

FIRST REGULAR SESSION

# SENATE BILL NO. 696

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

2700S.01H

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 143.436, RSMo, and to enact in lieu thereof one new section relating to the taxation of pass-through entities.

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

Section A. Section 143.436, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 143.436,  
3 to read as follows:

143.436. 1. This section shall be known and may be  
2 cited as the "SALT Parity Act".

3 2. For the purposes of this section, the following  
4 terms shall mean:

5 (1) "Affected business entity", any partnership or S  
6 corporation that elects to be subject to tax pursuant to  
7 subsection 10 of this section;

8 (2) "Direct member", a member that holds an interest  
9 directly in an affected business entity;

10 (3) "Indirect member", a member that itself holds an  
11 interest, through a direct or indirect member that is a  
12 partnership or an S corporation, in an affected business  
13 entity;

14 (4) "Member":

15 (a) A shareholder of an S corporation;

16 (b) A partner in a general partnership, a limited  
17 partnership, or a limited liability partnership; or

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

18           (c) A member of a limited liability company that is  
19 treated as a partnership or S corporation for federal income  
20 tax purposes;

21           (5) "Partnership", the same meaning as provided in 26  
22 U.S.C. Section 7701(a)(2). The term partnership shall  
23 include a limited liability company that is treated as a  
24 partnership for federal income tax purposes;

25           (6) "S corporation", a corporation or limited  
26 liability company that is treated as an S corporation for  
27 federal income tax purposes;

28           (7) "Tax year", the tax year of a partnership or S  
29 corporation for federal income tax purposes.

30           3. (1) Notwithstanding any provision of law to the  
31 contrary, a tax is hereby imposed on each affected business  
32 entity that is a partnership and that is doing business in  
33 this state. Such affected business entity shall, at the  
34 time that the affected business entity's return is due, pay  
35 a tax in an amount equal to the sum of the separately and  
36 nonseparately computed items, as described in 26 U.S.C.  
37 Section 702(a), of the affected business entity, to the  
38 extent derived from or connected with sources within this  
39 state, as determined pursuant to section 143.455, decreased  
40 by the deduction allowed under 26 U.S.C. Section 199A  
41 computed as if such deduction was allowed to be taken by the  
42 affected business entity for federal tax purposes, and  
43 increased or decreased by any modification made pursuant to  
44 section 143.471 that relates to an item of the affected  
45 business entity's income, gain, loss, or deduction, to the  
46 extent derived from or connected with sources within this  
47 state, as determined pursuant to section 143.455, with such  
48 sum multiplied by the highest rate of tax used to determine  
49 a Missouri income tax liability for an individual pursuant

50 to section 143.011. An affected entity paying the tax  
51 pursuant to this subsection shall include with the payment  
52 of such taxes each report provided to a member pursuant to  
53 subsection 7 of this section.

54 (2) If the amount calculated pursuant to subdivision  
55 (1) of this section results in a net loss, such net loss may  
56 be carried forward to succeeding tax years for which the  
57 affected business entity elects to be subject to tax  
58 pursuant to subsection 11 of this section until fully used.

59 4. (1) Notwithstanding any provision of law to the  
60 contrary, a tax is hereby imposed on each affected business  
61 entity that is an S corporation and that is doing business  
62 in this state. Such affected business entity shall, at the  
63 time that the affected business entity's return is due, pay  
64 a tax in an amount equal to the sum of the separately and  
65 nonseparately computed items, as described in 26 U.S.C.  
66 Section 1366, of the affected business entity, to the extent  
67 derived from or connected with sources within this state, as  
68 determined pursuant to section 143.455, decreased by the  
69 deduction allowed under 26 U.S.C. Section 199A computed as  
70 if such deduction was allowed to be taken by the affected  
71 business entity for federal tax purposes, and increased or  
72 decreased by any modification made pursuant to section  
73 143.471 that relates to an item of the affected business  
74 entity's income, gain, loss, or deduction, to the extent  
75 derived from or connected with sources within this state, as  
76 determined pursuant to section 143.455, with such sum  
77 multiplied by the highest rate of tax used to determine a  
78 Missouri income tax liability for an individual pursuant to  
79 section 143.011. An affected entity paying the tax pursuant  
80 to this subsection shall include with the payment of such

81 taxes each report provided to a member pursuant to  
82 subsection 7 of this section.

83 (2) If the amount calculated pursuant to subdivision  
84 (1) of this section results in a net loss, such net loss may  
85 be carried forward to succeeding tax years for which the  
86 affected business entity elects to be subject to tax  
87 pursuant to subsection 11 of this section until fully used.

88 5. If an affected business entity is a direct or  
89 indirect member of another affected business entity, the  
90 member affected business entity shall, when calculating its  
91 net income or loss pursuant to subsection 3 or 4 of this  
92 section, subtract its distributive share of income or add  
93 its distributive share of loss from the affected business  
94 entity in which it is a direct or indirect member to the  
95 extent that the income or loss was derived from or connected  
96 with sources within this state, as determined pursuant to  
97 section 143.455.

98 6. A nonresident individual who is a member shall not  
99 be required to file an income tax return pursuant to this  
100 chapter for a tax year if, for such tax year, the only  
101 source of income derived from or connected with sources  
102 within the state for such member, or the member and the  
103 member's spouse if a joint federal income tax return is or  
104 shall be filed, is from one or more affected business  
105 entities and such affected business entity or entities file  
106 and pay the tax due under this section.

107 7. Each partnership and S corporation shall report to  
108 each of its members, for each tax year, such member's direct  
109 pro rata share of the tax imposed pursuant to this section  
110 on such partnership or S corporation if it is an affected  
111 business entity and its indirect pro rata share of the tax

imposed on any affected business entity in which such affected business entity is a direct or indirect member.

8. (1) Each member that is subject to the tax imposed pursuant to section 143.011 shall be entitled to a credit against the tax imposed pursuant to section 143.011. Such credit shall be in an amount equal to such member's direct and indirect pro rata share of the tax paid pursuant to this section by any affected business entity of which such member is directly or indirectly a member.

(2) If the amount of the credit authorized by this subsection exceeds such member's tax liability for the tax imposed pursuant to section 143.011, the excess amount shall not be refunded but may be carried forward to each succeeding tax year until such credit is fully taken.

9. (1) Each member that is subject to the tax imposed pursuant to section 143.011 as a resident or part-year resident of this state shall be entitled to a credit against the tax imposed pursuant to section 143.011 for such member's direct and indirect pro rata share of taxes paid to another state of the United States or to the District of Columbia, on income of any partnership or S corporation of which such person is a member that is derived therefrom, provided the taxes paid to another state of the United States or to the District of Columbia results from a tax that the director of revenue determines is substantially similar to the tax imposed pursuant to this section. Any such credit shall be calculated in a manner to be prescribed by the director of revenue, provided such calculation is consistent with the provisions of this section, and further provided that the limitations provided in subsection 2 of section 143.081 shall apply to the credit authorized by this subsection.

144           (2) If the amount of the credit authorized by this  
145 subsection exceeds such member's tax liability for the tax  
146 imposed pursuant to section 143.011, the excess amount shall  
147 not be refunded and shall not be carried forward.

148           10. (1) Each corporation **or fiduciary** that is subject  
149 to the tax imposed pursuant to section **143.061 or** 143.071  
150 and that is a member **or, in the case of a fiduciary subject**  
151 **to tax pursuant to section 143.061, is a fiduciary of an**  
152 **estate or trust that is a member**, shall be entitled to a  
153 credit against the tax imposed pursuant to section **143.061**  
154 **or** 143.071. Such credit shall be in an amount equal to such  
155 corporation's, **estate's, or trust's** direct and indirect pro  
156 rata share of the tax paid pursuant to this section by any  
157 affected business entity of which such corporation, **estate,**  
158 **or trust** is directly or indirectly a member. Such credit  
159 shall be applied after all other credits.

160           (2) If the amount of the credit authorized by this  
161 subsection exceeds such corporation's **or fiduciary's** tax  
162 liability for the tax imposed pursuant to section **143.061 or**  
163 143.071, the excess amount shall not be refunded but may be  
164 carried forward to each succeeding tax year until such  
165 credit is fully taken.

166           11. A partnership or an S corporation may elect to  
167 become an affected business entity that is required to pay  
168 the tax pursuant to this section [**in any tax year**]. A  
169 separate election shall be made for each [**taxable**] **tax**  
170 year. Such election shall be made on such form and in such  
171 manner as the director of revenue may prescribe by rule. An  
172 election made pursuant to this subsection shall be signed by:

173           (1) Each member of the electing entity who is a member  
174 at the time the election is filed; [**or**]

(2) Any officer, manager, or member of the electing entity who is authorized to make the election and who attests to having such authorization under penalty of perjury; or

**(3) The designated affected business entity representative of the electing entity.**

12. The provisions of sections 143.425 and 143.601 shall apply to any modifications made to an affected business entity's federal return, and such affected business entity shall pay any resulting underpayment of tax to the extent not already paid pursuant to section 143.425.

13. (1) With respect to an action required or permitted to be taken by an affected business entity pursuant to this section, a proceeding under section 143.631 for reconsideration by the director of revenue, an appeal to the administrative hearing commission, or a review by the judiciary with respect to such action, [the affected business entity] **a partnership or S corporation** shall designate an affected business entity representative for the tax year, and such affected business entity representative shall have the sole authority to act on behalf of the affected business entity, and the affected business entity's members shall be bound by those actions.

(2) The department of revenue may establish reasonable qualifications and procedures for designating a person to be the affected business entity representative.

(3) The affected business entity representative shall be considered an authorized representative of the affected business entity and its members under section 32.057 for the purposes of compliance with this section, or participating in a proceeding described in subdivision (1) of this subsection.

207           14. The provisions of this section shall only apply to  
208 tax years ending on or after December 31, 2022.

209           15. The department of revenue may promulgate rules to  
210 implement the provisions of this section. Any rule or  
211 portion of a rule, as that term is defined in section  
212 536.010, that is created under the authority delegated in  
213 this section shall become effective only if it complies with  
214 and is subject to all of the provisions of chapter 536 and,  
215 if applicable, section 536.028. This section and chapter  
216 536 are nonseverable and if any of the powers vested with  
217 the general assembly pursuant to chapter 536 to review, to  
218 delay the effective date, or to disapprove and annul a rule  
219 are subsequently held unconstitutional, then the grant of  
220 rulemaking authority and any rule proposed or adopted after  
221 August 28, 2022, shall be invalid and void.

✓