

FIRST REGULAR SESSION

# SENATE BILL NO. 241

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time January 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0232S.011

## AN ACT

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

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

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143.091, 143.121, 143.225, 143.261, 143.431, 143.451, 143.461, 143.471, 144.010, 144.030, and 144.190, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 143.091, 143.121, 143.225, 143.431, 143.434, 143.471, 144.010, 144.030, and 144.190, to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

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

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

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

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

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

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

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

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

7           (2) 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 (1) of subsection 3 of this section. The amount added pursuant to  
12 this subdivision 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           (3) The amount of any deduction that is included in the computation of  
17 federal taxable income pursuant to Section 168 of the Internal Revenue Code as  
18 amended by the Job Creation and Worker Assistance Act of 2002 to the extent the  
19 amount deducted relates to property purchased on or after July 1, 2002, but  
20 before July 1, 2003, and to the extent the amount deducted exceeds the amount  
21 that would have been deductible pursuant to Section 168 of the Internal Revenue  
22 Code of 1986 as in effect on January 1, 2002;

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

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

34 Internal Revenue Code of 1986, as amended, other than the deduction allowed by  
35 Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as  
36 amended, for a net operating loss the taxpayer claims in the tax year in which the  
37 net operating loss occurred or carries forward for a period of more than twenty  
38 years and carries backward for more than two years. Any amount of net  
39 operating loss taken against federal taxable income but disallowed for Missouri  
40 income tax purposes pursuant to this subdivision after June 18, 2002, may be  
41 carried forward and taken against any income on the Missouri income tax return  
42 for a period of not more than twenty years from the year of the initial loss; and

43 ~~[(5)]~~ **(6)** For nonresident individuals in all taxable years ending on or  
44 after December 31, 2006, the amount of any property taxes paid to another state  
45 or a political subdivision of another state for which a deduction was allowed on  
46 such nonresident's federal return in the taxable year unless such state, political  
47 subdivision of a state, or the District of Columbia allows a subtraction from  
48 income for property taxes paid to this state for purposes of calculating income for  
49 the income tax for such state, political subdivision of a state, or the District of  
50 Columbia.

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

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

66 (2) The portion of any gain, from the sale or other disposition of property  
67 having a higher adjusted basis to the taxpayer for Missouri income tax purposes  
68 than for federal income tax purposes on December 31, 1972, that does not exceed  
69 such difference in basis. If a gain is considered a long-term capital gain for

70 federal income tax purposes, the modification shall be limited to one-half of such  
71 portion of the gain;

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

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

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

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

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

91 (8) For all tax years beginning on or after January 1, 2005, the amount  
92 of any income received for military service while the taxpayer serves in a combat  
93 zone which is included in federal adjusted gross income and not otherwise  
94 excluded therefrom. As used in this section, "combat zone" means any area which  
95 the President of the United States by Executive Order designates as an area in  
96 which armed forces of the United States are or have engaged in combat. Service  
97 is performed in a combat zone only if performed on or after the date designated  
98 by the President by Executive Order as the date of the commencing of combat  
99 activities in such zone, and on or before the date designated by the President by  
100 Executive Order as the date of the termination of combatant activities in such  
101 zone; [and]

102 (9) For all tax years ending on or after July 1, 2002, with respect to  
103 qualified property that is sold or otherwise disposed of during a taxable year by  
104 a taxpayer and for which an addition modification was made under subdivision  
105 (3) of subsection 2 of this section, the amount by which addition modification

106 made under subdivision (3) of subsection 2 of this section on qualified property  
107 has not been recovered through the additional subtractions provided in  
108 subdivision (7) of this subsection; and

109       **(10) The amount that would have been deducted in the**  
110 **computation of federal taxable income under Section 168 of the**  
111 **Internal Revenue Code as in effect on January 1, 2002, to the extent**  
112 **that amount relates to property purchased in any taxable year**  
113 **beginning after August 31, 2004, and to the extent that amount exceeds**  
114 **the amount actually deducted under Section 168 of the Internal**  
115 **Revenue Code as amended by the Job Creation and Worker Assistance**  
116 **Act of 2002, and the Jobs and Growth Tax Relief Reconciliation Act of**  
117 **2003.**

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

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

123       6. In addition to the modifications to a taxpayer's federal adjusted gross  
124 income in this section, to calculate Missouri adjusted gross income there shall be  
125 subtracted from the taxpayer's federal adjusted gross income any gain recognized  
126 pursuant to Section 1033 of the Internal Revenue Code of 1986, as amended,  
127 arising from compulsory or involuntary conversion of property as a result of  
128 condemnation or the imminence thereof.

129       7. (1) As used in this subsection, "qualified health insurance premium"  
130 means the amount paid during the tax year by such taxpayer for any insurance  
131 policy primarily providing health care coverage for the taxpayer, the taxpayer's  
132 spouse, or the taxpayer's dependents.

133       (2) In addition to the subtractions in subsection 3 of this section, one  
134 hundred percent of the amount of qualified health insurance premiums shall be  
135 subtracted from the taxpayer's federal adjusted gross income to the extent the  
136 amount paid for such premiums is included in federal taxable income. The  
137 taxpayer shall provide the department of revenue with proof of the amount of  
138 qualified health insurance premiums paid.

139       8. (1) Beginning January 1, 2009, in addition to the subtractions provided  
140 in this section, one hundred percent of the cost incurred by a taxpayer for a home  
141 energy audit conducted by an entity certified by the department of natural

resources under section 640.153, RSMo, or the implementation of any energy efficiency recommendations made in such an audit shall be subtracted from the taxpayer's federal adjusted gross income to the extent the amount paid for any such activity is included in federal taxable income. The taxpayer shall provide the department of revenue with a summary of any recommendations made in a qualified home energy audit, the name and certification number of the qualified home energy auditor who conducted the audit, and proof of the amount paid for any activities under this subsection for which a deduction is claimed. The taxpayer shall also provide a copy of the summary of any recommendations made in a qualified home energy audit to the department of natural resources.

(2) At no time shall a deduction claimed under this subsection by an individual taxpayer or taxpayers filing combined returns exceed one thousand dollars per year or cumulatively exceed two thousand dollars per taxpayer or taxpayers filing combined returns.

(3) Any deduction claimed under this subsection shall be claimed for the tax year in which the qualified home energy audit was conducted or in which the implementation of the energy efficiency recommendations occurred. If implementation of the energy efficiency recommendations occurred during more than one year, the deduction may be claimed in more than one year, subject to the limitations provided under subdivision (2) of this subsection.

(4) A deduction shall not be claimed for any otherwise eligible activity under this subsection if such activity qualified for and received any rebate or other incentive through a state-sponsored energy program or through an electric corporation, gas corporation, electric cooperative, or municipally owned utility.

9. The provisions of subsection 8 of this section shall expire on December 31, 2013.

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.

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

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

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

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

23           6. (1) In the case of an underpayment of any amount required to be paid  
24 pursuant to this section, an employer shall be liable for a penalty in lieu of all  
25 other penalties, interest or additions to tax imposed by this chapter for violating  
26 this section. The penalty shall be five percent of the amount of the underpayment  
27 determined under subdivision (2) of this subsection.

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

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

33           7. (1) The penalty with respect to any quarter-monthly period shall not  
34 be imposed if the employer's timely remittance for the quarter-monthly period  
35 equals or exceeds one-fourth of the average monthly withholding tax liability of  
36 the employer for the preceding calendar year. The month of highest liability and  
37 the month of lowest liability shall be excluded in computing the average. This  
38 subdivision shall apply only to an employer who had a withholding tax liability  
39 for at least six months of the previous calendar year.

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

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

46           8. Tax amounts remitted under this section shall be treated as payments

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

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

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

7 2. There shall be added to or subtracted from federal taxable income the  
8 modifications to adjusted gross income provided in section 143.121, with the  
9 exception of subdivision (5) of subsection 2 of section 143.121, and the applicable  
10 modifications to itemized deductions provided in section 143.141. There shall be  
11 subtracted the federal income tax deduction provided in section 143.171. There  
12 shall be subtracted, to the extent included in federal taxable income, corporate  
13 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] **32.200, RSMo**, then it may elect to file a  
18 Missouri consolidated income tax return. The federal consolidated taxable income  
19 of the electing affiliated group for the taxable year shall be its federal taxable  
20 income.

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



28 except with the approval of the director of revenue, and subject to such terms and  
29 conditions as he may prescribe.

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

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

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

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

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

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

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

64 (d) of subsection 2 of section 143.121;

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

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

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

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

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

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

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

8 (b) The common parent directly owns at least eighty percent of  
9 the stock of at least one of the corporations in the group. "Affiliated  
10 group" does not include corporations that are qualified to do business  
11 but are not otherwise doing business in this state. For purposes of this  
12 section, "stock" does not include nonvoting stock which is limited and  
13 preferred as to dividends;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48           (b) Eighty percent or more of whose business activity is  
49 conducted without the United States.

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

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

55           (a) Are related through common ownership; and

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

60           a. Centralized management;

61           **b. Functional integration; and**

62           **c. Economies of scale;**

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

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

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

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

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

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

79           **(a) Doing business in Missouri;**

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

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

84           **(2) Each corporation within the affiliated group that is doing**  
85 **business in Missouri shall file a combined report. If an affiliated group**  
86 **elects to file a combined report, each corporation within the affiliated**  
87 **group that is doing business in Missouri shall file a combined report.**

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

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

98 corporations.

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

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

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

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

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

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

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

122           7. The director of revenue may prescribe such regulations not  
123 inconsistent with the provisions of this chapter as the director may  
124 deem necessary in order that the tax liability of any affiliated group of  
125 corporations making a Missouri consolidated income tax return, and of  
126 each corporation in the group, before, during, and after the period of  
127 affiliation, may be returned, determined, computed, assessed, collected,  
128 and adjusted, in such manner as clearly to reflect the Missouri taxable  
129 income derived from sources within the state and in order to prevent  
130 avoidance of such tax liability.

131           8. Any rule or portion of a rule, as that term is defined in section  
132 536.010, RSMo, that is created under the authority delegated in this  
133 section shall become effective only if it complies with and is subject to  
134 all of the provisions of chapter 536, RSMo, and, if applicable, section

135 **536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
136 **and if any of the powers vested with the general assembly pursuant to**  
137 **chapter 536, RSMo, to review, to delay the effective date, or to**  
138 **disapprove and annul a rule are subsequently held unconstitutional,**  
139 **then the grant of rulemaking authority and any rule proposed or**  
140 **adopted after August 28, 2008, shall be invalid and void.**

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

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

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

15 (2) Each item of S corporation income, gain, loss, or deduction shall have  
16 the same character for a shareholder pursuant to sections 143.005 to 143.998 as  
17 it has for federal income tax purposes. Where an item is not characterized for  
18 federal income tax purposes, it shall have the same character for a shareholder  
19 as if realized directly from the source from which realized by the S corporation  
20 or incurred in the same manner as incurred by the S corporation.

21 3. A nonresident shareholder of an S corporation shall determine such  
22 shareholder's Missouri nonresident adjusted gross income and his or her  
23 nonresident shareholder modification by applying the provisions of this  
24 subsection. Items shall be determined to be from sources within this state  
25 pursuant to regulations of the director of revenue in a manner consistent with the  
26 division of income provisions of [section 143.451, section 143.461, or] section  
27 32.200, RSMo (Multistate Tax Compact). In determining the adjusted gross  
28 income of a nonresident shareholder of any S corporation, there shall be included  
29 only that part derived from or connected with sources in this state of the  
30 shareholder's pro rata share of items of S corporation income, gain, loss or

31 deduction entering into shareholder's federal adjusted gross income, as such part  
32 is determined pursuant to regulations prescribed by the director of revenue in  
33 accordance with the general rules in section 143.181. Any modification described  
34 in subsections 2 and 3 of section 143.121 and in section 143.141, which relates to  
35 an item of S corporation income, gain, loss, or deduction shall be made in  
36 accordance with the shareholder's pro rata share, for federal income tax purposes,  
37 of the item to which the modification relates, but limited to the portion of such  
38 item derived from or connected with sources in this state.

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

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

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

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

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

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

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

67 taxable year.

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

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

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

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

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

89           9. With respect to S corporations that are banks or bank holding  
90 companies, a pro rata share of the tax credit for the tax payable pursuant to  
91 chapter 148, RSMo, shall be allowed against each S corporation shareholders'  
92 state income tax as follows, provided the bank otherwise complies with section  
93 148.112, **RSMo**:

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

101           (2) The tax credit authorized in this subsection shall be permitted only to  
102 the shareholders that qualify as S corporation shareholders, provided the stock



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

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

114 10. With respect to S corporations that are associations, a pro rata share  
115 of the tax credit for the tax payable under chapter 148, RSMo, shall be allowed  
116 against each S corporation shareholders' state income tax as follows, provided the  
117 association otherwise complies with section 148.655, RSMo:

118 (1) The credit allowed by this subsection shall be equal to the savings and  
119 loan association tax calculated under chapter 148, RSMo, based on the  
120 computations provided in section 148.630, RSMo, on an association that makes  
121 an election under 26 U.S.C. Section 1362, and such credit shall be allocated to the  
122 qualifying shareholder according to stock ownership, determined by multiplying  
123 a fraction, where the numerator is the shareholder's stock, and the denominator  
124 is the total stock issued by the association;

125 (2) The tax credit authorized in this subsection shall be permitted only to  
126 the shareholders that qualify as S corporation shareholders, provided the stock  
127 at all times during the taxable period qualifies as S corporation stock as defined  
128 in 26 U.S.C. Section 1361, and such stock is held by the shareholder during the  
129 taxable period. The credit created by this section on a yearly basis is available  
130 to each qualifying shareholder, including shareholders filing joint returns. A  
131 savings and loan association holding company is not allowed this credit, except  
132 that, such credit shall flow through to such savings and loan association holding  
133 company's qualified shareholders, and be allocated to such shareholders under  
134 the same conditions; and

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

139           11. With respect to S corporations that are credit institutions, a pro rata  
140 share of the tax credit for the tax payable under chapter 148, RSMo, shall be  
141 allowed against each S corporation shareholders' state income tax as follows,  
142 provided the credit institution otherwise complies with section 148.657, RSMo:

143           (1) The credit allowed by this subsection shall be equal to the credit  
144 institution tax calculated under chapter 148, RSMo, based on the computations  
145 provided in section 148.150, RSMo, on a credit institution that makes an election  
146 under 26 U.S.C. Section 1362, and such credit shall be allocated to the qualifying  
147 shareholder according to stock ownership, determined by multiplying a fraction,  
148 where the numerator is the shareholder's stock, and the denominator is the total  
149 stock issued by such credit institution;

150           (2) The tax credit authorized in this subsection shall be permitted only to  
151 the shareholders that qualify as S corporation shareholders, provided the stock  
152 at all times during the taxable period qualifies as S corporation stock as defined  
153 in 26 U.S.C. Section 1361, and such stock is held by the shareholder during the  
154 taxable period. The credit created by this section on a yearly basis is available  
155 to each qualifying shareholder, including shareholders filing joint returns. A  
156 credit institution holding company is not allowed this credit, except that, such  
157 credit shall flow through to such credit institution holding company's qualified  
158 shareholders, and be allocated to such shareholders under the same conditions;  
159 and

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

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

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

8           (2) "Business" includes any activity engaged in by any person, or caused  
9 to be engaged in by him, with the object of gain, benefit or advantage, either  
10 direct or indirect, and the classification of which business is of such character as  
11 to be subject to the terms of sections 144.010 to 144.525. The isolated or

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

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

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

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

48           [(5)] (6) "Motor vehicle leasing company" shall be a company obtaining  
49 a permit from the director of revenue to operate as a motor vehicle leasing  
50 company. Not all persons renting or leasing trailers or motor vehicles need to  
51 obtain such a permit; however, no person failing to obtain such a permit may  
52 avail itself of the optional tax provisions of subsection 5 of section 144.070, as  
53 hereinafter provided;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 require;

121       [(13)] (14) "Telecommunications service", for the purpose of this chapter,  
122 the transmission of information by wire, radio, optical cable, coaxial cable,  
123 electronic impulses, or other similar means. As used in this definition,  
124 "information" means knowledge or intelligence represented by any form of writing,  
125 signs, signals, pictures, sounds, or any other symbols. Telecommunications service  
126 does not include the following if such services are separately stated on the  
127 customer's bill or on records of the seller maintained in the ordinary course of  
128 business:

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

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

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

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

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

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

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

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

9 further taxing by the constitution of this state.

10           2. There are also specifically exempted from the provisions of the local  
11 sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and  
12 sections 144.010 to 144.525 and 144.600 to 144.761 and from the computation of  
13 the tax levied, assessed or payable pursuant to the local sales tax law as defined  
14 in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525  
15 and 144.600 to 144.745:

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

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

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

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

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

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

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

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

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

80           (10) Pumping machinery and equipment used to propel products delivered



81 by pipelines engaged as common carriers;

82 (11) Railroad rolling stock for use in transporting persons or property in  
83 interstate commerce and motor vehicles licensed for a gross weight of twenty-four  
84 thousand pounds or more or trailers used by common carriers[, as defined in  
85 section 390.020, RSMo,] in the transportation of persons or property;

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

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

104 (14) Machinery, equipment, appliances and devices purchased or leased  
105 and used solely for the purpose of preventing, abating or monitoring air pollution,  
106 and materials and supplies solely required for the installation, construction or  
107 reconstruction of such machinery, equipment, appliances and devices;

108 (15) Machinery, equipment, appliances and devices purchased or leased  
109 and used solely for the purpose of preventing, abating or monitoring water  
110 pollution, and materials and supplies solely required for the installation,  
111 construction or reconstruction of such machinery, equipment, appliances and  
112 devices;

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

114 (17) All amounts paid or charged for admission or participation or other  
115 fees paid by or other charges to individuals in or for any place of amusement,  
116 entertainment or recreation, games or athletic events, including museums, fairs,

117 zoos and planetariums, owned or operated by a municipality or other political  
118 subdivision where all the proceeds derived therefrom benefit the municipality or  
119 other political subdivision and do not inure to any private person, firm, or  
120 corporation;

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

138 (19) All sales made by or to religious and charitable organizations and  
139 institutions in their religious, charitable or educational functions and activities  
140 and all sales made by or to all elementary and secondary schools operated at  
141 public expense in their educational functions and activities;

142 (20) All sales of aircraft to common carriers for storage or for use in  
143 interstate commerce and all sales made by or to not-for-profit civic, social, service  
144 or fraternal organizations, including fraternal organizations which have been  
145 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the  
146 1986 Internal Revenue Code, as amended, in their civic or charitable functions  
147 and activities and all sales made to eleemosynary and penal institutions and  
148 industries of the state, and all sales made to any private not-for-profit institution  
149 of higher education not otherwise excluded pursuant to subdivision (19) of this  
150 subsection or any institution of higher education supported by public funds, and  
151 all sales made to a state relief agency in the exercise of relief functions and  
152 activities;

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

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

186           (a) Used exclusively for agricultural purposes;

187           (b) Used on land owned or leased for the purpose of producing farm  
188 products; and

189 (c) Used directly in producing farm products to be sold ultimately in  
190 processed form or otherwise at retail or in producing farm products to be fed to  
191 livestock or poultry to be sold ultimately in processed form at retail;

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

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

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

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

condominiums through a single or master meter, including service for common areas and facilities and vacant units, under a nonresidential utility service rate classification may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for credit or refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase. The person making such purchases on behalf of occupants of residential apartments or condominiums shall have standing to apply to the director of revenue for such credit or refund;

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

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

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

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

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

(29) All livestock sales when either the seller is engaged in the growing, producing or feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering or leasing of such livestock;

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

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

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

268 (33) Tangible personal property and utilities purchased for use or  
269 consumption directly or exclusively in the research and development of  
270 agricultural/biotechnology and plant genomics products and prescription  
271 pharmaceuticals consumed by humans or animals;

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

273 (35) All sales of feed which are developed for and used in the feeding of  
274 pets owned by a commercial breeder when such sales are made to a commercial  
275 breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections  
276 273.325 to 273.357, RSMo;

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

293 (a) An exempt entity located in this state, if the entity is one of those  
294 entities able to issue project exemption certificates in accordance with the  
295 provisions of section 144.062; or

296 (b) An exempt entity located outside the state if the exempt entity is

297 authorized to issue an exemption certificate to contractors in accordance with the  
298 provisions of that state's law and the applicable provisions of this section;

299 (37) All sales or other transfers of tangible personal property to a lessor  
300 who leases the property under a lease of one year or longer executed or in effect  
301 at the time of the sale or other transfer to an interstate compact agency created  
302 pursuant to sections 70.370 to 70.441, RSMo, or sections 238.010 to 238.100,  
303 RSMo;

304 (38) Sales of tickets to any collegiate athletic championship event that is  
305 held in a facility owned or operated by a governmental authority or commission,  
306 a quasi-governmental agency, a state university or college or by the state or any  
307 political subdivision thereof, including a municipality, and that is played on a  
308 neutral site and may reasonably be played at a site located outside the state of  
309 Missouri. For purposes of this subdivision, "neutral site" means any site that is  
310 not located on the campus of a conference member institution participating in the  
311 event;

312 (39) All purchases by a sports complex authority created under section  
313 64.920, RSMo;

314 (40) Beginning January 1, 2009, but not after January 1, 2015, materials,  
315 replacement parts, and equipment purchased for use directly upon, and for the  
316 modification, replacement, repair, and maintenance of aircraft, aircraft power  
317 plants, and aircraft accessories.

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

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

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

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

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

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

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

46           (3) Within sixty days of receiving the customer's notice, the home service  
47 provider shall review its records and the electronic database or enhanced zip code  
48 to determine the customer's correct taxing jurisdiction. If the home service  
49 provider determines that the review shows that the amount of tax, assignment  
50 of place of primary use or taxing jurisdiction is in error, the home service  
51 provider shall correct the error and, at its election, either refund or credit the



52 amount of tax erroneously collected to the customer for a period of up to three  
53 years from the last day of the home service provider's sixty-day review period. If  
54 the home service provider determines that the review shows that the amount of  
55 tax, the assignment of place of primary use or the taxing jurisdiction is correct,  
56 the home service provider shall provide a written explanation of its determination  
57 to the customer.

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

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

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

70 (3) Changes in regulations or policy by the department of revenue.]

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

79 (1) **Where the total claim for refund is over one thousand dollars**  
80 **for any five year period, the person legally obligated to remit the tax**  
81 **demonstrates to the satisfaction of the director of revenue that all**  
82 **incorrectly collected or incorrectly computed amounts were or will be**  
83 **refunded or credited to every purchaser that originally paid the tax; or**

84 (2) **The person legally obligated to remit the tax submits to the**  
85 **director duplicate copies of a claim for refund and amended tax returns**  
86 **showing the correct amount of gross receipts for each reporting period**  
87 **originally filed and proves to the director's satisfaction that the tax**

88 **originally reported and remitted to the director was paid by such**  
89 **person claiming the refund or credit and was not collected from**  
90 **purchasers.**

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

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

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

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

11 thousand dollars.]

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

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

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

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

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

21 (b) The amount of sales which are transactions wholly in  
22 this state shall be added to one-half of the amount of sales which  
23 are transactions partly within this state and partly without this  
24 state, and the amount thus obtained shall be divided by the total  
25 sales or in cases where sales do not express the volume of business,  
26 the amount of business transacted wholly in this state shall be  
27 added to one-half of the amount of business transacted partly in  
28 this state and partly outside this state and the amount thus  
29 obtained shall be divided by the total amount of business  
30 transacted, and the net income shall be multiplied by the fraction  
31 thus obtained, to determine the proportion of income to be used to  
32 arrive at the amount of Missouri taxable income. The investment  
33 or reinvestment of its own funds, or sale of any such investment or  
34 reinvestment, shall not be considered as sales or other business  
35 transacted for the determination of said fraction.

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

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

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

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

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

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

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

61 (b) "Affiliate", the meaning as set forth in 15 U.S.C. Section  
62 80a-2(a)(3)(C), as may be amended from time to time;

63 (c) "Distribution services" include, but are not limited to,  
64 the services of advertising, servicing, marketing, underwriting or  
65 selling shares of an investment company, but, in the case of  
66 advertising, servicing or marketing shares, only where such service  
67 is performed by a person who is, or in the case of a closed end  
68 company, was, either engaged in the services of underwriting or  
69 selling investment company shares or affiliated with a person that  
70 is engaged in the service of underwriting or selling investment  
71 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

108 entered into such contract with an investment company;

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

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

128 (5) Notwithstanding other provisions of law to the contrary,  
129 qualifying sales of an investment funds service corporation, or S  
130 corporation, shall be considered wholly in this state only to the  
131 extent that the fund shareholders of the investment companies, to  
132 which the investment funds service corporation, or S corporation,  
133 provide services, are resided in this state.

134 Wholly in this state qualifying sales of an investment funds service  
135 corporation, or S corporation, shall be determined as follows:

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

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 income arising from all sources in this state and all income from each transportation service wholly within this state, from each service where the only lines of such corporation used are those in this state, and such proportion of revenue from each service where the facilities of such corporation in this state and in another state or states are used, as the mileage used over the lines of such corporation in the state shall bear to the total mileage used over

180 the lines of such corporation. The taxpayer may elect to compute  
181 the portion of income from all sources within this state in the  
182 following manner:

183 (1) The income from all sources shall be determined as  
184 provided;

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

202 5. A corporation described in subdivision (3) of subsection  
203 1 of section 143.441 shall include in its Missouri taxable income  
204 one-half of the net income from the operation of a bridge between  
205 this and another state. If any such bridge is owned or operated by  
206 a railroad corporation or corporations, or by a corporation owning  
207 a railroad corporation using such bridge, then the figures for  
208 operation of such bridge may be included in the return of such  
209 railroad or railroads; or if such bridge is owned or operated by any  
210 other corporation which may now or hereafter be required to file an  
211 income tax return, one-half of the income or loss to such  
212 corporation from such bridge may be included in such return by  
213 adding or subtracting same to or from another net income or loss  
214 shown by the return.

215 6. A corporation described in subdivision (4) of subsection



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

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

(2) The amount of investment of such corporation on December thirty-first of each year in this state in 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 Missouri, 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

252 applicable to Missouri shall be determined by multiplying the  
253 amount that would otherwise affect Missouri taxable income by the  
254 ratio for the year of the Missouri taxable income of the corporation  
255 for the year divided by the Missouri taxable income for the year as  
256 though the corporation had derived all of its income from sources  
257 within Missouri. For the purpose of the preceding sentence,  
258 Missouri taxable income shall not reflect the listed deductions.

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

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

10 2. If the corporation shall keep its books and records so as  
11 to show by any other method of allocation between this state and  
12 other states involved of income from transactions partially within  
13 and partially without this state, including gross income and  
14 deductions applicable thereto, and such method shows the income  
15 applicable to this state, including gross income and deductions  
16 applicable thereto, then it may, on or before sixty days before the  
17 end of any taxable year, petition the director of revenue, in writing,  
18 to be permitted in its return required to be filed to apportion to  
19 this state according to the method shown by such books or records. If  
20 the director of revenue finds that such method does show the  
21 income applicable to this state including gross income and the  
22 deductions applicable thereto, he shall notify the corporation, at  
23 least thirty days prior to the last day on which such corporation's  
24 return for that taxable year is to be filed, that it may use that  
25 method as long as such method shows the income applicable to this

state, including gross income and deductions applicable thereto.

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

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

Section B. Section A of this act shall become effective September 1, 2009.

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