SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1865

AN ACT

To repeal section 143.451, RSMo, and to enact in lieu thereof two new sections relating to taxation.

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

- Section A. Section 143.451, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 143.451 and 144.055, to read as follows:
- 4 143.451. 1. Missouri taxable income of a corporation shall include all income derived from sources within this state.

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- 2. A corporation described in subdivision (1) of subsection 1 of section 143.441 shall include in its Missouri taxable income all income from sources within this state, including that from the transaction of business in this state and that from the transaction of business partly done in this state and partly done in another state or states. However:
- (1) Where income results from a transaction partially in this state and partially in another state or states, and income and deductions of the portion in the state cannot be segregated, then such portions of income and deductions shall be allocated in this state and the other state or states as will distribute to this state a portion based upon the portion of the transaction in

this state and the portion in such other state or states. 1

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- 2 The taxpayer may elect to compute the portion of income from all sources in this state in the following manner, or the 3 manner set forth in subdivision (3) of this subsection:
 - The income from all sources shall be determined as provided, excluding therefrom the figures for the operation of any bridge connecting this state with another state.
- 8 (b) The amount of sales which are transactions wholly in 9 this state shall be added to one-half of the amount of sales 10 which are transactions partly within this state and partly without this state, and the amount thus obtained shall be divided 11 12 by the total sales or in cases where sales do not express the 13 volume of business, the amount of business transacted wholly in 14 this state shall be added to one-half of the amount of business 15 transacted partly in this state and partly outside this state and 16 the amount thus obtained shall be divided by the total amount of 17 business transacted, and the net income shall be multiplied by 18 the fraction thus obtained, to determine the proportion of income 19 to be used to arrive at the amount of Missouri taxable income. 20 The investment or reinvestment of its own funds, or sale of any 21 such investment or reinvestment, shall not be considered as sales 22 or other business transacted for the determination of said 23 fraction.
 - For the purposes of this subdivision, a transaction involving the sale of tangible property is:
 - "Wholly in this state" if both the seller's shipping point and the purchaser's destination point are in this state;
 - b. "Partly within this state and partly without this state"

- 1 if the seller's shipping point is in this state and the
- 2 purchaser's destination point is outside this state, or the
- 3 seller's shipping point is outside this state and the purchaser's
- 4 destination point is in this state;
- 5 c. Not "wholly in this state" or not "partly within this
- 6 state and partly without this state" only if both the seller's
- 7 shipping point and the purchaser's destination point are outside
- 8 this state.
- 9 (d) For purposes of this subdivision:
- 10 a. The purchaser's destination point shall be determined
- 11 without regard to the FOB point or other conditions of the sale;
- 12 and
- 13 b. The seller's shipping point is determined without regard
- 14 to the location of the seller's principle office or place of
- 15 business.
- 16 (3) The taxpayer may elect to compute the portion of income
- 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
- 20 any bridge connecting this state with another state;
- 21 (b) The amount of sales which are transactions in this
- 22 state shall be divided by the total sales, and the net income
- 23 shall be multiplied by the fraction thus obtained, to determine
- 24 the proportion of income to be used to arrive at the amount of
- 25 Missouri taxable income. The investment or reinvestment of its
- own funds, or sale of any such investment or reinvestment, shall
- 27 not be considered as sales or other business transacted for the
- 28 determination of said fraction;

- 1 (c) For the purposes of this subdivision, a transaction 2 involving the sale of tangible property is:
- 3 a. "In this state" if the purchaser's destination point is
 4 in this state;
- b. Not "in this state" if the purchaser's destination pointis outside this state;

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- (d) For purposes of this subdivision, the purchaser's destination point shall be determined without regard to the FOB point or other conditions of the sale and shall not be in this state if the purchaser received the tangible personal property from the seller in this state for delivery to the purchaser's location outside this state;
- (e) For the purposes of this subdivision, a transaction involving the sale other than the sale of tangible property is "in this state" if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:
- a. In the case of sale, rental, lease, or license of real
 property, if and to the extent the property is located in this
 state;
 - b. In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;
- 23 <u>c. In the case of sale of a service, if and to the extent</u>
 24 <u>the benefit of the service is delivered to a purchaser location</u>
 25 in this state; and
- 26 <u>d. In the case of intangible property:</u>
- 27 <u>(i) That is rented, leased, or licensed, if and to the</u>
 28 extent the property is used in this state by the rentee, lessee,

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- 2 marketing a good or service to a consumer is "used in this state"
- 3 if that good or service is purchased by a consumer who is in this
- 4 state. Franchise fees or royalties received for the rent, lease,
- 5 license, or use of a trade name, trademark, service mark, or
- 6 <u>franchise system or provides a right to conduct business activity</u>
- 7 in a specific geographic area are "used in this state" to the
- 8 extent the franchise location is in this state; and
- 9 <u>(ii)</u> That is sold, if and to the extent the property is
- 10 <u>used in this state</u>, provided that:
- 11 <u>i. A contract right, government license, or similar</u>
- intangible property that authorizes the holder to conduct a
- business activity in a specific geographic area is "used in this
- state" if the geographic area includes all or part of this state;
- 15 ii. Receipts from intangible property sales that are
- 16 contingent on the productivity, use, or disposition of the
- intangible property shall be treated as receipts from the rental,
- lease, or licensing of such intangible property under item (i) of
- 19 this subparagraph; and
- 20 <u>iii.</u> All other receipts from a sales of intangible
- 21 property shall be excluded from the numerator and denominator of
- 22 the sales factor;
- 23 (f) If the state or states of assignment under paragraph
- 24 (e) of this subdivision cannot be determined, the state or states
- of assignment shall be reasonably approximated;
- 26 (g) If the state of assignment cannot be determined under
- 27 paragraph (e) of this subdivision or reasonably approximated
- under paragraph (f) of this subdivision, such sales shall be

- 1 excluded from the denominator of the sales factor;
- 2 (h) The director may prescribe such rules and regulations
- 3 <u>as necessary or appropriate to carry out the purposes of this</u>
- 4 section.
- 5 (4) For purposes of this subsection, the following words
- 6 shall, unless the context otherwise requires, have the following
- 7 meaning:
- 8 (a) "Administration services" include, but are not limited
- 9 to, clerical, fund or shareholder accounting, participant record
- 10 keeping, transfer agency, bookkeeping, data processing,
- 11 custodial, internal auditing, legal and tax services performed
- 12 for an investment company;
- 13 (b) "Affiliate", the meaning as set forth in 15 U.S.C.
- 14 Section 80a-2(a)(3)(C), as may be amended from time to time;
- 15 (c) "Distribution services" include, but are not limited
- 16 to, the services of advertising, servicing, marketing,
- 17 underwriting or selling shares of an investment company, but, in
- 18 the case of advertising, servicing or marketing shares, only
- where such service is performed by a person who is, or in the
- 20 case of a closed end company, was, either engaged in the services
- of underwriting or selling investment company shares or
- 22 affiliated with a person that is engaged in the service of
- 23 underwriting or selling investment company shares. In the case
- of an open end company, such service of underwriting or selling
- 25 shares must be performed pursuant to a contract entered into
- 26 pursuant to 15 U.S.C. Section 80a-15(b), as from time to time
- 27 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;
- 6 "Investment funds service corporation" includes any 7 corporation or S corporation doing business in the state which 8 derives more than fifty percent of its gross income in the 9 ordinary course of business from the provision directly or 10 indirectly of management, distribution or administration services to or on behalf of an investment company or from trustees, 11 12 sponsors and participants of employee benefit plans which have 13 accounts in an investment company. An investment funds service 14 corporation shall include any corporation or S corporation 15 providing management services as an investment advisory firm 16 registered under Section 203 of the Investment Advisors Act of 17 1940, as amended from time to time, regardless of the percentage 18 of gross revenues consisting of fees from management services 19 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:

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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 entered into such contract with an investment company;
- (g) "Qualifying sales", gross income derived 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. For purposes of this section, "gross income" is defined as that amount of income earned from qualifying sources without deduction of expenses related to the generation of such income;
- (h) "Residence", presumptively the fund shareholder's mailing address on the records of the investment company. If, however, the investment company or the investment funds service corporation has actual knowledge that the fund shareholder's primary residence or principal place of business is different than the fund shareholder's mailing address such presumption shall not control. To the extent an investment funds service corporation does not have access to the records of the investment company, the investment funds service corporation may employ reasonable methods to determine the investment company fund shareholder's residence.
- (5) Notwithstanding other provisions of law to the contrary, qualifying sales of an investment funds service corporation, or S corporation, shall be considered wholly in this

state only to the extent that the fund shareholders of the investment companies, to which the investment funds service corporation, or S corporation, provide services, are residenced in this state. Wholly in this state qualifying sales of an investment funds service corporation, or S corporation, shall be

determined as follows:

- (a) By multiplying the investment funds service corporation's total dollar amount of qualifying sales from services provided to each investment company by a fraction, the numerator of which shall be the average of the number of shares owned by the investment company's fund shareholders residenced in this state 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, 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 the lines of such corporation. 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 1 2 December thirty-first of each year in this state in fixed transportation facilities, real estate and improvements, plus the 3 value on December thirty-first of each year of any fixed 5 transportation facilities, real estate and improvements in this 6 state leased from any other railroad shall be divided by the sum 7 of the total amount of investment of such corporation on December 8 thirty-first of each year in fixed transportation facilities, 9 real estate and improvements, plus the value on December 10 thirty-first of each year, of any fixed transportation facilities, real estate and improvements leased from any other 11 12 railroad. Where any fixed transportation facilities, real estate 13 or improvements are leased by more than one railroad, such 14 portion of the value shall be used by each railroad as the rental 15 paid by each shall bear to the rental paid by all lessees. 16 income shall be multiplied by the fraction thus obtained to 17 determine the proportion to be used to arrive at the amount of 18 Missouri taxable income.
 - 5. A corporation described in subdivision (3) of subsection 1 of section 143.441 shall include in its Missouri taxable income one-half of the net income from the operation of a bridge between this and another state. If any such bridge is owned or operated by a railroad corporation or corporations, or by a corporation owning a railroad corporation using such bridge, then the figures for operation of such bridge may be included in the return of such railroad or railroads; or if such bridge is owned or operated by any other corporation which may now or hereafter be required to file an income tax return, one-half of the income or

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loss to such corporation from such bridge may be included in such return by adding or subtracting same to or from another net income or loss shown by the return.

- 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:
- 17 (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
2 be deducted such of the deductions for expenses in determining
3 Missouri taxable income as were incurred in this state to produce
4 such income and all losses actually sustained in this state in
5 the business of the corporation.

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- 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 The extent applicable to Missouri shall be Revenue Code. determined by multiplying the amount that would otherwise affect Missouri taxable income by the ratio for the year of the Missouri taxable income of the corporation for the year divided by the Missouri taxable income for the year as though the corporation had derived all of its income from sources within Missouri. For the purpose of the preceding sentence, Missouri taxable income shall not reflect the listed deductions.
 - 9. Any investment funds service corporation organized as a corporation or S corporation which has any shareholders residenced in this state shall be subject to Missouri income tax as provided in this chapter.
 - 144.055. 1. As used in this section, the term "processing" shall mean any mode of treatment, act, or series of acts

 performed upon materials or food products to transform or reduce such materials or products to a different state, thing, or

product, including treatment necessary to maintain or preserve

such processing by the producer at the location at which the food
product is produced.

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2. In addition to all other exemptions granted under this chapter, there is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to 144.761, and from the computation of the tax levied, assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761, electrical energy and gas, whether natural, artificial, or propane, water, coal, and energy sources, or other utilities which are purchased by a restaurant, cafeteria, fast food restaurant, delicatessen, bakery, grocery store, convenience store, or other similar facility engaged in selling prepared food for consumption on or off the premises of such establishment and ultimately consumed or used in the manufacturing, processing, preparing, furnishing, compounding, or producing of food, or used in research and development related to the manufacturing, processing, preparing, furnishing, compounding, or producing of food that is ultimately sold to customers at a restaurant, cafeteria, fast food restaurant, delicatessen, bakery, grocery store, convenience store, or other similar facility engaged in selling prepared food for consumption on or off the premises of the establishment.

3. The exemptions granted in this section shall not apply to the local sales tax law as defined in section 32.085.