

SECOND REGULAR SESSION

# SENATE BILL NO. 704

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3553S.01I

## 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  
2 section, to be known as section 143.425, to read as follows:

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

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

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

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

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

11 (5) "Exempt partner", a partner that is exempt from taxation  
12 under the provisions of subdivisions (1) or (4) of subsection 2 of section  
13 143.441, except on unrelated business taxable income;

14 (6) "Federal adjustment", a change to an item or amount  
15 determined under the Internal Revenue Code that is used by a taxpayer  
16 to compute Missouri individual or corporate income tax owed, whether  
17 that change results from action by the IRS, including a partnership  
18 level audit, or the filing of an amended federal return, federal refund  
19 claim, or an administrative adjustment request by the taxpayer. A  
20 federal adjustment is positive to the extent that it increases Missouri  
21 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) "Publicly traded partnership", the same meaning as used in  
87 26 U.S.C. Section 7704(b), and any amendments thereto;

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

96 decrease federal adjusted gross income or federal taxable income for  
97 one or more direct partners;

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

102 (21) "Reviewed year", the taxable year of a partnership that is  
103 subject to a partnership level audit which results in a federal  
104 adjustment;

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

111 (23) "Tiered partner", any partner that is a partnership or pass-  
112 through entity;

113 (24) "Unrelated business taxable income", the same meaning as  
114 defined in 26 U.S.C. Section 512.

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

129 3. Except for adjustments required to be reported for federal  
130 purposes under 26 U.S.C. Section 6225(a)(2), and the distributive share  
131 of adjustments that have been reported as required under subsection  
132 2 of this section, partnerships and partners shall report final federal

133 adjustments arising from a partnership level audit or an administrative  
134 adjustment request and make payments as required under subsections  
135 3 to 9 of this section.

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

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

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

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

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

161 (1) No later than ninety days after the final determination date,  
162 the partnership shall:

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

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

169 (c) Pay any additional amount under section 143.411 that would

170 have been due had the final federal adjustments originally been  
171 reported properly, unless the partnership is a publicly traded  
172 partnership; and

173       (d) If the partnership is a publicly traded partnership, report  
174 such information as is required by the department of revenue and in  
175 the manner and format as required by department of revenue  
176 instruction, including the name, address, and taxpayer identification  
177 number of each direct partner with income in Missouri which the  
178 publicly traded partnership can reasonably determine to be:

179       a. Six hundred dollars or more if the partner is an individual; or  
180       b. One hundred dollars or more if the partner is a corporation  
181 or entity other than an individual;

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

186       (a) File a federal adjustments report reporting the distributive  
187 share of the adjustments reported to them under paragraph (b) of  
188 subdivision (1) of this subsection; and

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

195       6. (1) Subject to the limitations provided under subdivision (2)  
196 of this subsection, an audited partnership making an election under  
197 this subsection shall:

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

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

205       a. Exclude from final federal adjustments the distributive share  
206 of such adjustments reported to a direct exempt partner not subject to

207 tax under sections 143.011 to 143.996;

208       b. For the total distributive shares of the remaining final federal  
209 adjustments reported to direct corporate partners subject to tax under  
210 section 143.071, and to direct exempt partners subject to tax under  
211 sections 143.011 to 143.996, apportion and allocate such adjustments as  
212 provided under section 143.455 if applicable, and multiply the resulting  
213 amount by the tax rate provided under section 143.071 for direct  
214 corporate partners and direct exempt partners that are corporations,  
215 or the top rate of tax under section 143.011 for direct exempt partners  
216 that are not corporations;

217       c. For the total distributive shares of the remaining final federal  
218 adjustments reported to non-resident direct partners subject to tax  
219 under sections 143.011 to 143.996, determine the amount of such  
220 adjustments which is derived from or connected with sources in  
221 Missouri as described in section 143.421, and multiply the resulting  
222 amount by the highest rate of tax under section 143.011;

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

225           (i) Determine the amount of such adjustments which is of a type  
226 such that it would be subject to sourcing to this state under section  
227 143.421; and then determine the portion of such amount that would be  
228 sourced to the state under section 143.421;

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

232           (iii) Determine the portion of the amount determined in item (ii)  
233 of this subparagraph that can be established, under regulation issued  
234 by the department of revenue, to be properly allocable to nonresident  
235 indirect partners or other partners not subject to tax on the  
236 adjustments;

237           (iv) Multiply the sum of the amounts determined in  
238 subparagraphs a and b of this paragraph, reduced by the amount  
239 determined in subparagraph c of this paragraph, by the highest rate of  
240 tax under section 143.011;

241       e. For the total distributive shares of the remaining final federal  
242 adjustments reported to resident direct partners subject to tax under  
243 section 143.011 or 143.061, multiply such amount by the highest rate of

244 tax under section 143.011;

245 f. For the total distributive shares of the remaining final federal  
246 adjustments reported to direct partners subject to tax under chapter  
247 148, section 153.020, or a Missouri tax on insurance companies or  
248 insurance providers, apportion and allocate such adjustments in the  
249 manner provided by law for such tax, if applicable, and multiply the  
250 resulting amount by the tax rate applicable to such direct partner;

251 g. Add the amounts determined under subparagraphs b to f of  
252 this paragraph, in addition to any penalty and interest as provided  
253 under sections 143.011 to 143.961 or any other provision of law. The  
254 rate of interest on any amount due shall be determined by section  
255 32.068.

256 (2) Final federal adjustments subject to the election provided for  
257 under this subsection shall not include:

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

262 (b) Any final federal adjustments resulting from an  
263 administrative adjustment request.

264 (3) An audited partnership not otherwise subject to any  
265 reporting or payment obligation to Missouri that makes an election  
266 under this subsection consents to be subject to Missouri law related to  
267 reporting, assessment, payment, and collection of Missouri tax  
268 calculated under this subsection.

269 7. The direct and indirect partners of an audited partnership  
270 that are tiered partners, and all of the partners of such tiered partners  
271 that are subject to tax under sections 143.011 to 143.961, shall be  
272 subject to the reporting and payment requirements of subsection 5 of  
273 this section, and such tiered partners shall be entitled to make the  
274 election provided under subsection 6 of this section. The tiered  
275 partners or their partners shall make required reports and payments  
276 no later than ninety days after the time for filing and furnishing  
277 statements to tiered partners and their partners as established under  
278 26 U.S.C. Section 6226. The department of revenue may promulgate  
279 rules to establish procedures and interim time periods for the reports  
280 and payments required by tiered partners and their partners, and for



281 making the elections under subsection 6 of this section.

282       8. (1) The election made under subsection 6 of this section shall  
283 be irrevocable, unless the director of revenue, in his or her discretion  
284 or that of the directors' designee, determines otherwise.

285       (2) If properly reported and paid by the audited partnership or  
286 tiered partner, the amount determined under subdivision (2) of  
287 subsection 6 of this section shall be treated as paid in lieu of taxes  
288 owed by its direct and indirect partners, to the extent applicable, on  
289 the same final federal adjustments. The direct partners or indirect  
290 partners shall not take any deduction or credit on the determined  
291 amount, or claim a refund of such amount in this state. Nothing in this  
292 subsection shall preclude a direct resident partner from claiming a  
293 credit against the tax otherwise due to this state under section 143.081,  
294 or any amounts paid by the audited partnership or tiered partner on  
295 the resident partner's behalf to another state or local tax jurisdiction  
296 in accordance with the provisions of section 143.081.

297       9. Nothing in subsections 3 to 9 of this section shall be construed  
298 to prevent the department of revenue from assessing direct partners or  
299 indirect partners for taxes owed by such partners, using the best  
300 information available, in the event that a partnership or tiered partner  
301 fails to timely make any report or payment required under subsections  
302 3 to 9 of this section for any reason.

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

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

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

317       (b) The expiration of the one year period following the date of

318 filing with the department of revenue of the federal adjustments report;  
319 (2) If the taxpayer fails to file the federal adjustments report  
320 within the period provided under subsections 2 to 9 of this section, as  
321 appropriate, or the federal adjustments report filed by the taxpayer  
322 omits final federal adjustments or understates the correct amount of  
323 tax owed, the department of revenue shall assess amounts or additional  
324 amounts including in-lieu-of amounts, taxes, interest, and penalties  
325 arising from the final federal adjustments, if it mails a notice of the  
326 assessment to the taxpayer by a date which is the latest of the  
327 following:

328 (a) The expiration of the limitations period provided under  
329 section 143.711;

330 (b) The expiration of the one year period following the date the  
331 federal adjustments report was filed with the department of revenue;  
332 or

333 (c) Absent fraud, the expiration of the six-year period following  
334 the final determination date.

335 11. A taxpayer may make estimated payments to the department  
336 of revenue of the Missouri tax expected to result from a pending IRS  
337 audit, prior to the due date of the federal adjustments report, without  
338 having to file such report with the department of revenue. The  
339 estimated tax payments shall be credited against any tax liability  
340 ultimately found to be due to Missouri and shall limit the accrual of  
341 further interest on such amount. If the estimated tax payments exceed  
342 the final tax liability and interest ultimately determined to be due, the  
343 taxpayer shall be entitled to a refund or credit for the excess, provided  
344 the taxpayer files a federal adjustments report or claim for refund or  
345 credit of tax under section 143.781 or 143.821 no later than one year  
346 following the final determination date.

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

351 (1) The expiration of the last day for filing a claim for refund or  
352 credit of Missouri tax under section 143.801, including any extensions;  
353 or

354 (2) One year from the date a federal adjustments report required

355 under subsections 2 to 9 of this section, as applicable, was due to the  
356 department of revenue, including any extensions provided under  
357 subsection 13 of this section.

358 The federal adjustments report shall serve as the means for the  
359 taxpayer to report additional tax due, report a claim for refund or  
360 credit of tax, and make other adjustments resulting from adjustments  
361 to the taxpayer's federal taxable income.

362 13. (1) Unless otherwise agreed in writing by the taxpayer and  
363 the department of revenue, any adjustments by the department or by  
364 the taxpayer made after the expiration of the appropriate limitations  
365 period provided under section 143.711 or 143.801 shall be limited to  
366 changes to the taxpayer's tax liability arising from federal adjustments.

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

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

372 (b) By written agreement between the taxpayer and the  
373 department of revenue.

374 (3) Any extension granted under this subsection for filing the  
375 federal adjustments report extends the last day prescribed by law for  
376 assessing any additional tax arising from the adjustments to federal  
377 taxable income and the period for filing a claim for refund or credit of  
378 taxes under section 143.781 or 143.821.

379 14. The department of revenue shall promulgate rules to  
380 implement the provisions of this section. Any rule or portion of a rule,  
381 as that term is defined in section 536.010, that is created under the  
382 authority delegated in this section shall become effective only if it  
383 complies with and is subject to all of the provisions of chapter 536 and,  
384 if applicable, section 536.028. This section and chapter 536 are  
385 nonseverable and if any of the powers vested with the general assembly  
386 pursuant to chapter 536 to review, to delay the effective date, or to  
387 disapprove and annul a rule are subsequently held unconstitutional,  
388 then the grant of rulemaking authority and any rule proposed or  
389 adopted after August 28, 2020, shall be invalid and void.

390 15. The provisions of this section shall apply to any adjustments  
391 to a taxpayer's federal taxable income or federal adjusted gross income

392 with a final determination date occurring on or after January 1, 2021.

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