

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 1248
91ST GENERAL ASSEMBLY

Reported from the Committee on Miscellaneous Bills and Resolutions, April 30, 2002, with recommendation that the House Committee Substitute for Senate Substitute for Senate Bill No. 1248 Do Pass.

TED WEDEL, Chief Clerk

4939L.07C

AN ACT

To repeal sections 143.225, 143.261, 143.431, 143.451, 143.811, 144.190, 313.820, and 313.822, RSMo, and to enact in lieu thereof fourteen new sections relating to assessment, collection and refund procedures of taxes, with an emergency clause.

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

Section A. Sections 143.225, 143.261, 143.431, 143.451, 143.811, 144.190, 313.820, and 313.822, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 32.068, 32.069, 136.320, 143.225, 143.261, 143.431, 143.435, 143.451, 143.811, 144.190, 313.820, 313.822, 1 and 2, to read as follows:

32.068. 1. The state treasurer shall calculate an annual rate of interest pursuant to this section and provide the calculated rate of interest to the director of revenue as determined by subsection 2 of this section.

2. Each calendar quarter the state treasurer shall calculate the annual rate of interest. The rate of interest shall be equal to the previous twelve-month annualized average rate of return on all funds invested by the state treasurer, rounded to the nearest one-tenth of one percent. The state treasurer shall provide such calculated rate to the director of revenue not later than thirty days prior to the end of each calendar quarter. The director of revenue shall apply the calculated rate of interest to all applicable situations during the next calendar quarter after the release of

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

the calculated rate of interest.

3. Beginning January 1, 2003, the director of revenue shall apply the calculated rate of interest as determined by this section to all applicable situations.

32.069. 1. Notwithstanding any other provision of law, interest shall be allowed and paid on any refund or overpayment at the rate determined by section 32.068 only if the overpayment is not refunded within one hundred twenty days from the latest of the following dates:

(1) The last day prescribed for filing a tax return or refund claim, without regard to any extension of time granted;

(2) The date the return, payment, or claim is filed; or

(3) The date the taxpayer files for a credit or refund and provides accurate and complete documentation to support such claim.

2. The commissioner of administration shall, on an annual basis, estimate the amount of any additional state revenue received pursuant to this section and shall transfer an additional amount to the schools of the future fund created in section 313.822, RSMo.

136.320. 1. Notwithstanding the provisions of any other law to the contrary, with respect to taxes administered by the department of revenue, an amnesty from the assessment or payment of all penalties, additions to tax, and interest shall apply with respect to unpaid taxes reported and paid in full from August 1, 2002, to September 30, 2002, regardless of whether previously assessed, except for penalties, additions to tax, and interest paid before August 1, 2002. The amnesty shall apply only to state tax liabilities due but unpaid on or before December 31, 2001, and shall not extend to any taxpayer who at the time of payment:

(1) Is a party to any criminal investigations or to any civil or criminal litigation that is pending in any court of the United States or this state for nonpayment, delinquency, or fraud in relation to any state tax imposed by the state of Missouri;

(2) Is a party to an appeal with the administrative hearing commission; or

(3) Is a party to a protest with the department of revenue.

2. Upon written application by the taxpayer, on forms prescribed by the director of revenue, and upon compliance with the provisions of this section, the department of revenue shall not seek to collect any penalty, addition to tax, or interest which may be applicable. The department of revenue shall not seek civil or criminal prosecution for any taxpayer for the taxable period for which the amnesty has been granted.

3. Amnesty shall be granted only to those taxpayers who have applied for amnesty within the period stated in subsection 1 of this section, who have filed a tax return for each taxable period for which amnesty is requested, who have paid the entire balance due within sixty days of approval by the department of revenue, and who agree to comply with state tax laws for the next three years from the date of the agreement. No taxpayer shall be entitled to a waiver of any

penalty, addition to tax, or interest pursuant to this section unless full payment of the tax due is made in accordance with rules and regulations established by the director of revenue.

4. A collection fee, not to exceed twenty-five percent of the delinquent tax amount, may be imposed but shall not be subject to waiver or abatement. The collection fee shall be in addition to all other penalties and interest otherwise authorized by law and may be imposed upon any tax liabilities eligible to be satisfied during the amnesty period established pursuant to subsection 1 of this section that are not satisfied during such period.

5. If a taxpayer elects to participate in the amnesty program established pursuant to this section as evidenced by full payment of the tax due as established by the director of revenue, that election shall constitute an express and absolute relinquishment of all administrative and judicial rights of appeal. No tax payment received pursuant to this section shall be eligible for refund or credit.

6. Nothing in this section shall be interpreted to disallow the department of revenue to adjust a taxpayer's tax return as a result of any state or federal audit.

7. The department may promulgate such rules or regulations or issue administrative guidelines as are necessary to administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

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

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

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

4. [The unpaid amount shall be after a reduction for the compensation provided by section 143.261.] **Beginning January 1, 2006, the unpaid amount shall be after a reduction for the**

compensation provided by section 143.261.

5. The unpaid amount at the end of a quarter-monthly period shall not include unpaid amounts for any prior quarter-monthly period.

[5.] 6. For purposes of this section, "quarter-monthly period" means:

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

[6.] 7. (1) In the case of an underpayment of any amount required to be paid pursuant to this section, an employer shall be liable for a penalty in lieu of all other penalties, interest or additions to tax imposed by this chapter for violating this section. The penalty shall be five percent of the amount of the underpayment determined under subdivision (2) of this subsection.

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

- (a) Ninety percent of the unpaid amount at the end of a quarter-monthly period, over
- (b) The amount, if any, of the timely remittance for the quarter-monthly period.

[7.] 8. (1) The penalty with respect to any quarter-monthly period shall not be imposed if the employer's timely remittance for the quarter-monthly period equals or exceeds one-fourth of the average monthly withholding tax liability of the employer for the preceding calendar year. The month of highest liability and the month of lowest liability shall be excluded in computing the average. This subdivision shall apply only to an employer who had a withholding tax liability for at least six months of the previous calendar year.

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

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

[8.] 9. Tax amounts remitted under this section shall be treated as payments on the employer's monthly return required by subsection 2 of section 143.221. Tax amounts remitted under this section shall be deemed to have been paid on the last day prescribed for filing the return. The preceding sentence shall apply in computing [compensation under section 143.261.] interest, penalties and additions to tax and for purposes of all sections of chapter 143, except this section. **Beginning January 1, 2006, such computation shall include compensation pursuant to section 143.261.**

143.261. Beginning January 1, 2006, for every remittance to the director of revenue made on or before the date the remittance becomes due, the employer, other than the United States and its agencies, the state of Missouri and political subdivisions thereof, may deduct and retain the following percentages of the total amount of tax withheld and paid in each calendar year:

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

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

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

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

2. There shall be added to or subtracted from federal taxable income, the modifications to adjusted gross income provided in section 143.121 and the applicable modifications to itemized deductions provided in section 143.141. There shall be subtracted the federal income tax deduction provided in section 143.171. There shall be subtracted, to the extent included in [federal] **Missouri** taxable income, corporate dividends [from sources within Missouri]. **There shall be added to federal taxable income any amount defined in section 143.435. The commissioner of administration shall, on an annual basis, estimate the amount of additional state revenue resulting from the disallowance of non-Missouri source income pursuant to this section and section 143.451, and from the disallowance of a timely filing discount for remitters of income tax withholding payments pursuant to the repeal of section 143.261, and shall transfer an equivalent amount to the schools of the future fund created in section 313.822, RSMo.**

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

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

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

(4) For each taxable year an affiliated group of corporations filing a federal consolidated income tax return does not file a Missouri consolidated income tax return, for purposes of computing the Missouri

income tax, the federal taxable income of each member of the affiliated group shall be determined as if a separate federal income tax return had been filed by each such member.

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

143.435. 1. As used in this section, the following terms mean:

(1) **"Affiliated group", a group as defined in Section 1504 of the Internal Revenue Code of 1986, as amended;**

(2) **"Intangible expenses and costs" includes:**

(a) **Expenses, losses, and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deductions and special deductions for the taxable year under the Internal Revenue Code;**

(b) **Losses related to and incurred in connection directly or indirectly with factoring transactions or discounting transactions;**

(c) **Royalty, patent, technical, and copyright fees;**

(d) **Licensing fees; and**

(e) **Other similar expenses and costs;**

(3) **"Intangible property", patents, patent applications, trade names, trademarks, service marks, copyrights, and similar types of intangible assets;**

(4) **"Interest expenses and costs", amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code of 1986, as amended, for purposes of determining taxable income under the Internal Revenue Code to the extent such expenses and costs are directly or indirectly for, relate to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange, or disposition of intangible property;**

(5) **"Related entity" includes:**

(a) **A stockholder who is an individual, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code of 1986, as amended, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock;**

(b) **A stockholder, or a stockholder's partnership, limited liability company, estate, trust,**

or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; or

(c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation under the attribution rules of Section 318 of the Internal Revenue Code of 1986, as amended, if the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of Section 318 of the Internal Revenue Code of 1986, as amended, shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.

2. For purposes of computing its Missouri taxable income pursuant to section 143.431, a corporation shall add to its federal taxable income any amount deducted in the calculation of its federal taxable income for interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members for the taxable year.

3. The adjustments required in subsection 2 of this section shall not apply to such portion of interest expenses and costs and intangible expenses and costs that the corporation can establish by the preponderance of the evidence meets both of the following:

(1) The related member during the same income year directly or indirectly paid, accrued, or incurred such portion to a person who is not a related member; and

(2) The transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due pursuant to this chapter.

4. The director of the department of revenue shall promulgate rules and regulations necessary to administer the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

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

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

(1) Where income results from a transaction partially in this state and partially in another state or states, and income and deductions of the portion in the state cannot be segregated, then such portions of income and deductions shall be allocated in this state and the other state or states as will distribute to this

state a portion based upon the portion of the transaction in this state and the portion in such other state or states.

(2) The taxpayer may elect to [compute the portion of] **apportion** income [from all sources in this state] **to Missouri** in the following manner:

(a) [The] **All federal taxable** income [from all sources] **for the taxable year with the modifications specified in subsections 2 and 3 of section 143.431** shall be determined as provided, excluding therefrom the figures for the operation of any bridge connecting this state with another state.

(b) The amount of sales which are transactions wholly in this state shall be added to one-half of the amount of sales which are transactions partly within this state and partly without this state, and the amount thus obtained shall be divided by the total sales or in cases where sales do not express the volume of business, the amount of business transacted wholly in this state shall be added to one-half of the amount of business transacted partly in this state and partly outside this state and the amount thus obtained shall be divided by the total amount of business transacted, and [the net] **all federal taxable** income **for the taxable year with the modifications specified in subsections 2 and 3 of section 143.431** shall be multiplied by the fraction thus obtained, to determine the proportion of income to be used to arrive at the amount of Missouri taxable income. The investment or reinvestment of its own funds, or sale of any such investment or reinvestment, shall not be considered as sales or other business transacted for the determination of said fraction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall include in its Missouri taxable income all **federal taxable** income [arising from all sources within this state]. Income shall include revenue from each telephonic or telegraphic service rendered wholly within this state; from each service rendered for which the only facilities of such corporation used are those in this state; and from each service rendered over the facilities of such corporation in this state and in other state or states, such proportion of such revenue **for the taxable year with the modifications specified in subsections 2 and 3 of section 143.431**, as the mileage involved in this state shall bear to the total mileage involved over the lines of said company in all states. The taxpayer may elect to [compute the portion of] **apportion** income [from all sources within this state] in the following manner:

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

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

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

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

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

143.811. 1. Under regulations prescribed by the director of revenue, interest shall be allowed and paid at the rate determined by section 32.065, RSMo, on any overpayment in respect of the tax imposed by sections 143.011 to 143.996; except that, where the overpayment resulted from the filing of an amendment of the tax by the taxpayer after the last day prescribed for the filing of the return, interest shall be allowed and paid at the rate of six percent per annum. With respect to the part of an overpayment attributable to a deposit made pursuant to subsection 2 of section 143.631, interest shall be paid thereon at the rate in section 32.065, RSMo, from the date of the deposit to the date of refund. No interest shall be allowed or paid if the amount thereof is less than one dollar.

2. For purposes of this section:

(1) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer;

(2) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year to which such amount constitutes a credit or payment.

3. For purposes of this section with respect to any withholding tax:

(1) If a return for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be considered filed April fifteenth of such succeeding calendar year; and

(2) If a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be considered paid on April fifteenth of such succeeding calendar year.

4. If any overpayment of tax imposed by sections 143.011 to 143.996 is refunded within four months after the last date prescribed (or permitted by extension of time) for filing the return of such tax or within four months after the return was filed, whichever is later, no interest shall be allowed under this section on overpayment.

5. Any overpayment resulting from a carryback, including a net operating loss and a corporate capital loss, shall be deemed not to have been made prior to the close of the taxable year in which the loss arises.

6. Any overpayment resulting from a carryback of a tax credit, including but not limited to the tax credits provided in sections 253.557 and 348.432, RSMo, shall be deemed not to have been made prior to the close of the taxable year in which the tax credit was authorized.

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

2. If any [tax,] penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.510, and the balance, with interest as determined by section 32.065, RSMo, shall be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from date of overpayment.

3. Except as provided in subsection 6 or 7 of this section, if any tax was paid more than once, was incorrectly collected, or was incorrectly computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to

144.510, or refunded, with interest as determined by section 32.065, RSMo, to the person legally obligated to remit the tax, only if duplicate copies of a claim for refund are filed within three years from date of overpayment and:

(1) Where the claim for refund is over one thousand dollars, the person legally obligated to remit the tax demonstrates to the satisfaction of the director or revenue that all incorrectly collected or incorrectly computed amounts were or will be refunded or credited to every purchaser that originally paid the tax;

(2) Refunds under one thousand dollars may not exceed one thousand dollars in the aggregate over any five year time frame; or

(3) In lieu of subdivisions (1) and (2) of this subsection and regardless of the amount of refund claimed, the person legally obligated to remit the tax submits to the director amended sales tax returns showing the correct amount of gross receipts for each reporting period originally filed and proves to the director's satisfaction that the tax originally reported and remitted to the director was paid by such person claiming the refund or credit and was not collected from purchasers.

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

[4.] **5.** Notwithstanding the provisions of this section, the director of revenue shall authorize direct-pay agreements to purchasers which have annual purchases in excess of seven hundred fifty thousand dollars pursuant to rules and regulations adopted by the director of revenue. For the purposes of such direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 92 and 94, RSMo, shall be remitted based upon the location of the place of business of the purchaser.

6. If any tax was paid more than once, was incorrectly collected, or was incorrectly computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.510 against any deficiency or tax due discovered through an audit of the person by the department of revenue through adjustment during the same tax filing period for which the audit applied.

313.820. 1. An excursion boat licensee shall pay to the commission an admission fee of [two] **three** dollars for each person embarking on an excursion gambling boat with a ticket of admission. One dollar of such fee shall be deposited to the credit of the gaming commission fund as authorized pursuant to section 313.835, and one dollar of such fee shall not be considered state funds and shall be paid to the home dock city or county. Subject to appropriation, one cent of such fee deposited to the credit of the

gaming commission fund may be deposited to the credit of the compulsive gamblers fund created pursuant to the provisions of section 313.842. Nothing in this section shall preclude any licensee from charging any amount deemed necessary for a ticket of admission to any person embarking on an excursion gambling boat. If tickets are issued which are good for more than one excursion, the admission fee shall be paid to the commission for each person using the ticket on each excursion that the ticket is used. If free passes or complimentary admission tickets are issued, the excursion boat licensee shall pay to the commission the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate; however, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the excursion gambling boat. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.

2. All licensees are subject to all income taxes, sales taxes, earnings taxes, use taxes, property taxes or any other tax or fee now or hereafter lawfully levied by any political subdivision; however, no other license tax, permit tax, occupation tax, excursion fee, or taxes or fees shall be imposed, levied or assessed exclusively upon licensees by a political subdivision. All state taxes not connected directly to gambling games shall be collected by the department of revenue. Notwithstanding the provisions of section 32.057, RSMo, to the contrary, the department of revenue may furnish and the commission may receive tax information to determine if applicants or licensees are complying with the tax laws of this state; however, any tax information acquired by the commission shall not become public record and shall be used exclusively for commission business.

313.822. **1.** A tax is imposed on the adjusted gross receipts received from gambling games authorized pursuant to sections 313.800 to 313.850 [at the rate of twenty percent] **as follows:**

(1) On the first twenty-five million of adjusted gross receipts received from gambling games conducted by licensees and authorized pursuant to sections 313.800 to 313.850, each licensee shall pay fourteen percent;

(2) On adjusted gross receipts of more than twenty-five million but less than fifty million received from gambling games conducted by licensees and authorized pursuant to sections 313.800 to 313.850, each licensee shall pay eighteen percent;

(3) On adjusted gross receipts of more than fifty million but less than seventy-five million received from gambling games conducted by licensees and authorized pursuant to sections 313.800 to 313.850, each licensee shall pay twenty-three percent; and

(4) On adjusted gross receipts of more than seventy-five million received from gambling games conducted by licensees and authorized pursuant to sections 313.800 to 313.850, each licensee shall pay twenty-eight percent.

The taxes imposed by this section shall be returned to the commission in accordance with the commission's

rules and regulations who shall transfer such taxes to the director of revenue. All checks and drafts remitted for payment of these taxes and fees shall be made payable to the director of revenue. If the commission is not satisfied with the return or payment made by any licensee, it is hereby authorized and empowered to make an assessment of the amount due based upon any information within its possession or that shall come into its possession. Any licensee against whom an assessment is made by the commission may petition for a reassessment. The request for reassessment shall be made within twenty days from the date the assessment was mailed or delivered to the licensee, whichever is earlier. Whereupon the commission shall give notice of a hearing for reassessment and fix the date upon which the hearing shall be held. The assessment shall become final if a request for reassessment is not received by the commission within the twenty days. Except as provided in this section, on and after April 29, 1993, all functions incident to the administration, collection, enforcement, and operation of the tax imposed by sections 144.010 to 144.525, RSMo, shall be applicable to the taxes and fees imposed by this section.

[(1)] **2.** Each excursion gambling boat shall designate a city or county as its home dock. The home dock city or county may enter into agreements with other cities or counties authorized pursuant to subsection 10 of section 313.812 to share revenue obtained pursuant to this section. The home dock city or county shall receive [ten] **two** percent of the adjusted gross receipts [tax collections, as levied pursuant to this section,] **conducted by licensees and authorized pursuant to sections 313.800 to 313.850** for use in providing services necessary for the safety of the public visiting an excursion gambling boat. Such home dock city or county shall annually submit to the commission a shared revenue agreement with any other city or county. All moneys owed the home dock city or county shall be deposited and distributed to such city or county in accordance with rules and regulations of the commission. All revenues provided for in this section to be transferred to the governing body of any city not within a county and any city with a population of over three hundred fifty thousand inhabitants shall not be considered state funds and shall be deposited in such city's general revenue fund to be expended as provided for in this section.

[(2)] **3.** The [remaining amount of the] adjusted gross receipts tax shall be deposited in the state treasury to the credit of the "Gaming Proceeds for Education Fund" which is hereby created in the state treasury. Moneys deposited in this fund shall be considered the proceeds of excursion boat gambling and state funds pursuant to article IV, section 15 of the Missouri Constitution. All interest received on the gaming proceeds for education fund shall be credited to the gaming proceeds for education fund. Appropriation of the moneys deposited into the gaming proceeds for education fund shall be pursuant to state law.

Section 1. Within sixty days of the enactment of this act, the state gaming commission shall provide the general assembly with a report wherein it shall indicate the extent to which the admission fee to excursion gambling boats must be increased to provide sufficient revenue to enable the general assembly to authorize a three percent pay increase for all state employees. The state gaming commission shall make a diligent effort to utilize presently available

information from various state entities in order to minimize the costs of this report.

Section 2. The aggregate increase in revenue produced by the provisions of this act, calculated in comparison to the revenue produced in the immediately prior full fiscal year by the same provisions of law prior to their modification by this act, shall be considered part of general revenue, and shall be considered as a source of revenue to fund section 163.031, RSMo.

[143.261. For every remittance to the director of revenue made on or before the date the remittance becomes due, the employer, other than the United States and its agencies, the state of Missouri and political subdivisions thereof, may deduct and retain the following percentages of the total amount of tax withheld and paid in each calendar year:

- (1) Two percent of five thousand dollars or less;
- (2) One percent of amount collected in excess of five thousand dollars and up to and including ten thousand dollars;
- (3) One-half percent of amount collected in excess of ten thousand dollars.]

Section B. Because of the immediate need to secure adequate state revenue, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

Unofficial

Bill

Copy