

CONFERENCE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 662

AN ACT

To repeal sections 143.451, 144.021, and 144.080, RSMo, and to enact in lieu thereof four new sections relating to taxation, with existing penalty provisions.

---

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1           Section A. Sections 143.451, 144.021, and 144.080, RSMo,  
2 are repealed and four new sections enacted in lieu thereof, to be  
3 known as sections 143.451, 144.021, 144.080, and 144.1030, to  
4 read as follows:

5           143.451. 1. Missouri taxable income of a corporation shall  
6 include all income derived from sources within this state.

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

13           (1) Where income results from a transaction partially in  
14 this state and partially in another state or states, and income  
15 and deductions of the portion in the state cannot be segregated,  
16 then such portions of income and deductions shall be allocated in

1 this state and the other state or states as will distribute to  
2 this state a portion based upon the portion of the transaction in  
3 this state and the portion in such other state or states.

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

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

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

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

28 a. "Wholly in this state" if both the seller's shipping

1 point and the purchaser's destination point are in this state;

2 b. "Partly within this state and partly without this state"  
3 if the seller's shipping point is in this state and the  
4 purchaser's destination point is outside this state, or the  
5 seller's shipping point is outside this state and the purchaser's  
6 destination point is in this state;

7 c. Not "wholly in this state" or not "partly within this  
8 state and partly without this state" only if both the seller's  
9 shipping point and the purchaser's destination point are outside  
10 this state.

11 (d) For purposes of this subdivision:

12 a. The purchaser's destination point shall be determined  
13 without regard to the FOB point or other conditions of the sale;  
14 and

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

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

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

23 (b) The amount of sales which are transactions in this  
24 state shall be divided by the total sales, and the net income  
25 shall be multiplied by the fraction thus obtained, to determine  
26 the proportion of income to be used to arrive at the amount of  
27 Missouri taxable income. The investment or reinvestment of its  
28 own funds, or sale of any such investment or reinvestment, shall

1 not be considered as sales or other business transacted for the  
2 determination of said fraction;

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

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

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

9 (d) For purposes of this subdivision, the purchaser's  
10 destination point shall be determined without regard to the FOB  
11 point or other conditions of the sale and shall not be in this  
12 state if the purchaser received the tangible personal property  
13 from the seller in this state for delivery to the purchaser's  
14 location outside this state;

15 (e) For the purposes of this subdivision, a transaction  
16 involving the sale other than the sale of tangible property is  
17 "in this state" if the taxpayer's market for the sales is in this  
18 state. The taxpayer's market for sales is in this state:

19 a. In the case of sale, rental, lease, or license of real  
20 property, if and to the extent the property is located in this  
21 state;

22 b. In the case of rental, lease, or license of tangible  
23 personal property, if and to the extent the property is located  
24 in this state;

25 c. In the case of sale of a service, if and to the extent  
26 the benefit of the service is delivered to a purchaser location  
27 in this state; and

28 d. In the case of intangible property:

1       (i) That is rented, leased, or licensed, if and to the  
2 extent the property is used in this state by the rentee, lessee,  
3 or licensee, provided that intangible property utilized in  
4 marketing a good or service to a consumer is "used in this state"  
5 if that good or service is purchased by a consumer who is in this  
6 state. Franchise fees or royalties received for the rent, lease,  
7 license, or use of a trade name, trademark, service mark, or  
8 franchise system or provides a right to conduct business activity  
9 in a specific geographic area are "used in this state" to the  
10 extent the franchise location is in this state; and

11       (ii) That is sold, if and to the extent the property is  
12 used in this state, provided that:

13       i. A contract right, government license, or similar  
14 intangible property that authorizes the holder to conduct a  
15 business activity in a specific geographic area is "used in this  
16 state" if the geographic area includes all or part of this state;

17       ii. Receipts from intangible property sales that are  
18 contingent on the productivity, use, or disposition of the  
19 intangible property shall be treated as receipts from the rental,  
20 lease, or licensing of such intangible property under item (i) of  
21 this subparagraph; and

22       iii. All other receipts from a sales of intangible  
23 property shall be excluded from the numerator and denominator of  
24 the sales factor;

25       (f) If the state or states of assignment under paragraph  
26 (e) of this subdivision cannot be determined, the state or states  
27 of assignment shall be reasonably approximated;

28       (g) If the state of assignment cannot be determined under

1 paragraph (e) of this subdivision or reasonably approximated  
2 under paragraph (f) of this subdivision, such sales shall be  
3 excluded from the denominator of the sales factor;

4 (h) The director may prescribe such rules and regulations  
5 as necessary or appropriate to carry out the purposes of this  
6 section.

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

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

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

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

1 amended;

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

8 (e) "Investment funds service corporation" includes any  
9 corporation or S corporation doing business in the state which  
10 derives more than fifty percent of its gross income in the  
11 ordinary course of business from the provision directly or  
12 indirectly of management, distribution or administration services  
13 to or on behalf of an investment company or from trustees,  
14 sponsors and participants of employee benefit plans which have  
15 accounts in an investment company. An investment funds service  
16 corporation shall include any corporation or S corporation  
17 providing management services as an investment advisory firm  
18 registered under Section 203 of the Investment Advisors Act of  
19 1940, as amended from time to time, regardless of the percentage  
20 of gross revenues consisting of fees from management services  
21 provided to or on behalf of an investment company;

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

1 performed:

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

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

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

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

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

28 (5) Notwithstanding other provisions of law to the



1 contrary, qualifying sales of an investment funds service  
2 corporation, or S corporation, shall be considered wholly in this  
3 state only to the extent that the fund shareholders of the  
4 investment companies, to which the investment funds service  
5 corporation, or S corporation, provide services, are resided  
6 in this state. Wholly in this state qualifying sales of an  
7 investment funds service corporation, or S corporation, shall be  
8 determined as follows:

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

22 (b) A separate computation shall be made to determine the  
23 wholly in this state qualifying sales from each investment  
24 company. The qualifying sales for each investment company shall  
25 be multiplied by the respective percentage of each fund, as  
26 calculated pursuant to paragraph (a) of this subdivision. The  
27 product of this equation shall result in the wholly in this state  
28 qualifying sales. The qualifying sales for each investment

1 company which are not wholly in this state will be considered  
2 wholly without this state;

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

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

17 4. A corporation described in subdivision (2) of subsection  
18 1 of section 143.441 shall include in its Missouri taxable income  
19 all income arising from all sources in this state and all income  
20 from each transportation service wholly within this state, from  
21 each service where the only lines of such corporation used are  
22 those in this state, and such proportion of revenue from each  
23 service where the facilities of such corporation in this state  
24 and in another state or states are used, as the mileage used over  
25 the lines of such corporation in the state shall bear to the  
26 total mileage used over the lines of such corporation. The  
27 taxpayer may elect to compute the portion of income from all  
28 sources within this state in the following manner:

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

3           (2) The amount of investment of such corporation on  
4 December thirty-first of each year in this state in fixed  
5 transportation facilities, real estate and improvements, plus the  
6 value on December thirty-first of each year of any fixed  
7 transportation facilities, real estate and improvements in this  
8 state leased from any other railroad shall be divided by the sum  
9 of the total amount of investment of such corporation on December  
10 thirty-first of each year in fixed transportation facilities,  
11 real estate and improvements, plus the value on December thirty-  
12 first of each year, of any fixed transportation facilities, real  
13 estate and improvements leased from any other railroad. Where  
14 any fixed transportation facilities, real estate or improvements  
15 are leased by more than one railroad, such portion of the value  
16 shall be used by each railroad as the rental paid by each shall  
17 bear to the rental paid by all lessees. The income shall be  
18 multiplied by the fraction thus obtained to determine the  
19 proportion to be used to arrive at the amount of Missouri taxable  
20 income.

21           5. A corporation described in subdivision (3) of subsection  
22 1 of section 143.441 shall include in its Missouri taxable income  
23 one-half of the net income from the operation of a bridge between  
24 this and another state. If any such bridge is owned or operated  
25 by a railroad corporation or corporations, or by a corporation  
26 owning a railroad corporation using such bridge, then the figures  
27 for operation of such bridge may be included in the return of  
28 such railroad or railroads; or if such bridge is owned or

1 operated by any other corporation which may now or hereafter be  
2 required to file an income tax return, one-half of the income or  
3 loss to such corporation from such bridge may be included in such  
4 return by adding or subtracting same to or from another net  
5 income or loss shown by the return.

6 6. A corporation described in subdivision (4) of subsection  
7 1 of section 143.441 shall include in its Missouri taxable income  
8 all income arising from all sources within this state. Income  
9 shall include revenue from each telephonic or telegraphic service  
10 rendered wholly within this state; from each service rendered for  
11 which the only facilities of such corporation used are those in  
12 this state; and from each service rendered over the facilities of  
13 such corporation in this state and in other state or states, such  
14 proportion of such revenue as the mileage involved in this state  
15 shall bear to the total mileage involved over the lines of said  
16 company in all states. The taxpayer may elect to compute the  
17 portion of income from all sources within this state in the  
18 following manner:

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

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

1 amount of Missouri taxable income.

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

8 8. If a corporation derives only part of its income from  
9 sources within Missouri, its Missouri taxable income shall only  
10 reflect the effect of the following listed deductions to the  
11 extent applicable to Missouri. The deductions are: (a) its  
12 deduction for federal income taxes pursuant to section 143.171,  
13 and (b) the effect on Missouri taxable income of the deduction  
14 for net operating loss allowed by Section 172 of the Internal  
15 Revenue Code. The extent applicable to Missouri shall be  
16 determined by multiplying the amount that would otherwise affect  
17 Missouri taxable income by the ratio for the year of the Missouri  
18 taxable income of the corporation for the year divided by the  
19 Missouri taxable income for the year as though the corporation  
20 had derived all of its income from sources within Missouri. For  
21 the purpose of the preceding sentence, Missouri taxable income  
22 shall not reflect the listed deductions.

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

27 144.021. 1. The purpose and intent of sections 144.010 to  
28 144.510 is to impose a tax upon the privilege of engaging in the

1 business, in this state, of selling tangible personal property  
2 and those services listed in section 144.020 and for the  
3 privilege of titling new and used motor vehicles, trailers,  
4 boats, and outboard motors purchased or acquired for use on the  
5 highways or waters of this state which are required to be  
6 registered under the laws of the state of Missouri. Except as  
7 otherwise provided, the primary tax burden is placed upon the  
8 seller making the taxable sales of property or service and is  
9 levied at the rate provided for in section 144.020. Excluding  
10 subdivision (9) of subsection 1 of section 144.020 and sections  
11 144.070, 144.440 and 144.450, the extent to which a seller is  
12 required to collect the tax from the purchaser of the taxable  
13 property or service is governed by section 144.285 and in no way  
14 affects sections 144.080 and 144.100, which require all sellers  
15 to report to the director of revenue their "gross receipts",  
16 defined herein to mean the aggregate amount of the sales price of  
17 all sales at retail, and remit tax at four percent of their gross  
18 receipts.

19 2. If any item of tangible personal property or service  
20 determined to be taxable under sections 144.010 to 144.510 is  
21 modified by a decision of:

22 (1) The director of revenue;

23 (2) The administrative hearing commission; or

24 (3) A court of competent jurisdiction;

25  
26 which changes which items of tangible personal property or  
27 services are taxable, all affected sellers shall be notified by  
28 the department of revenue before such modification shall take

1 effect for such sellers. Failure of the department of revenue to  
2 notify a seller shall relieve such seller of liability for taxes  
3 that would be due under the modification until the seller is  
4 notified. The waiver of liability for taxes under this  
5 subsection shall only apply to sellers actively selling the type  
6 of tangible personal property or service affected by the decision  
7 on the date the decision is made or handed down and shall not  
8 apply to any seller that has previously remitted tax on the  
9 tangible personal property or taxable services subject to the  
10 decision or to any seller that had prior notice that the seller  
11 must collect and remit the tax.

12 144.080. 1. Every person receiving any payment or  
13 consideration upon the sale of property or rendering of service,  
14 subject to the tax imposed by the provisions of sections 144.010  
15 to 144.525, is exercising the taxable privilege of selling the  
16 property or rendering the service at retail and is subject to the  
17 tax levied in section 144.020. The person shall be responsible  
18 not only for the collection of the amount of the tax imposed on  
19 the sale or service to the extent possible under the provisions  
20 of section 144.285, but shall, on or before the last day of the  
21 month following each calendar quarterly period of three months,  
22 file a return with the director of revenue showing the person's  
23 gross receipts and the amount of tax levied in section 144.020  
24 for the preceding quarter, and shall remit to the director of  
25 revenue, with the return, the taxes levied in section 144.020,  
26 except as provided in subsections 2 and 3 of this section. The  
27 director of revenue may promulgate rules or regulations changing  
28 the filing and payment requirements of sellers, but shall not

1 require any seller to file and pay more frequently than required  
2 in this section.

3 2. Where the aggregate amount levied and imposed upon a  
4 seller by section 144.020 is in excess of two hundred and fifty  
5 dollars for either the first or second month of a calendar  
6 quarter, the seller shall file a return and pay such aggregate  
7 amount for such months to the director of revenue by the  
8 twentieth day of the succeeding month.

9 3. Where the aggregate amount levied and imposed upon a  
10 seller by section 144.020 is less than forty-five dollars in a  
11 calendar quarter, the director of revenue shall by regulation  
12 permit the seller to file a return for a calendar year. The  
13 return shall be filed and the taxes paid on or before January  
14 thirty-first of the succeeding year.

15 4. The seller of any property or person rendering any  
16 service, subject to the tax imposed by sections 144.010 to  
17 144.525, shall collect the tax from the purchaser of such  
18 property or the recipient of the service to the extent possible  
19 under the provisions of section 144.285, but the seller's  
20 inability to collect any part or all of the tax does not relieve  
21 the seller of the obligation to pay to the state the tax imposed  
22 by section 144.020; except that the collection of the tax imposed  
23 by sections 144.010 to 144.525 on motor vehicles and trailers  
24 shall be made as provided in sections 144.070 and 144.440.

25 5. **[It shall be unlawful for]** Any person **[to]** may advertise  
26 or hold out or state to the public or to any customer directly  
27 **[or indirectly]** that the tax or any part thereof imposed by  
28 sections 144.010 to 144.525, and required to be collected by the



1 person, will be assumed or absorbed by the person, [or that it  
2 will not be separately stated and added to the selling price of  
3 the] provided that the amount of tax assumed or absorbed shall be  
4 stated on any invoice or receipt for the property sold or service  
5 rendered[, or if added, that it or any part thereof will be  
6 refunded]. Any person violating any of the provisions of this  
7 section shall be guilty of a misdemeanor. This subsection shall  
8 not apply to any retailer prohibited from collecting and  
9 remitting sales tax under section 66.630.

10 144.1030. Notwithstanding the provisions of sections  
11 144.010, 144.018, and 144.020 to the contrary, in the case of a  
12 multi-use arena that:

13 (1) Is publicly owned, but operated under a contract with a  
14 private company;

15 (2) Was originally funded in a public-private partnership  
16 that included private investment of at least forty million  
17 dollars; and

18 (3) Is located in a home rule city with more than four  
19 hundred thousand inhabitants and located in more than one county;

20  
21 "sales at retail" shall not include the amount paid that results  
22 in the first opportunity to purchase or decline tickets for  
23 admission to events at such arena, but does not itself result in  
24 admission.

25 ✓

26 \_\_\_\_\_  
27  
28 \_\_\_\_\_  
29 Will Kraus

26 \_\_\_\_\_  
27  
28 \_\_\_\_\_  
29 Andrew Koenig