

FIRST REGULAR SESSION

SENATE BILL NO. 220

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

Pre-filed January 7, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1126S.011

AN ACT

To amend chapter 143, RSMo, by adding thereto one new section relating to the taxation of partnerships.

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

Section A. Chapter 143, RSMo, is amended by adding thereto one new section, to be known as section 143.425, to read as follows:

143.425. 1. For the purposes of this section, the following terms shall mean:

(1) "Administrative adjustment request", an administrative adjustment request filed by a partnership under 26 U.S.C. Section 6227;

(2) "Audited partnership", a partnership subject to a partnership level audit resulting in a federal adjustment;

(3) "Corporate partner", a partner that is subject to tax under section 143.071;

(4) "Direct partner", a partner that holds an interest directly in a partnership or pass-through entity;

(5) "Exempt partner", a partner that is exempt from taxation under the provisions of subdivisions (1) or (4) of subsection 2 of section 143.441, except on unrelated business taxable income;

(6) "Federal adjustment", a change to an item or amount determined under the Internal Revenue Code that is used by a taxpayer to compute Missouri individual or corporate income tax owed, whether that change results from action by the IRS, including a partnership level audit, or the filing of an amended federal return, federal refund claim, or an administrative adjustment request by the taxpayer. A federal adjustment is positive to the extent that it increases Missouri taxable income as determined under section 143.431, or Missouri

22 adjusted gross income under section 143.121 or 143.181, and is negative
23 to the extent that it decreases such Missouri taxable income or
24 Missouri adjusted gross income;

25 (7) "Federal adjustments report", methods or forms, which shall
26 be prescribed by the department of revenue, for use by a taxpayer to
27 report final federal adjustments, including an amended Missouri tax
28 return, a uniform multistate report, or an information return,
29 notwithstanding any provision of law restricting the form or
30 applicability of information return filing;

31 (8) "Federal partnership representative", the person the
32 partnership designates for the taxable year as the partnership's
33 representative, or the person the IRS has appointed to act as the
34 federal partnership representative, under 26 U.S.C. Section 6223(a);

35 (9) "Final determination date", shall be the following:

36 (a) Except as provided under paragraphs (b) and (c) of this
37 subdivision, if the federal adjustment arises from an IRS audit or other
38 action by the IRS, the final determination date shall be the first day on
39 which no federal adjustments arising from such audit or other action
40 remain to be finally determined, whether by IRS decision with respect
41 to which all rights of appeal have been waived or exhausted, by
42 agreement, or, if appealed or contested, by a final decision with respect
43 to which all rights of appeal have been waived or exhausted. For
44 agreements required to be signed by the IRS and the taxpayer, the final
45 determination date shall be the date on which the last party signed the
46 agreement;

47 (b) For federal adjustments arising from an IRS audit or other
48 action by the IRS, if the taxpayer filed as a member of a Missouri
49 consolidated return, the final determination date shall be the first day
50 on which no related federal adjustments arising from such audit remain
51 to be finally determined, as described in paragraph (a) of this
52 subdivision, for the entire group;

53 (c) If the federal adjustment results from filing an amended
54 federal return, a federal refund claim, or an administrative adjustment
55 request, or if it is a federal adjustment reported on an amended federal
56 return or other similar report filed under 26 U.S.C. Section 6225(c), the
57 final determination date shall be the day on which the amended return,
58 refund claim, administrative adjustment request, or other similar

59 report was filed;

60 (10) "Final federal adjustment", a federal adjustment that
61 remains in effect after the final determination date for such federal
62 adjustment has passed;

63 (11) "IRS", the Internal Revenue Service of the United States
64 Department of the Treasury;

65 (12) "Indirect partner", a partner in a partnership or pass-
66 through entity, where such partnership or pass-through entity itself
67 holds a direct or indirect interest in another partnership or pass-
68 through entity. A partnership or pass-through entity holds an "indirect
69 interest" in another partnership or pass-through entity where its
70 interest is held through an indirect partner or series of indirect
71 partners;

72 (13) "Non-resident partner", an individual, trust, or estate
73 partner that is not a resident partner;

74 (14) "Partner", a person that holds an interest directly or
75 indirectly in a partnership or other pass-through entity;

76 (15) "Partnership", the same meaning as used in 26 U.S.C.
77 Sections 701 to 771;

78 (16) "Partnership level audit", an examination by the IRS at the
79 partnership level under 26 U.S.C. Sections 6221 to 6241, as enacted by
80 the Bipartisan Budget Act of 2015, Public Law 114-74, and any
81 amendments thereto, which results in federal adjustments;

82 (17) "Pass-through entity", an entity, other than a partnership,
83 that is not subject to tax under section 143.071, section 153.020, chapter
84 148, or a tax on insurance companies or insurance providers imposed
85 by the state of Missouri;

86 (18) "Reallocation adjustment", a federal adjustment resulting
87 from a partnership level audit or an administrative adjustment request
88 that changes the shares of one or more items of partnership income,
89 gain, loss, expense, or credit allocated to direct partners. A positive
90 reallocation adjustment means the portion of a reallocation adjustment
91 that would increase federal adjusted gross income or federal taxable
92 income for one or more direct partners, and a negative reallocation
93 adjustment means the portion of a reallocation adjustment that would
94 decrease federal adjusted gross income or federal taxable income for
95 one or more direct partners;

96 **(19) "Resident partner", an individual, trust, or estate partner**
97 **that is a resident of Missouri as defined under section 143.101 for**
98 **individuals, or under section 143.331 for trusts or estates, for the**
99 **relevant tax period;**

100 **(20) "Reviewed year", the taxable year of a partnership that is**
101 **subject to a partnership level audit which results in a federal**
102 **adjustment;**

103 **(21) "Taxpayer", any individual or entity subject to a tax in**
104 **Missouri or a tax-related reporting requirement in Missouri and, unless**
105 **the context clearly indicates otherwise, includes a partnership subject**
106 **to a partnership level audit or a partnership that has made an**
107 **administrative adjustment request, as well as a tiered partner of that**
108 **partnership;**

109 **(22) "Tiered partner", any partner that is a partnership or pass-**
110 **through entity;**

111 **(23) "Unrelated business taxable income", the same meaning as**
112 **defined in 26 U.S.C. Section 512.**

113 **2. Except in the case of final federal adjustments that are**
114 **reported by a partnership and its partners using the procedures**
115 **provided under subsections 3 to 9 of this section, final federal**
116 **adjustments required to be reported for federal purposes under 26**
117 **U.S.C. Section 6225(a)(2), and changes required to be reported under**
118 **section 143.601, a taxpayer shall report and pay any Missouri tax due**
119 **with respect to final federal adjustments arising from an audit or other**
120 **action by the IRS or reported by the taxpayer on a timely filed**
121 **amended federal income tax return, including a return or other similar**
122 **report filed under 26 U.S.C. Section 6225(c)(2), or federal claim for**
123 **refund, by filing a federal adjustments report with the department of**
124 **revenue for the reviewed year and, if applicable, paying the additional**
125 **Missouri tax owed by the taxpayer no later than one hundred eighty**
126 **days after the final determination date.**

127 **3. Except for adjustments required to be reported for federal**
128 **purposes under 26 U.S.C. Section 6225(a)(2), and the distributive share**
129 **of adjustments that have been reported as required under subsection**
130 **2 of this section, partnerships and partners shall report final federal**
131 **adjustments arising from a partnership level audit or an administrative**
132 **adjustment request and make payments as required under subsections**

133 **3 to 9 of this section.**

134 **4. (1) With respect to an action required or permitted to be**
135 **taken by a partnership under subsections 3 to 9 of this section, a**
136 **proceeding under section 143.631 for reconsideration by the director of**
137 **revenue, appeal to the administrative hearing commission, or review**
138 **by the judiciary with respect to such action, the state partnership**
139 **representative for the reviewed year shall have the sole authority to**
140 **act on behalf of the partnership, and the partnership's direct partners**
141 **and indirect partners shall be bound by those actions.**

142 **(2) The state partnership representative for the reviewed year**
143 **is the partnership's federal partnership representative unless the**
144 **partnership designates in writing another person as its state**
145 **partnership representative.**

146 **(3) The department of revenue may establish reasonable**
147 **qualifications and procedures for designating a person, other than the**
148 **federal partnership representative, to be the state partnership**
149 **representative.**

150 **(4) The state partnership representative shall be considered an**
151 **authorized representative of the partnership and its partners under**
152 **section 32.057 for the purposes of compliance with this section, or**
153 **participating in a proceeding described in subdivision (1) of this**
154 **section.**

155 **5. Final federal adjustments subject to the requirements of**
156 **subsections 3 to 9 of this section, except for those subject to a properly**
157 **made election under subsection 6 of this section, shall be reported as**
158 **follows:**

159 **(1) No later than ninety days after the final determination date,**
160 **the partnership shall:**

161 **(a) File a completed federal adjustments report with the**
162 **department of revenue, including information as required by the**
163 **department of revenue;**

164 **(b) Notify each of its direct partners of their distributive share**
165 **of the final federal adjustments including information as required by**
166 **the department of revenue; and**

167 **(c) Pay any additional amount under section 143.411 that would**
168 **have been due had the final federal adjustments originally been**
169 **reported properly;**

170 **(2) No later than one hundred eighty days after the final**
171 **determination date, each direct partner that is subject to tax under**
172 **sections 143.011 to 143.996, section 153.020, chapter 148, or a Missouri**
173 **tax on insurance companies or insurance providers, shall:**

174 **(a) File a federal adjustments report reporting the distributive**
175 **share of the adjustments reported to them under paragraph (b) of**
176 **subdivision (1) of this subsection; and**

177 **(b) Pay any additional amount of tax due as if final federal**
178 **adjustments had been properly reported, plus any penalty and interest**
179 **due under sections 143.011 to 143.996 or any other provision of law, and**
180 **less any credit for related amounts paid or withheld and remitted on**
181 **behalf of the direct partner. The rate of interest on any amount due**
182 **shall be determined by section 32.068.**

183 **6. (1) Subject to the limitations provided under subdivision (2)**
184 **of this subsection, an audited partnership making an election under**
185 **this subsection shall:**

186 **(a) No later than ninety days after the final determination date,**
187 **file a completed federal adjustments report, including information as**
188 **required by department of revenue, and notify the department of**
189 **revenue that it is making the election under this subsection;**

190 **(b) No later than ninety days after the final determination date,**
191 **pay an amount, determined as follows, in lieu of taxes owed by its**
192 **direct and indirect partners:**

193 **a. Exclude from final federal adjustments the distributive share**
194 **of such adjustments reported to a direct exempt partner not subject to**
195 **tax under sections 143.011 to 143.996;**

196 **b. For the total distributive shares of the remaining final federal**
197 **adjustments reported to direct corporate partners subject to tax under**
198 **section 143.071, and to direct exempt partners subject to tax under**
199 **sections 143.011 to 143.996, apportion and allocate such adjustments as**
200 **provided under section 143.455 if applicable, and multiply the resulting**
201 **amount by the tax rate provided under section 143.071 for direct**
202 **corporate partners and direct exempt partners that are corporations,**
203 **or the top rate of tax under section 143.011 for direct exempt partners**
204 **that are not corporations;**

205 **c. For the total distributive shares of the remaining final federal**
206 **adjustments reported to non-resident direct partners subject to tax**

207 under sections 143.011 to 143.996, determine the amount of such
208 adjustments which is derived from or connected with sources in
209 Missouri as described in section 143.421, and multiply the resulting
210 amount by the highest rate of tax under section 143.011;

211 d. For the total distributive shares of the remaining final federal
212 adjustments reported to tiered partners:

213 (i) Determine the amount of such adjustments which is of a type
214 such that it would be subject to sourcing to this state under section
215 143.421; and then determine the portion of such amount that would be
216 sourced to the state under section 143.421;

217 (ii) Determine the amount of such adjustments which is of a type
218 such that it would not be subject to sourcing to Missouri by a
219 nonresident partner under section 143.421;

220 (iii) Determine the portion of the amount determined in item (ii)
221 of this subparagraph that can be established, under regulation issued
222 by the department of revenue, to be properly allocable to nonresident
223 indirect partners or other partners not subject to tax on the
224 adjustments;

225 (iv) Multiply the sum of the amounts determined in
226 subparagraphs a and b of this paragraph, reduced by the amount
227 determined in subparagraph c of this paragraph, by the highest rate of
228 tax under section 143.011;

229 e. For the total distributive shares of the remaining final federal
230 adjustments reported to resident direct partners subject to tax under
231 section 143.011 or 143.061, multiply such amount by the highest rate of
232 tax under section 143.011;

233 f. For the total distributive shares of the remaining final federal
234 adjustments reported to direct partners subject to tax under chapter
235 148, section 153.020, or a Missouri tax on insurance companies or
236 insurance providers, apportion and allocate such adjustments in the
237 manner provided by law for such tax, if applicable, and multiply the
238 resulting amount by the tax rate applicable to such direct partner;

239 g. Add the amounts determined under subparagraphs b to f of
240 this paragraph, in addition to any penalty and interest as provided
241 under sections 143.011 to 143.961 or any other provision of law. The
242 rate of interest on any amount due shall be determined by section
243 32.068.

244 **(2) Final federal adjustments subject to the election provided for**
245 **under this subsection shall not include:**

246 **(a) The distributive share of final audit adjustments that would,**
247 **under section 143.455, be included in the apportionable income of any**
248 **direct or indirect corporate partner, provided that the audited**
249 **partnership can reasonably determine such amount; and**

250 **(b) Any final federal adjustments resulting from an**
251 **administrative adjustment request.**

252 **(3) An audited partnership not otherwise subject to any**
253 **reporting or payment obligation to Missouri that makes an election**
254 **under this subsection consents to be subject to Missouri law related to**
255 **reporting, assessment, payment, and collection of Missouri tax**
256 **calculated under this subsection.**

257 **7. The direct and indirect partners of an audited partnership**
258 **that are tiered partners, and all of the partners of such tiered partners**
259 **that are subject to tax under sections 143.011 to 143.961, shall be**
260 **subject to the reporting and payment requirements of subsection 5 of**
261 **this section, and such tiered partners shall be entitled to make the**
262 **election provided under subsection 6 of this section. The tiered**
263 **partners or their partners shall make required reports and payments**
264 **no later than ninety days after the time for filing and furnishing**
265 **statements to tiered partners and their partners as established under**
266 **26 U.S.C. Section 6226. The department of revenue may promulgate**
267 **rules to establish procedures and interim time periods for the reports**
268 **and payments required by tiered partners and their partners, and for**
269 **making the elections under subsection 6 of this section.**

270 **8. (1) The election made under subsection 6 of this section shall**
271 **be irrevocable, unless the director of revenue, in his or her discretion**
272 **or that of the directors' designee, determines otherwise.**

273 **(2) If properly reported and paid by the audited partnership or**
274 **tiered partner, the amount determined under subdivision (2) of**
275 **subsection 6 of this section shall be treated as paid in lieu of taxes**
276 **owed by its direct and indirect partners, to the extent applicable, on**
277 **the same final federal adjustments. The direct partners or indirect**
278 **partners shall not take any deduction or credit on the determined**
279 **amount, or claim a refund of such amount in this state. Nothing in this**
280 **subsection shall preclude a direct resident partner from claiming a**

281 credit against the tax otherwise due to this state under section 143.081,
282 or any amounts paid by the audited partnership or tiered partner on
283 the resident partner's behalf to another state or local tax jurisdiction
284 in accordance with the provisions of section 143.081.

285 9. Nothing in subsections 3 to 9 of this section shall be construed
286 to prevent the department of revenue from assessing direct partners or
287 indirect partners for taxes owed by such partners, using the best
288 information available, in the event that a partnership or tiered partner
289 fails to timely make any report or payment required under subsections
290 3 to 9 of this section for any reason.

291 10. The department of revenue shall assess additional tax,
292 interest, and penalties arising from final federal adjustments arising
293 from an audit by the IRS, including a partnership level audit, or
294 reported by the taxpayer on an amended federal income tax return, or
295 as part of an administrative adjustment request by the following dates:

296 (1) If a taxpayer files with the department of revenue a federal
297 adjustments report or an amended Missouri tax return as required
298 within the period provided under subsections 2 to 9 of this section, the
299 department of revenue shall assess any amounts, including in-lieu-of
300 amounts, taxes, interest, and penalties arising from such federal
301 adjustments if the department of revenue issues a notice of the
302 assessment to the taxpayer no later than:

303 (a) The expiration of the limitations period provided under
304 section 143.711; or

305 (b) The expiration of the one year period following the date of
306 filing with the department of revenue of the federal adjustments report;

307 (2) If the taxpayer fails to file the federal adjustments report
308 within the period provided under subsections 2 to 9 of this section, as
309 appropriate, or the federal adjustments report filed by the taxpayer
310 omits final federal adjustments or understates the correct amount of
311 tax owed, the department of revenue shall assess amounts or additional
312 amounts including in-lieu-of amounts, taxes, interest, and penalties
313 arising from the final federal adjustments, if it mails a notice of the
314 assessment to the taxpayer by a date which is the latest of the
315 following:

316 (a) The expiration of the limitations period provided under
317 section 143.711;

318 **(b) The expiration of the one year period following the date the**
319 **federal adjustments report was filed with the department of revenue;**
320 **or**

321 **(c) Absent fraud, the expiration of the six-year period following**
322 **the final determination date.**

323 **11. A taxpayer may make estimated payments to the department**
324 **of revenue of the Missouri tax expected to result from a pending IRS**
325 **audit, prior to the due date of the federal adjustments report, without**
326 **having to file such report with the department of revenue. The**
327 **estimated tax payments shall be credited against any tax liability**
328 **ultimately found to be due to Missouri and shall limit the accrual of**
329 **further interest on such amount. If the estimated tax payments exceed**
330 **the final tax liability and interest ultimately determined to be due, the**
331 **taxpayer shall be entitled to a refund or credit for the excess, provided**
332 **the taxpayer files a federal adjustments report or claim for refund or**
333 **credit of tax under section 143.781 or 143.821 no later than one year**
334 **following the final determination date.**

335 **12. Except for final federal adjustments required to be reported**
336 **for federal purposes under 26 U.S.C. Section 6225(a)(2), a taxpayer may**
337 **file a claim for refund or credit of tax arising from federal adjustments**
338 **made by the IRS on or before the later of:**

339 **(1) The expiration of the last day for filing a claim for refund or**
340 **credit of Missouri tax under section 143.801, including any extensions;**
341 **or**

342 **(2) One year from the date a federal adjustments report required**
343 **under subsections 2 to 9 of this section, as applicable, was due to the**
344 **department of revenue, including any extensions provided under**
345 **subsection 13 of this section.**

346 **The federal adjustments report shall serve as the means for the**
347 **taxpayer to report additional tax due, report a claim for refund or**
348 **credit of tax, and make other adjustments resulting from adjustments**
349 **to the taxpayer's federal taxable income.**

350 **13. (1) Unless otherwise agreed in writing by the taxpayer and**
351 **the department of revenue, any adjustments by the department or by**
352 **the taxpayer made after the expiration of the appropriate limitations**
353 **period provided under section 143.711 or 143.801 shall be limited to**
354 **changes to the taxpayer's tax liability arising from federal adjustments.**

355 **(2) For purposes of compliance with this section, the time**
356 **periods provided for in chapter 143 may be extended:**

357 **(a) Automatically, upon written notice to the department of**
358 **revenue, by ninety days for an audited partnership or tiered partner**
359 **which has one hundred or more direct partners; or**

360 **(b) By written agreement between the taxpayer and the**
361 **department of revenue.**

362 **(3) Any extension granted under this subsection for filing the**
363 **federal adjustments report extends the last day prescribed by law for**
364 **assessing any additional tax arising from the adjustments to federal**
365 **taxable income and the period for filing a claim for refund or credit of**
366 **taxes under section 143.781 or 143.821.**

367 **14. The department of revenue shall promulgate rules to**
368 **implement the provisions of this section. Any rule or portion of a rule,**
369 **as that term is defined in section 536.010 that is created under the**
370 **authority delegated in this section shall become effective only if it**
371 **complies with and is subject to all of the provisions of chapter 536, and,**
372 **if applicable, section 536.028. This section and chapter 536 are**
373 **nonseverable and if any of the powers vested with the general assembly**
374 **pursuant to chapter 536, to review, to delay the effective date, or to**
375 **disapprove and annul a rule are subsequently held unconstitutional,**
376 **then the grant of rulemaking authority and any rule proposed or**
377 **adopted after August 28, 2019, shall be invalid and void.**

378 **15. The provisions of this section shall apply to any adjustments**
379 **to a taxpayer's federal taxable income or federal adjusted gross income**
380 **with a final determination date occurring on or after January 1, 2020.**