

FIRST REGULAR SESSION

SENATE BILL NO. 195

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRAHAM.

Read 1st time January 19, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

0483S.011

AN ACT

To repeal sections 143.121, 143.431, 313.805, 313.820, and 313.822, RSMo, and to enact in lieu thereof five new sections relating to revenues for higher education.

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

Section A. Sections 143.121, 143.431, 313.805, 313.820, and 313.822, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 143.121, 143.431, 313.805, 313.820, and 313.822, to read as follows:

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

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

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

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

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

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

(d) The amount of any deduction that is included in the computation of federal taxable income for net operating loss allowed by Section 172 of the Internal Revenue Code of 1986, as amended, other than the deduction allowed by Section 172(b)(1)(G) and Section 172(I) of the Internal Revenue Code of 1986, as amended, for a net operating loss the taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a period of more than twenty years and carries backward for more than two years. Any amount of net operating loss taken against federal taxable income but disallowed for Missouri income tax purposes pursuant to this paragraph after June 18, 2002, may be carried forward and taken against any income on the Missouri income tax return for a period of not more than twenty years from the year of the initial loss; **and**

(e) For nonresident individuals, in all taxable years ending on or after December 31, 2005, the amount of any property taxes paid to another state or a political subdivision of another state for which a deduction was allowed on such nonresident's federal return in the taxable year.

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

(a) Interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent exempt from Missouri income taxes pursuant to the laws of the United States. The amount subtracted pursuant to this paragraph shall be reduced by any interest on indebtedness incurred to carry the described obligations or securities and by any expenses incurred in the production of interest or dividend income described in this paragraph. The reduction in the previous sentence shall only apply to the extent that such expenses including amortizable bond premiums are deducted in determining the taxpayer's federal adjusted gross income or included in the taxpayer's Missouri itemized

deduction. The reduction shall only be made if the expenses total at least five hundred dollars;

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

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

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

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

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

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

(h) For all tax years ending on or after July 1, 2002, with respect to qualified property that is sold or otherwise disposed of during a taxable year by a taxpayer and for which an addition modification was made under paragraph (c) of subsection 2 of this section, the amount by which addition modification made under paragraph (c) of subsection 2 of this section on qualified property has not been recovered through the additional subtractions provided in paragraph (g) of this subsection.

4. There shall be added to or subtracted from the taxpayer's federal adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment

provided in section 143.351.

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

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 to 4 of this section, as is derived from sources within 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, **with the exception of subdivision (e) of subsection 2 of 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 taxable income, corporate dividends from sources within Missouri.

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

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

(6) The commissioner of administration shall estimate and furnish to the state treasurer the appropriate net increase in the amount of state tax revenues collected and any adjustments to previous estimates pursuant to subdivision (e) of subsection 2 of section 143.121. The treasurer shall transfer monthly from general revenue an amount equal to the estimate to the Missouri college guarantee fund established in section 173.830, RSMo.

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

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

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

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

(d) of subsection 2 of section 143.121;

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

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

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

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

313.805. The commission shall have full jurisdiction over and shall supervise all gambling operations governed by sections 313.800 to 313.850. The commission shall have the following powers and shall promulgate rules and regulations to implement sections 313.800 to 313.850:

(1) To investigate applicants and determine the priority and eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Missouri;

(2) To license the operators of excursion gambling boats and operators of gambling games within such boats, to identify occupations within the excursion gambling boat operations which require licensing, and adopt standards for licensing the occupations including establishing fees for the occupational licenses and to license suppliers;

(3) To adopt standards under which all excursion gambling boat operations shall be held and standards for the facilities within which the gambling operations are to be held. Notwithstanding the provisions of chapter 311, RSMo, to the contrary, the commission may authorize the operation of gambling games on an excursion gambling boat which is also licensed to sell or serve alcoholic beverages, wine, or beer. The commission shall regulate the wagering structure for gambling excursions including providing a maximum loss of five hundred dollars per individual player per gambling excursion];

(4) To enter the premises of excursion gambling boats, facilities, or other places of business of a licensee within this state to determine compliance with sections 313.800 to 313.850;

(5) To investigate alleged violations of sections 313.800 to 313.850 or the commission rules, orders, or final decisions;

(6) To assess any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the commission up to three times the highest daily amount of gross receipts derived from wagering on the gambling games, whether unauthorized or authorized, conducted during the previous twelve months as well as confiscation and forfeiture of all gambling game equipment used in the conduct of unauthorized gambling games. Forfeitures pursuant to this section shall be enforced as provided in sections 513.600 to 513.645, RSMo;

(7) To require a licensee, an employee of a licensee or holder of an occupational license to remove a person violating a provision of sections 313.800 to 313.850 or the commission rules, orders, or final orders, or other person deemed to be undesirable from the excursion gambling boat or adjacent facilities;

(8) To require the removal from the premises of a licensee, an employee of a licensee, or a holder of an occupational license for a violation of sections 313.800 to 313.850 or a commission rule or engaging in a fraudulent practice;

(9) To require all licensees to file all financial reports required by rules and regulations of the commission;

(10) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, and other pertinent documents, and to administer oaths and affirmations to the witnesses, when, in the judgment of the commission, it is necessary to enforce sections 313.800 to 313.850 or the commission rules;

(11) To keep accurate and complete records of its proceedings and to certify the records as may be appropriate;

(12) To ensure that the gambling games are conducted fairly. No gambling device shall be set to pay out less than eighty percent of all wagers;

(13) To require all licensees of gambling game operations to use a cashless wagering system whereby all players' money is converted to physical or electronic tokens, electronic cards, or chips which only can be used for wagering on the excursion gambling boat;

(14) To require excursion gambling boat licensees to develop a system, approved by the commission, that allows patrons the option to prohibit the excursion gambling boat licensee from using identifying information for marketing purposes. The provisions of this subdivision shall apply only to patrons giving

identifying information for the first time. Such system shall be submitted to the commission by October 1, 2000, and approved by the commission by January 1, 2001. The excursion gambling boat licensee shall use identifying information obtained from patrons who have elected to have marketing blocked under the provisions of this section only for the purposes of enforcing the requirements contained in sections 313.800 to 313.850. This section shall not prohibit the commission from accessing identifying information for the purposes of enforcing section 313.004 and sections 313.800 to 313.850;

(15) To determine which of the authorized gambling games will be permitted on any licensed excursion gambling boat;

(16) Excursion gambling boats shall cruise, unless the commission finds that the best interest of Missouri and the safety of the public indicate the need for continuous docking of the excursion gambling boat in any city or county authorized pursuant to subsection 10 of section 313.812. The commission shall base its decision to allow continuously docked excursion gambling boats on any of the following criteria: the docking location or the excursion cruise could cause danger to the boat's passengers, violate federal law or the law of another state, or cause disruption of interstate commerce or possible interference with railway or barge transportation. In addition, the commission shall consider economic feasibility or impact that would benefit land-based development and permanent job creation. The commission shall not discriminate among applicants for continuous-docking excursion gambling that are similarly situated with respect to the criteria set forth in this section;

(17) The commission shall render a finding concerning the possibility of continuous docking, as described in subdivision (15) of this section, within thirty days after a hearing on any request from an applicant or licensee. Such hearing may be held prior to any final action on licensing to assist an applicant and any city or county in the finalizing of their economic development plan;

(18) To require any applicant for a license or renewal of a license to operate an excursion gambling boat to provide an affirmative action plan which has as its goal the use of best efforts to achieve maximum employment of African-Americans and other minorities and maximum participation in the procurement of contractual purchases of goods and services. This provision shall be administered in accordance with all federal and state employment laws, including Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991. At license renewal, the licensee will report on the effectiveness of

the plan. The commission shall include the licensee's reported information in its annual report to the joint committee on gaming and wagering;

(19) To take any other action as may be reasonable or appropriate to enforce sections 313.800 to 313.850 and the commission rules.

313.820. 1. An excursion boat licensee shall pay to the commission [an] **a one-time-per-day** admission fee of [two] **four** dollars for each person embarking on an excursion gambling boat with a ticket of admission. [One dollar] **Two dollars** of such fee shall be deposited to the credit of the gaming commission fund as authorized pursuant to section 313.835, and [one dollar] **two dollars** 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] **twenty-one** 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 percent of the adjusted gross receipts tax collections, as levied pursuant to this section, 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.

3. Additional tax revenue provided by the one percent increase in the adjusted gross receipts tax as enacted by the general assembly in this section during the ninety-third general assembly, first regular session shall be deposited in the state treasury to the credit of the "Higher Education Investment 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 higher education investment fund shall be credited to the higher education investment fund. All proceeds in the higher education investment fund shall be distributed in the following manner:

(1) All proceeds necessary shall be used to meet all bond obligations for higher education, in the following order:

(a) The construction and renovation of life sciences and economic development infrastructure on the several campuses of the University of Missouri, including the following:

Project	Campus	Amount from Bonds	Project Cost
Benton-Stadler Renovation	St. Louis	\$23,913,000	\$23,913,000
Mechanical Engineering Addition/Renovation	Rolla	\$18,617,000	\$23,350,000
Engineering Building East Renovation	Columbia	\$20,910,000	\$20,910,000
Health Sciences Building Phase 2	Kansas City	\$42,800,000	\$53,500,000
Health Sciences Building Phase 1 Space Completion	Kansas City	\$ 9,200,000	\$11,500,000
Health Sciences Research	Columbia	\$75,000,000	\$175,000,000

(b) The renovation and revitalization plan involving multiple campus facilities on the campus of Southwest Missouri State University;

(c) Renovations and additions for math and science programs at the Agenstein Science and Math Building on the campus of Missouri Western State College;

(d) The renovation of Olive DeLuce Fine Arts Building on the campus of Northwest Missouri State University;

(e) The renovation of the Morrow or Garrison Building on the

campus of Central Missouri State University;

(f) The renovation of Jason Hall and the addition of a swimming facility on the campus of Lincoln University;

(g) Renovations to Baldwin and McClain Halls on the campus of Truman State University;

(h) The construction of new buildings for early childhood and parent education programs on the campus of Harris Stowe State College;

(i) The construction of a Health Sciences Building on the campus of Missouri Southern State University-Joplin; and

(j) The addition of a Visual and Performing Arts Building and for renovations at the Kennett Area Center on the campus of Southeast Missouri State University;

(2) Any remaining net proceeds shall be used to fund the following student financial aid programs in the following order:

(a) The Missouri college guarantee program established in section 173.810, RSMo;

(b) The higher education academic scholarship program established in section 173.250, RSMo;

(c) The advantage Missouri program established in sections 173.775 to 173.796, RSMo;

(d) The A+ schools program established in section 160.545, RSMo; and

(e) The Charles Gallagher student financial assistance program established in sections 173.200 to 173.230, RSMo;

(3) Any remaining net proceeds up to a maximum of twelve million dollars shall be used to fund endowed chairs in the life sciences at the University of Missouri;

(4) Any remaining net proceeds shall be used to restore community college core funding to fiscal year 2002 appropriated levels;

(5) Any remaining net proceeds shall be used to restore four-year and coordinating board for higher education core funding to fiscal year 2002 appropriated levels.

[(2)] 4. The remaining amount of the adjusted gross receipts tax, not to exceed an amount equal to the total amount of adjusted gross receipts taxes transferred into the gaming proceeds for education fund in fiscal year 2005, 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. **Any amounts in excess of the total amount of adjusted gross receipts taxes transferred into the gaming proceeds for education fund in fiscal year 2005 shall be deposited in the higher education investment fund created in subsection 3 of this section and shall be distributed pursuant to the provisions of that subsection.**

5. Any funding provided for higher education pursuant to subsections 3 and 4 of this section shall not be used to supplant, reduce, or replace funding which would otherwise be appropriated by the general assembly from general revenue or lottery proceed funds for higher education and none of the existing educational programs described in subsection 3 of this section shall receive any less funding from general revenue than such programs received in fiscal year 2005.

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Bill

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