

SECOND REGULAR SESSION

# SENATE BILL NO. 595

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

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

TERRY L. SPIELER, Secretary.

3667S.011

## AN ACT

To repeal sections 143.121 and 143.431, RSMo, and to enact in lieu thereof two new sections relating to nonresident income tax.

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

Section A. Sections 143.121 and 143.431, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 143.121 and 143.431, to  
3 read as follows:

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

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

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

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

16 (c) The amount of any deduction that is included in the computation of  
17 federal taxable income pursuant to Section 168 of the Internal Revenue Code as  
18 amended by the Job Creation and Worker Assistance Act of 2002 to the extent the

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

19 amount deducted relates to property purchased on or after July 1, 2002, but  
20 before July 1, 2003, and to the extent the amount deducted exceeds the amount  
21 that would have been deductible pursuant to Section 168 of the Internal Revenue  
22 Code of 1986 as in effect on January 1, 2002; [and]

23 (d) The amount of any deduction that is included in the computation of  
24 federal taxable income for net operating loss allowed by Section 172 of the  
25 Internal Revenue Code of 1986, as amended, other than the deduction allowed by  
26 Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as  
27 amended, for a net operating loss the taxpayer claims in the tax year in which the  
28 net operating loss occurred or carries forward for a period of more than twenty  
29 years and carries backward for more than two years. Any amount of net  
30 operating loss taken against federal income taxes but disallowed against Missouri  
31 income taxes pursuant to this paragraph since July 1, 2002, may be carried  
32 forward and taken against any loss on the Missouri income tax return for a period  
33 of not more than twenty years from the year of the initial loss; **and**

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

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

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

54 (b) The portion of any gain, from the sale or other disposition of property

55 having a higher adjusted basis to the taxpayer for Missouri income tax purposes  
56 than for federal income tax purposes on December 31, 1972, that does not exceed  
57 such difference in basis. If a gain is considered a long-term capital gain for  
58 federal income tax purposes, the modification shall be limited to one-half of such  
59 portion of the gain;

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

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

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

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

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

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

90 4. There shall be added to or subtracted from the taxpayer's federal

91 adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment  
92 provided in section 143.351.

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

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

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

14 3. (1) If an affiliated group of corporations files a consolidated income tax  
15 return for the taxable year for federal income tax purposes and fifty percent or  
16 more of its income is derived from sources within this state as determined in  
17 accordance with section 143.451, then it may elect to file a Missouri consolidated  
18 income tax return. The federal consolidated taxable income of the electing  
19 affiliated group for the taxable year shall be its federal taxable income.

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

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

32 (4) For each taxable year an affiliated group of corporations filing a

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

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

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

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

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

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

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

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

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

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

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