to the Missouri clean water commission which may uphold or reverse
117 such action;

118 (16) Tangible personal property purchased by a rural water district;

119 (17) All amounts paid or charged for admission or participation or other
120 fees paid by or other charges to individuals in or for any place of amusement,
121 entertainment or recreation, games or athletic events, including museums, fairs,
122 zoos and planetariums, owned or operated by a municipality or other political
123 subdivision where all the proceeds derived therefrom benefit the municipality or
124 other political subdivision and do not inure to any private person, firm, or
125 corporation;

126 (18) All sales of insulin and prosthetic or orthopedic devices as defined on
127 January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the
128 Social Security Act of 1965, including the items specified in Section 1862(a)(12)
129 of that act, and also specifically including hearing aids and hearing aid supplies
130 and all sales of drugs which may be legally dispensed by a licensed pharmacist
131 only upon a lawful prescription of a practitioner licensed to administer those
132 items, including samples and materials used to manufacture samples which may
133 be dispensed by a practitioner authorized to dispense such samples and all sales
134 of medical oxygen, home respiratory equipment and accessories, hospital beds and
135 accessories and ambulatory aids, all sales of manual and powered wheelchairs,
136 stairway lifts, Braille writers, electronic Braille equipment and, if purchased by
137 or on behalf of a person with one or more physical or mental disabilities to enable
138 them to function more independently, all sales of scooters, reading machines,
139 electronic print enlargers and magnifiers, electronic alternative and augmentative
140 communication devices, and items used solely to modify motor vehicles to permit
141 the use of such motor vehicles by individuals with disabilities or sales of
142 over-the-counter or nonprescription drugs to individuals with disabilities;

143 (19) All sales made by or to religious and charitable organizations and
144 institutions in their religious, charitable or educational functions and activities
145 and all sales made by or to all elementary and secondary schools operated at
146 public expense in their educational functions and activities;

147 (20) All sales of aircraft to common carriers for storage or for use in
148 interstate commerce and all sales made by or to not-for-profit civic, social, service
149 or fraternal organizations, including fraternal organizations which have been
150 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the
151 1986 Internal Revenue Code, as amended, in their civic or charitable functions
152 and activities and all sales made to eleemosynary and penal institutions and
153 industries of the state, and all sales made to any private not-for-profit institution
154 of higher education not otherwise excluded pursuant to subdivision (19) of this

155 subsection or any institution of higher education supported by public funds, and
156 all sales made to a state relief agency in the exercise of relief functions and
157 activities;

158 (21) All ticket sales made by benevolent, scientific and educational
159 associations which are formed to foster, encourage, and promote progress and
160 improvement in the science of agriculture and in the raising and breeding of
161 animals, and by nonprofit summer theater organizations if such organizations are
162 exempt from federal tax pursuant to the provisions of the Internal Revenue Code
163 and all admission charges and entry fees to the Missouri state fair or any fair
164 conducted by a county agricultural and mechanical society organized and
165 operated pursuant to sections 262.290 to 262.530, RSMo;

166 (22) All sales made to any private not-for-profit elementary or secondary
167 school, all sales of feed additives, medications or vaccines administered to
168 livestock or poultry in the production of food or fiber, all sales of pesticides used
169 in the production of crops, livestock or poultry for food or fiber, all sales of
170 bedding used in the production of livestock or poultry for food or fiber, all sales
171 of propane or natural gas, electricity or diesel fuel used exclusively for drying
172 agricultural crops, natural gas used in the primary manufacture or processing of
173 fuel ethanol as defined in section 142.028, RSMo, natural gas, propane, and
174 electricity used by an eligible new generation cooperative or an eligible new
175 generation processing entity as defined in section 348.432, RSMo, and all sales
176 of farm machinery and equipment, other than airplanes, motor vehicles and
177 trailers. As used in this subdivision, the term "feed additives" means tangible
178 personal property which, when mixed with feed for livestock or poultry, is to be
179 used in the feeding of livestock or poultry. As used in this subdivision, the term
180 "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and
181 other assorted pesticide carriers used to improve or enhance the effect of a
182 pesticide and the foam used to mark the application of pesticides and herbicides
183 for the production of crops, livestock or poultry. As used in this subdivision, the
184 term "farm machinery and equipment" means new or used farm tractors and such
185 other new or used farm machinery and equipment and repair or replacement
186 parts thereon, and supplies and lubricants used exclusively, solely, and directly
187 for producing crops, raising and feeding livestock, fish, poultry, pheasants,
188 chukar, quail, or for producing milk for ultimate sale at retail, including field
189 drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which
190 is:

191 (a) Used exclusively for agricultural purposes;
192 (b) Used on land owned or leased for the purpose of producing farm
193 products; and
194 (c) Used directly in producing farm products to be sold ultimately in
195 processed form or otherwise at retail or in producing farm products to be fed to
196 livestock or poultry to be sold ultimately in processed form at retail;

197 (23) Except as otherwise provided in section 144.032, all sales of metered
198 water service, electricity, electrical current, natural, artificial or propane gas,
199 wood, coal or home heating oil for domestic use and in any city not within a
200 county, all sales of metered or unmetered water service for domestic use;

201 (a) "Domestic use" means that portion of metered water service,
202 electricity, electrical current, natural, artificial or propane gas, wood, coal or
203 home heating oil, and in any city not within a county, metered or unmetered
204 water service, which an individual occupant of a residential premises uses for
205 nonbusiness, noncommercial or nonindustrial purposes. Utility service through
206 a single or master meter for residential apartments or condominiums, including
207 service for common areas and facilities and vacant units, shall be deemed to be
208 for domestic use. Each seller shall establish and maintain a system whereby
209 individual purchases are determined as exempt or nonexempt;

210 (b) Regulated utility sellers shall determine whether individual purchases
211 are exempt or nonexempt based upon the seller's utility service rate
212 classifications as contained in tariffs on file with and approved by the Missouri
213 public service commission. Sales and purchases made pursuant to the rate
214 classification "residential" and sales to and purchases made by or on behalf of the
215 occupants of residential apartments or condominiums through a single or master
216 meter, including service for common areas and facilities and vacant units, shall
217 be considered as sales made for domestic use and such sales shall be exempt from
218 sales tax. Sellers shall charge sales tax upon the entire amount of purchases
219 classified as nondomestic use. The seller's utility service rate classification and
220 the provision of service thereunder shall be conclusive as to whether or not the
221 utility must charge sales tax;

222 (c) Each person making domestic use purchases of services or property
223 and who uses any portion of the services or property so purchased for a
224 nondomestic use shall, by the fifteenth day of the fourth month following the year
225 of purchase, and without assessment, notice or demand, file a return and pay
226 sales tax on that portion of nondomestic purchases. Each person making

227 nondomestic purchases of services or property and who uses any portion of the
228 services or property so purchased for domestic use, and each person making
229 domestic purchases on behalf of occupants of residential apartments or
230 condominiums through a single or master meter, including service for common
231 areas and facilities and vacant units, under a nonresidential utility service rate
232 classification may, between the first day of the first month and the fifteenth day
233 of the fourth month following the year of purchase, apply for credit or refund to
234 the director of revenue and the director shall give credit or make refund for taxes
235 paid on the domestic use portion of the purchase. The person making such
236 purchases on behalf of occupants of residential apartments or condominiums shall
237 have standing to apply to the director of revenue for such credit or refund;

238 (24) All sales of handicraft items made by the seller or the seller's spouse
239 if the seller or the seller's spouse is at least sixty-five years of age, and if the total
240 gross proceeds from such sales do not constitute a majority of the annual gross
241 income of the seller;

242 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041,
243 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United
244 States Code. The director of revenue shall promulgate rules pursuant to chapter
245 536, RSMo, to eliminate all state and local sales taxes on such excise taxes;

246 (26) Sales of fuel consumed or used in the operation of ships, barges, or
247 waterborne vessels which are used primarily in or for the transportation of
248 property or cargo, or the conveyance of persons for hire, on navigable rivers
249 bordering on or located in part in this state, if such fuel is delivered by the seller
250 to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such
251 river;

252 (27) All sales made to an interstate compact agency created pursuant to
253 sections 70.370 to 70.441, RSMo, or sections 238.010 to 238.100, RSMo, in the
254 exercise of the functions and activities of such agency as provided pursuant to the
255 compact;

256 (28) Computers, computer software and computer security systems
257 purchased for use by architectural or engineering firms headquartered in this
258 state. For the purposes of this subdivision, "headquartered in this state" means
259 the office for the administrative management of at least four integrated facilities
260 operated by the taxpayer is located in the state of Missouri;

261 (29) All livestock sales when either the seller is engaged in the growing,
262 producing or feeding of such livestock, or the seller is engaged in the business of

263 buying and selling, bartering or leasing of such livestock;

264 (30) All sales of barges which are to be used primarily in the
265 transportation of property or cargo on interstate waterways;

266 (31) Electrical energy or gas, whether natural, artificial or propane, water,
267 or other utilities which are ultimately consumed in connection with the
268 manufacturing of cellular glass products or in any material recovery processing
269 plant as defined in subdivision (4) of subsection 2 of this section;

270 (32) Notwithstanding other provisions of law to the contrary, all sales of
271 pesticides or herbicides used in the production of crops, aquaculture, livestock or
272 poultry;

273 (33) Tangible personal property purchased for use or consumption directly
274 or exclusively in the research and development of prescription pharmaceuticals
275 consumed by humans or animals;

276 (34) All sales of grain bins for storage of grain for resale;

277 (35) All sales of feed which are developed for and used in the feeding of
278 pets owned by a commercial breeder when such sales are made to a commercial
279 breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections
280 273.325 to 273.357, RSMo;

281 (36) All purchases by a contractor on behalf of an entity located in another
282 state, provided that the entity is authorized to issue a certificate of exemption for
283 purchases to a contractor under the provisions of that state's laws. For purposes
284 of this subdivision, the term "certificate of exemption" shall mean any document
285 evidencing that the entity is exempt from sales and use taxes on purchases
286 pursuant to the laws of the state in which the entity is located. Any contractor
287 making purchases on behalf of such entity shall maintain a copy of the entity's
288 exemption certificate as evidence of the exemption. If the exemption certificate
289 issued by the exempt entity to the contractor is later determined by the director
290 of revenue to be invalid for any reason and the contractor has accepted the
291 certificate in good faith, neither the contractor or the exempt entity shall be liable
292 for the payment of any taxes, interest and penalty due as the result of use of the
293 invalid exemption certificate. Materials shall be exempt from all state and local
294 sales and use taxes when purchased by a contractor for the purpose of fabricating
295 tangible personal property which is used in fulfilling a contract for the purpose
296 of constructing, repairing or remodeling facilities for the following:

297 (a) An exempt entity located in this state, if the entity is one of those
298 entities able to issue project exemption certificates in accordance with the

299 provisions of section 144.062; or

300 (b) An exempt entity located outside the state if the exempt entity is
301 authorized to issue an exemption certificate to contractors in accordance with the
302 provisions of that state's law and the applicable provisions of this section;

303 (37) Tangible personal property purchased for use or consumption directly
304 or exclusively in research or experimentation activities performed by life science
305 companies and so certified as such by the director of the department of economic
306 development or the director's designees; except that, the total amount of
307 exemptions certified pursuant to this section shall not exceed one million three
308 hundred thousand dollars in state and local taxes per fiscal year. For purposes
309 of this subdivision, the term "life science companies" means companies whose
310 primary research activities are in agriculture, pharmaceuticals, biomedical or food
311 ingredients, and whose North American Industry Classification System (NAICS)
312 Codes fall under industry 541710 (biotech research or development laboratories),
313 621511 (medical laboratories) or 541940 (veterinary services). The exemption
314 provided by this subdivision shall expire on June 30, 2003;

315 (38) All sales or other transfers of tangible personal property to a lessor
316 who leases the property under a lease of one year or longer executed or in effect
317 at the time of the sale or other transfer to an interstate compact agency created
318 pursuant to sections 70.370 to 70.441, RSMo, or sections 238.010 to 238.100,
319 RSMo; and

320 (39) Sales of tickets to any collegiate athletic championship event that is
321 held in a facility owned or operated by a governmental authority or commission,
322 a quasi-governmental agency, a state university or college or by the state or any
323 political subdivision thereof, including a municipality, and that is played on a
324 neutral site and may reasonably be played at a site located outside the state of
325 Missouri. For purposes of this subdivision, "neutral site" means any site that is
326 not located on the campus of a conference member institution participating in the
327 event.

144.190. 1. If a tax has been incorrectly computed by reason of a clerical
2 error or mistake on the part of the director of revenue, such fact shall be set forth
3 in the records of the director of revenue, and the amount of the overpayment shall
4 be credited on any taxes then due from the person legally obligated to remit the
5 tax pursuant to sections 144.010 to 144.525, and the balance shall be refunded
6 to the person legally obligated to remit the tax, such person's administrators or
7 executors, as provided for in section 144.200.

8 2. If any tax, penalty or interest has been paid more than once, or has
9 been erroneously or illegally collected, or has been erroneously or illegally
10 computed, such sum shall be credited on any taxes then due from the person
11 legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the
12 balance, with interest as determined by [section 32.065] **sections 32.068 and**
13 **32.069**, RSMo, shall be refunded to the person legally obligated to remit the tax,
14 but no such credit or refund shall be allowed unless duplicate copies of a claim
15 for refund are filed within three years from date of overpayment.

16 3. Every claim for refund must be in writing and signed by the applicant,
17 and must state the specific grounds upon which the claim is founded. Any refund
18 or any portion thereof which is erroneously made, and any credit or any portion
19 thereof which is erroneously allowed, may be recovered in any action brought by
20 the director of revenue against the person legally obligated to remit the tax. In
21 the event that a tax has been illegally imposed against a person legally obligated
22 to remit the tax, the director of revenue shall authorize the cancellation of the tax
23 upon the director's record.

24 4. Notwithstanding the provisions of this section, the director of revenue
25 shall authorize direct-pay agreements to purchasers which have annual purchases
26 in excess of seven hundred fifty thousand dollars pursuant to rules and
27 regulations adopted by the director of revenue. For the purposes of such
28 direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 70, 92,
29 94, 162, 190, 238, 321, and 644, RSMo, shall be remitted based upon the location
30 of the place of business of the purchaser.

31 5. Special rules applicable to error corrections requested by customers of
32 mobile telecommunications service are as follows:

33 (1) For purposes of this subsection, the terms "customer", "home service
34 provider", "place of primary use", "electronic database", and "enhanced zip code"
35 shall have the same meanings as defined in the Mobile Telecommunications
36 Sourcing Act incorporated by reference in section 144.013;

37 (2) Notwithstanding the provisions of this section, if a customer of mobile
38 telecommunications services believes that the amount of tax, the assignment of
39 place of primary use or the taxing jurisdiction included on a billing is erroneous,
40 the customer shall notify the home service provider, in writing, within three years
41 from the date of the billing statement. The customer shall include in such
42 written notification the street address for the customer's place of primary use, the
43 account name and number for which the customer seeks a correction of the tax

44 assignment, a description of the error asserted by the customer and any other
45 information the home service provider reasonably requires to process the request;

46 (3) Within sixty days of receiving the customer's notice, the home service
47 provider shall review its records and the electronic database or enhanced zip code
48 to determine the customer's correct taxing jurisdiction. If the home service
49 provider determines that the review shows that the amount of tax, assignment
50 of place of primary use or taxing jurisdiction is in error, the home service
51 provider shall correct the error and, at its election, either refund or credit the
52 amount of tax erroneously collected to the customer for a period of up to three
53 years from the last day of the home service provider's sixty-day review period. If
54 the home service provider determines that the review shows that the amount of
55 tax, the assignment of place of primary use or the taxing jurisdiction is correct,
56 the home service provider shall provide a written explanation of its determination
57 to the customer.

58 6. [For all refund claims submitted to the department of revenue on or
59 after September 1, 2003, notwithstanding any provision of this section to the
60 contrary, if a person legally obligated to remit the tax levied pursuant to sections
61 144.010 to 144.525 has received a refund of such taxes for a specific issue and
62 submits a subsequent claim for refund of such taxes on the same issue for a tax
63 period beginning on or after the date the original refund check issued to such
64 person, no refund shall be allowed. This subsection shall not apply and a refund
65 shall be allowed if an additional refund claim is filed due to any of the following:

66 (1) Receipt of additional information or an exemption certificate from the
67 purchaser of the item at issue;

68 (2) A decision of a court of competent jurisdiction or the administrative
69 hearing commission; or

70 (3) Changes in regulations or policy by the department of
71 revenue.] **Except as provided in subsection 8 of this section, if any tax**
72 **was paid more than once, was incorrectly collected, or was incorrectly**
73 **computed, such sum shall be credited on any taxes then due from the**
74 **person legally obligated to remit the tax pursuant to sections 144.010**
75 **to 144.510 and the remainder, refunded, with interest as determined**
76 **under chapter 32, RSMo, to the person legally obligated to remit the**
77 **tax, provided that duplicate copies of a claim for refund are filed**
78 **within three years from date of overpayment and:**

79 (1) Where the total claim for refund is over one thousand dollars

80 for any five year period, the person legally obligated to remit the tax
81 demonstrates to the satisfaction of the director of revenue that all
82 incorrectly collected or incorrectly computed amounts were or will be
83 refunded or credited to every purchaser that originally paid the tax; or

84 (2) The person legally obligated to remit the tax submits to the
85 director duplicate copies of a claim for refund and amended tax returns
86 showing the correct amount of gross receipts for each reporting period
87 originally filed and proves to the director's satisfaction that the tax
88 originally reported and remitted to the director was paid by such
89 person claiming the refund or credit and was not collected from
90 purchasers.

91 7. Notwithstanding any provision of law to the contrary, the director of
92 revenue shall respond to a request for a binding letter ruling filed in accordance
93 with section 536.021, RSMo, within sixty days of receipt of such request. If the
94 director of revenue fails to respond to such letter ruling request within sixty days
95 of receipt by the director, the director of revenue shall be barred from pursuing
96 collection of any assessment of sales or use tax with respect to the issue which is
97 the subject of the letter ruling request. For purposes of this subsection, the term
98 "letter ruling" means a written interpretation of law by the director to a specific
99 set of facts provided by a specific taxpayer or his or her agent.

100 8. In lieu of subsection 6 of this section, if any tax was paid more
101 than once, was incorrectly collected, or was incorrectly computed, such sum shall
102 be credited on any taxes then due from the person legally obligated to remit the
103 tax pursuant to sections 144.010 to 144.510, [against any deficiency or tax due
104 discovered through an audit of the person by the department of revenue through
105 adjustment during the same tax filing period for which the audit applied] or
106 refunded, with interest as determined by sections 32.068 and 32.069,
107 RSMo, to the person legally obligated to remit the tax only if duplicate
108 copies of a claim for a refund and amended tax returns are filed within
109 three years from the date of overpayment and the person legally
110 obligated to remit the tax submits a plan acceptable to the director to
111 generally refund the amount of overpayment to future customers of the
112 person by mutually agreed to distribution of a fixed value coupon to
113 such customers.

[143.261. For every remittance to the director of revenue
2 made on or before the date the remittance becomes due, the

3 employer, other than the United States and its agencies, the state
4 of Missouri and political subdivisions thereof, may deduct and
5 retain the following percentages of the total amount of tax withheld
6 and paid in each calendar year:

7 (1) Two percent of five thousand dollars or less;

8 (2) One percent of amount collected in excess of five
9 thousand dollars and up to and including ten thousand dollars;

10 (3) One-half percent of amount collected in excess of ten
11 thousand dollars.]

[143.451. 1. Missouri taxable income of a corporation shall
2 include all income derived from sources within this state.

3 2. A corporation described in subdivision (1) of subsection
4 1 of section 143.441 shall include in its Missouri taxable income all
5 income from sources within this state, including that from the
6 transaction of business in this state and that from the transaction
7 of business partly done in this state and partly done in another
8 state or states. However:

9 (1) Where income results from a transaction partially in
10 this state and partially in another state or states, and income and
11 deductions of the portion in the state cannot be segregated, then
12 such portions of income and deductions shall be allocated in this
13 state and the other state or states as will distribute to this state a
14 portion based upon the portion of the transaction in this state and
15 the portion in such other state or states.

16 (2) The taxpayer may elect to compute the portion of income
17 from all sources in this state in the following manner:

18 (a) The income from all sources shall be determined as
19 provided, excluding therefrom the figures for the operation of any
20 bridge connecting this state with another state.

21 (b) The amount of sales which are transactions wholly in
22 this state shall be added to one-half of the amount of sales which
23 are transactions partly within this state and partly without this
24 state, and the amount thus obtained shall be divided by the total
25 sales or in cases where sales do not express the volume of business,
26 the amount of business transacted wholly in this state shall be
27 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 income 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:

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

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

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

162 3. Any corporation described in subdivision (1) of subsection
163 1 of section 143.441 organized in this state or granted a permit to
164 operate in this state for the transportation or care of passengers
165 shall report its gross earnings within the state on intrastate
166 business and shall also report its gross earnings on all interstate
167 business done in this state which report shall be subject to inquiry
168 for the purpose of determining the amount of income to be included
169 in Missouri taxable income. The previous sentence shall not apply
170 to a railroad.

171 4. A corporation described in subdivision (2) of subsection

1 of section 143.441 shall include in its Missouri taxable income all 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, 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 income from all sources within this state in the following manner:

(1) The income from all sources 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

208 operation of such bridge may be included in the return of such
209 railroad or railroads; or if such bridge is owned or operated by any
210 other corporation which may now or hereafter be required to file an
211 income tax return, one-half of the income or loss to such
212 corporation from such bridge may be included in such return by
213 adding or subtracting same to or from another net income or loss
214 shown by the return.

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

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

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

239 7. From the income determined in subsections 2, 3, 4, 5 and
240 6 of this section to be from all sources within this state shall be
241 deducted such of the deductions for expenses in determining
242 Missouri taxable income as were incurred in this state to produce
243 such income and all losses actually sustained in this state in the

244 business of the corporation.

245 8. If a corporation derives only part of its income from
246 sources within Missouri, its Missouri taxable income shall only
247 reflect the effect of the following listed deductions to the extent
248 applicable to Missouri. The deductions are: (a) its deduction for
249 federal income taxes pursuant to section 143.171, and (b) the effect
250 on Missouri taxable income of the deduction for net operating loss
251 allowed by Section 172 of the Internal Revenue Code. The extent
252 applicable to Missouri shall be determined by multiplying the
253 amount that would otherwise affect Missouri taxable income by the
254 ratio for the year of the Missouri taxable income of the corporation
255 for the year divided by the Missouri taxable income for the year as
256 though the corporation had derived all of its income from sources
257 within Missouri. For the purpose of the preceding sentence,
258 Missouri taxable income shall not reflect the listed deductions.

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

[143.461. 1. A corporation shall elect to determine income
2 applicable to this state by multiplying the total income from all
3 sources by the fraction determined in the manner in section
4 143.451; first, by filing written notice with the director of revenue
5 on or before the due date of the return (including extensions of
6 time) of the taxpayer's election, or, second, by failing to keep its
7 books and records in such manner as to show the income applicable
8 to this state, including gross income and deductions applicable
9 thereto.

10 2. If the corporation shall keep its books and records so as
11 to show by any other method of allocation between this state and
12 other states involved of income from transactions partially within
13 and partially without this state, including gross income and
14 deductions applicable thereto, and such method shows the income
15 applicable to this state, including gross income and deductions
16 applicable thereto, then it may, on or before sixty days before the
17 end of any taxable year, petition the director of revenue, in writing,

18 to be permitted in its return required to be filed to apportion to
19 this state according to the method shown by such books or records.
20 If the director of revenue finds that such method does show the
21 income applicable to this state including gross income and the
22 deductions applicable thereto, he shall notify the corporation, at
23 least thirty days prior to the last day on which such corporation's
24 return for that taxable year is to be filed, that it may use that
25 method as long as such method shows the income applicable to this
26 state, including gross income and deductions applicable thereto.

27 3. The corporation shall cease using such method whenever
28 the director of revenue finds and notifies such corporation on or
29 before ninety days before the end of the taxable year, that such
30 method does not so show. Upon and after such revocation the
31 corporation shall be permitted to petition to use another method of
32 allocation that will show such income including gross income and
33 deductions applicable thereto as though no petition had ever been
34 filed.

35 4. Failure, after a method has been revoked by the director
36 of revenue, to submit a method which the director of revenue finds
37 will show such income applicable to this state including gross
38 income and deductions applicable thereto, on or before sixty days
39 before the end of any taxable year, or failure to make a return on
40 the basis, which has been approved by the director of revenue on
41 petition of the corporation and which stands unrevoked, shall
42 constitute an election to accept the determination of income
43 applicable to this state by multiplying the total income from all
44 sources by the fraction determined in the manner set forth in
45 section 143.451.]

Section B. Section A of this act shall become effective September 1, 2006.

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