

FIRST REGULAR SESSION

SENATE BILL NO. 461

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

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TERRY L. SPIELER, Secretary.

1919S.01I

AN ACT

To repeal section 143.451, RSMo, and to enact in lieu thereof one new section relating to division of interstate income for corporate income taxation.

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

Section A. Section 143.451, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 143.451, to read as follows:

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

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

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

14 (2) The taxpayer may elect to compute the portion of income from all
15 sources in this state in the following manner, **or the manner set forth in**
16 **subdivision (3) of this subsection:**

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

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

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

33 [(3)] (c) For the purposes of this [section] **subdivision**, a transaction
34 involving the sale of tangible property is:

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

37 [(b)] b. "Partly within this state and partly without this state" if the
38 seller's shipping point is in this state and the purchaser's destination point is
39 outside this state, or the seller's shipping point is outside this state and the
40 purchaser's destination point is in this state;

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

44 (d) For purposes of this subdivision:

45 a. The purchaser's destination point shall be determined without regard
46 to the FOB point or other conditions of the sale[.]; and

47 b. The seller's shipping point is determined without regard to the location
48 of the seller's principle office or place of business.

49 (3) **The taxpayer may elect to compute the portion of income**
50 **from all sources in this state in the following manner:**

51 (a) **The income from all sources shall be determined as provided,**
52 **excluding therefrom the figures for the operation of any bridge**
53 **connecting this state with another state;**

54 (b) **The amount of sales which are transactions in this state shall**
55 **be divided by the total sales, and the net income shall be multiplied by**

56 the fraction thus obtained, to determine the proportion of income to be
57 used to arrive at the amount of Missouri taxable income. The
58 investment or reinvestment of its own funds, or sale of any such
59 investment or reinvestment, shall not be considered as sales or other
60 business transacted for the determination of said fraction;

61 (c) For the purposes of this subdivision, a transaction involving
62 the sale of tangible property is:

63 a. "In this state" if the purchaser's destination point is in this
64 state;

65 b. Not "in this state" if the purchaser's destination point is
66 outside this state;

67 (d) For purposes of this subdivision, the purchaser's destination
68 point shall be determined without regard to the FOB point or other
69 conditions of the sale and shall not be in this state if the purchaser
70 received the tangible personal property from the seller in this state for
71 delivery to the purchaser's location outside this state.

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

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

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

80 (c) "Distribution services" include, but are not limited to, the services of
81 advertising, servicing, marketing, underwriting or selling shares of an investment
82 company, but, in the case of advertising, servicing or marketing shares, only
83 where such service is performed by a person who is, or in the case of a closed end
84 company, was, either engaged in the services of underwriting or selling
85 investment company shares or affiliated with a person that is engaged in the
86 service of underwriting or selling investment company shares. In the case of an
87 open end company, such service of underwriting or selling shares must be
88 performed pursuant to a contract entered into pursuant to 15 U.S.C. Section
89 80a-15(b), as from time to time amended;

90 (d) "Investment company", any person registered under the federal
91 Investment Company Act of 1940, as amended from time to time, (the act) or a

92 company which would be required to register as an investment company under
93 the act except that such person is exempt to such registration pursuant to Section
94 80a-3(c)(1) of the act;

95 (e) "Investment funds service corporation" includes any corporation or S
96 corporation doing business in the state which derives more than fifty percent of
97 its gross income in the ordinary course of business from the provision directly or
98 indirectly of management, distribution or administration services to or on behalf
99 of an investment company or from trustees, sponsors and participants of employee
100 benefit plans which have accounts in an investment company. An investment
101 funds service corporation shall include any corporation or S corporation providing
102 management services as an investment advisory firm registered under Section
103 203 of the Investment Advisors Act of 1940, as amended from time to time,
104 regardless of the percentage of gross revenues consisting of fees from
105 management services provided to or on behalf of an investment company;

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

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

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

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

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

125 (h) "Residence", presumptively the fund shareholder's mailing address on
126 the records of the investment company. If, however, the investment company or
127 the investment funds service corporation has actual knowledge that the fund

128 shareholder's primary residence or principal place of business is different than
129 the fund shareholder's mailing address such presumption shall not control. To
130 the extent an investment funds service corporation does not have access to the
131 records of the investment company, the investment funds service corporation may
132 employ reasonable methods to determine the investment company fund
133 shareholder's residence.

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

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

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

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

162 3. Any corporation described in subdivision (1) of subsection 1 of section
163 143.441 organized in this state or granted a permit to operate in this state for the

164 transportation or care of passengers shall report its gross earnings within the
165 state on intrastate business and shall also report its gross earnings on all
166 interstate business done in this state which report shall be subject to inquiry for
167 the purpose of determining the amount of income to be included in Missouri
168 taxable income. The previous sentence shall not apply to a railroad.

169 4. A corporation described in subdivision (2) of subsection 1 of section
170 143.441 shall include in its Missouri taxable income all income arising from all
171 sources in this state and all income from each transportation service wholly
172 within this state, from each service where the only lines of such corporation used
173 are those in this state, and such proportion of revenue from each service where
174 the facilities of such corporation in this state and in another state or states are
175 used, as the mileage used over the lines of such corporation in the state shall
176 bear to the total mileage used over the lines of such corporation. The taxpayer
177 may elect to compute the portion of income from all sources within this state in
178 the following manner:

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

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

194 5. A corporation described in subdivision (3) of subsection 1 of section
195 143.441 shall include in its Missouri taxable income one-half of the net income
196 from the operation of a bridge between this and another state. If any such bridge
197 is owned or operated by a railroad corporation or corporations, or by a corporation
198 owning a railroad corporation using such bridge, then the figures for operation
199 of such bridge may be included in the return of such railroad or railroads; or if

200 such bridge is owned or operated by any other corporation which may now or
201 hereafter be required to file an income tax return, one-half of the income or loss
202 to such corporation from such bridge may be included in such return by adding
203 or subtracting same to or from another net income or loss shown by the return.

204 6. A corporation described in subdivision (4) of subsection 1 of section
205 143.441 shall include in its Missouri taxable income all income arising from all
206 sources within this state. Income shall include revenue from each telephonic or
207 telegraphic service rendered wholly within this state; from each service rendered
208 for which the only facilities of such corporation used are those in this state; and
209 from each service rendered over the facilities of such corporation in this state and
210 in other state or states, such proportion of such revenue as the mileage involved
211 in this state shall bear to the total mileage involved over the lines of said
212 company in all states. The taxpayer may elect to compute the portion of income
213 from all sources within this state in the following manner:

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

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

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

227 8. If a corporation derives only part of its income from sources within
228 Missouri, its Missouri taxable income shall only reflect the effect of the following
229 listed deductions to the extent applicable to Missouri. The deductions are: (a)
230 its deduction for federal income taxes pursuant to section 143.171, and (b) the
231 effect on Missouri taxable income of the deduction for net operating loss allowed
232 by Section 172 of the Internal Revenue Code. The extent applicable to Missouri
233 shall be determined by multiplying the amount that would otherwise affect
234 Missouri taxable income by the ratio for the year of the Missouri taxable income
235 of the corporation for the year divided by the Missouri taxable income for the year

236 as though the corporation had derived all of its income from sources within
237 Missouri. For the purpose of the preceding sentence, Missouri taxable income
238 shall not reflect the listed deductions.

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

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