

SENATE BILL NO. 1250

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

4418S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 143.081 and 143.436, RSMo, and to enact in lieu thereof two new sections relating to the taxation of pass-through entities.

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

Section A. Sections 143.081 and 143.436, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 143.081 and 143.436, to read as follows:

143.081. 1. A resident individual, resident estate,
2 and resident trust shall be allowed a credit against the tax
3 otherwise due pursuant to sections 143.005 to 143.998 for
4 the amount of any income tax imposed for the taxable year by
5 another state of the United States (or a political
6 subdivision thereof) or the District of Columbia on income
7 derived from sources therein and which is also subject to
8 tax pursuant to sections 143.005 to 143.998. For purposes
9 of this subsection, the phrase "income tax imposed" shall be
10 that amount of tax before any income tax credit allowed by
11 such other state or the District of Columbia if the other
12 state or the District of Columbia authorizes a reciprocal
13 benefit for residents of this state.

14 2. The credit provided pursuant to this section shall
15 not exceed an amount which bears the same ratio to the tax
16 otherwise due pursuant to sections 143.005 to 143.998 as the
17 amount of the taxpayer's Missouri adjusted gross income
18 derived from sources in the other [taxing] jurisdiction

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

19 bears to the taxpayer's Missouri adjusted gross income
20 derived from all sources. In applying the limitation of the
21 previous sentence to an estate or trust, Missouri taxable
22 income shall be substituted for Missouri adjusted gross
23 income. If the tax of more than one other [taxing]
24 jurisdiction is imposed on the same item of income, the
25 credit shall not exceed the limitation that would result if
26 the taxes of all the other jurisdictions applicable to the
27 item were deemed to be of a single jurisdiction. **The**
28 **provisions of this subsection shall apply to any credit**
29 **allowed pursuant to this section, including a credit allowed**
30 **pursuant to subdivision (2) of subsection 3 of this section.**

31 3. (1) For the purposes of this section, in the case
32 of an S corporation, each resident S shareholder shall be
33 considered to have paid a tax imposed on the shareholder in
34 an amount equal to the shareholder's pro rata share of any
35 net income tax paid by the S corporation to a state which
36 does not measure the income of shareholders on an S
37 corporation by reference to the income of the S corporation
38 or where a composite return and composite payments are made
39 in such state on behalf of the S shareholders by the S
40 corporation.

41 (2) A resident S shareholder shall be eligible for a
42 credit issued pursuant to this section in an amount equal to
43 the [shareholder's pro rata share of any] **individual** income
44 tax imposed pursuant to this chapter on **such shareholder's**
45 **share of the S corporation's** income derived from sources in
46 another state of the United States[, or a political
47 subdivision thereof,] or the District of Columbia, and which
48 is subject to **income** tax pursuant to this chapter but is not
49 subject to **income** tax in such other jurisdiction **or a**
50 **political subdivision thereof.**

51 4. For purposes of subsection 3 of this section, in
52 the case of an S corporation that is a bank chartered by a
53 state, the Office of Thrift Supervision, or the comptroller
54 of currency, each Missouri resident S shareholder of such
55 out-of-state bank shall qualify for the shareholder's pro
56 rata share of any net tax paid, including a bank franchise
57 tax based on the income of the bank, by such S corporation
58 where bank payment of taxes are made in such state on behalf
59 of the S shareholders by the S bank to the extent of the tax
60 paid.

 143.436. 1. This section shall be known and may be
2 cited as the "SALT Parity Act".

3 2. For the purposes of this section, the following
4 terms shall mean:

5 (1) "Affected business entity", any partnership or S
6 corporation that elects to be subject to tax pursuant to
7 subsection [10] 11 of this section;

8 (2) "Direct member", a member that holds an interest
9 directly in an affected business entity;

10 (3) "Indirect member", a member that itself holds an
11 interest, through a direct or indirect member that is a
12 partnership or an S corporation, in an affected business
13 entity;

14 (4) "Member":

15 (a) A shareholder of an S corporation;

16 (b) A partner in a general partnership, a limited
17 partnership, or a limited liability partnership; or

18 (c) A member of a limited liability company that is
19 treated as a partnership or S corporation for federal income
20 tax purposes;

21 (5) "Partnership", the same meaning as provided in 26
22 U.S.C. Section 7701(a)(2), **but not including a publicly**

23 **traded partnership.** The term partnership shall include a
24 limited liability company that is treated as a partnership
25 for federal income tax purposes;

26 (6) "S corporation", a corporation or limited
27 liability company that is treated as an S corporation for
28 federal income tax purposes;

29 (7) "Tax year", the tax year of a partnership or S
30 corporation for federal income tax purposes.

31 3. (1) Notwithstanding any provision of law to the
32 contrary, a tax is hereby imposed on each affected business
33 entity that is a partnership and that is doing business in
34 this state. Such affected business entity shall, at the
35 time that the affected business entity's **tax** return is due,
36 pay a tax [in an amount equal to] **as determined in this**
37 **subsection.** The sum of the separately and nonseparately
38 computed **income and deduction** items, as described in 26
39 U.S.C. Section 702(a), of the affected business entity, to
40 the extent derived from or connected with sources within
41 this state, as determined pursuant to section 143.455, **shall**
42 **be** decreased by [the deduction allowed under 26 U.S.C.
43 Section 199A computed as if such deduction was allowed to be
44 taken by the affected business entity for federal tax
45 purposes] **the percentage deduction that would be allowable**
46 **to the owners pursuant to section 143.022,** and increased or
47 decreased by any modification made pursuant to [section
48 143.471] **sections 143.121 and 143.141** that [relates] **relate**
49 to an item of the affected business entity's income, gain,
50 loss, or deduction, to the extent derived from or connected
51 with sources within this state, as determined pursuant to
52 section 143.455[, with such sum]. **The resulting amount shall**
53 **be the partnership's Missouri net income or loss, which, if**
54 **greater than zero, shall be** multiplied by the highest rate

55 of tax used to determine a Missouri income tax liability for
56 an individual pursuant to section 143.011 **to arrive at the**
57 **tax due.** An affected **business** entity paying the tax
58 pursuant to this subsection shall include with the payment
59 of such taxes each report provided to a member pursuant to
60 subsection 7 of this section.

61 (2) If [the amount] a **Missouri net loss is** calculated
62 pursuant to subdivision (1) of this [section] **subsection**
63 [results in a net loss], such net loss may be carried
64 forward to succeeding tax years for which the affected
65 business entity elects to be subject to tax pursuant to
66 subsection 11 of this section until fully used.

67 4. (1) Notwithstanding any provision of law to the
68 contrary, a tax is hereby imposed on each affected business
69 entity that is an S corporation and that is doing business
70 in this state. Such affected business entity shall, at the
71 time that the affected business entity's **tax** return is due,
72 pay a tax [in an amount equal to] **as determined in this**
73 **subsection.** The sum of the separately and nonseparately
74 computed **income and deduction** items, as described in 26
75 U.S.C. Section 1366, of the affected business entity, to the
76 extent derived from or connected with sources within this
77 state, as determined pursuant to section 143.455, **shall be**
78 decreased by [the deduction allowed under 26 U.S.C. Section
79 199A computed as if such deduction was allowed to be taken
80 by the affected business entity for federal tax purposes]
81 **the percentage deduction that would be allowable to the**
82 **owners pursuant to section 143.022,** and increased or
83 decreased by any modification made pursuant to [section
84 143.471] **sections 143.121 and 143.141** that [relates] **relate**
85 to an item of the affected business entity's income, gain,
86 loss, or deduction, to the extent derived from or connected

87 with sources within this state, as determined pursuant to
88 section 143.455[, with such sum]. **The resulting amount shall**
89 **be the S corporation's Missouri net income or loss, which,**
90 **if greater than zero, shall be** multiplied by the highest
91 rate of tax used to determine a Missouri income tax
92 liability for an individual pursuant to section 143.011 **to**
93 **arrive at the tax due.** An affected **business** entity paying
94 the tax pursuant to this subsection shall include with the
95 payment of such taxes each report provided to a member
96 pursuant to subsection 7 of this section.

97 (2) If [the amount] **a Missouri net loss is** calculated
98 pursuant to subdivision (1) of this [section] **subsection**
99 **[results in a net loss],** such net loss may be carried
100 forward to succeeding tax years for which the affected
101 business entity elects to be subject to tax pursuant to
102 subsection 11 of this section until fully used.

103 5. (1) If an affected business entity is a direct or
104 indirect member of another affected business entity, the
105 member affected business entity shall, when calculating its
106 **Missouri** net income or loss pursuant to subsection 3 or 4 of
107 this section, subtract its distributive share of **Missouri**
108 **net** income or add its distributive share of **Missouri net**
109 loss from the affected business entity in which it is a
110 direct or indirect member [to the extent that the income or
111 loss was derived from or connected with sources within this
112 state, as determined pursuant to section 143.455].

113 (2) **Any member of an affected business entity may**
114 **elect not to have tax imposed pursuant to this section with**
115 **respect to the affected business entity's separately and**
116 **nonseparately computed items described in subsection 3 or 4**
117 **of this section, as the case may be, and otherwise subject**
118 **to tax pursuant to this section, to the extent such items**

119 are allocable to that member; however, any such opt-out
120 election made by a nonresident member shall also comply with
121 subdivision (3) of this subsection. If and to the extent
122 one or more members of the affected business entity shall
123 make an opt-out election, the affected business entity
124 shall, in computing the tax pursuant to this section,
125 subtract the opt-out members' allocable items described in
126 the preceding sentence. The affected business entity shall,
127 in applying the provisions of this section, take into
128 account the effect of any opt-out election on each opt-out
129 member's share of deductions, credits, and any other
130 relevant items.

131 (3) Any opt-out election by a nonresident member shall
132 be effective only if that member has agreed to:

133 (a) File a return in accordance with the provisions of
134 section 143.181 and to make timely payment of all taxes
135 imposed on the member by this state with respect to income
136 of the affected business entity; and

137 (b) Be subject to personal jurisdiction in this state
138 for purposes of the collection of income taxes, together
139 with related interest and penalties, imposed on the member
140 by this state with respect to the income of the affected
141 business entity.

142 (4) An opt-out election shall be considered timely
143 filed for a tax year, and for all subsequent tax years, if
144 it is filed before or in conjunction with the annual return
145 for such tax year pursuant to section 143.511. If a member
146 of an affected business entity does not timely file an opt-
147 out election for a tax year, that member shall not be
148 precluded from timely filing an opt-out election for
149 subsequent tax years.

150 6. A nonresident individual who is a member shall not
151 be required to file an income tax return pursuant to this
152 chapter for a tax year if, for such tax year, the only
153 source of income derived from or connected with sources
154 within the state for such member, or the member and the
155 member's spouse if a joint federal income tax return is or
156 shall be filed, is from one or more affected business
157 entities and such affected business entity or entities file
158 and pay the tax due under this section.

159 7. Each partnership and S corporation shall report to
160 each of its members, for each tax year, such member's direct
161 pro rata share of the tax imposed pursuant to this section
162 **[on] by** such partnership or S corporation if it is an
163 affected business entity and its indirect pro rata share of
164 the tax imposed on any affected business entity in which
165 such affected business entity is a direct or indirect
166 member. **For each tax year in which it is subject to a tax**
167 **pursuant to this section, the affected business entity shall**
168 **file an affected business entity tax return on a date**
169 **prescribed by the director of revenue. The payment of any**
170 **interest, additions to tax, or penalties shall not be**
171 **considered part of the tax imposed pursuant to this section.**

172 8. (1) Each member that is subject to the tax imposed
173 pursuant to section 143.011 **or 143.041** shall be entitled to
174 a credit against the tax imposed pursuant to section 143.011
175 **or 143.041**. Such credit shall be in an amount equal to such
176 member's direct and indirect pro rata share of the tax paid
177 pursuant to this section by any affected business entity of
178 which such member is directly or indirectly a member.

179 (2) If the amount of the credit authorized by this
180 subsection exceeds such member's tax liability for the tax
181 imposed pursuant to section 143.011 **or 143.041**, the excess

182 amount shall not be refunded but may be carried forward to
183 each succeeding tax year until such credit is fully taken.

184 9. (1) Each member that is subject to the tax imposed
185 pursuant to section 143.011 as a resident or part-year
186 resident of this state shall be entitled to a credit against
187 the tax imposed pursuant to section 143.011 for such
188 member's direct and indirect pro rata share of taxes paid to
189 another state of the United States or to the District of
190 Columbia, on income of any partnership or S corporation of
191 which such person is a member that is derived therefrom,
192 provided the taxes paid to another state of the United
193 States or to the District of Columbia results from a tax
194 that the director of revenue determines is substantially
195 similar to the tax imposed pursuant to this section. Any
196 such credit shall be calculated in a manner to be prescribed
197 by the director of revenue, provided such calculation is
198 consistent with the provisions of this section, and further
199 provided that the limitations provided in subsection 2 of
200 section 143.081 shall apply to the credit authorized by this
201 subsection.

202 (2) If the amount of the credit authorized by this
203 subsection exceeds such member's tax liability for the tax
204 imposed pursuant to section 143.011, the excess amount shall
205 not be refunded and shall not be carried forward.

206 10. (1) Each corporation **or fiduciary** that is subject
207 to the tax imposed pursuant to section **143.061 or** 143.071
208 and that is a member, **or, in the case of a fiduciary subject**
209 **to tax pursuant to section 143.061, is the fiduciary of an**
210 **estate or trust that is a member**, shall be entitled to a
211 credit against the tax imposed pursuant to section 143.071.
212 Such credit shall be in an amount equal to such
213 corporation's, **estate's, or trust's** direct and indirect pro

214 rata share of the tax paid pursuant to this section by any
215 affected business entity of which such corporation, **estate,**
216 **or trust** is directly or indirectly a member. Such credit
217 shall be applied after all other credits.

218 (2) If the amount of the credit authorized by this
219 subsection exceeds such corporation's **or fiduciary's** tax
220 liability for the tax imposed pursuant to section **143.061 or**
221 143.071, the excess amount shall not be refunded but may be
222 carried forward to each succeeding tax year until such
223 credit is fully taken.

224 11. A partnership or an S corporation may elect to
225 become an affected business entity that is required to pay
226 the tax pursuant to this section [**in any tax year**]. A
227 separate election shall be made for each [**taxable**] **tax**
228 year. Such election shall be made on such form and in such
229 manner as the director of revenue may prescribe by rule. An
230 election made pursuant to this subsection shall be signed by:

231 (1) Each member of the electing entity who is a member
232 at the time the election is filed; [**or**]

233 (2) Any officer, manager, or member of the electing
234 entity who is authorized to make the election and who
235 attests to having such authorization under penalty of
236 perjury; **or**

237 (3) **The designated affected business entity**
238 **representative of the electing entity.**

239 12. The provisions of sections 143.425 and 143.601
240 shall apply to any modifications made to an affected
241 business entity's federal return, and such affected business
242 entity shall pay any resulting underpayment of tax to the
243 extent not already paid pursuant to section 143.425.

244 13. (1) With respect to an action required or
245 permitted to be taken by an affected business entity

246 pursuant to this section, a proceeding under section 143.631
247 for reconsideration by the director of revenue, an appeal to
248 the administrative hearing commission, or a review by the
249 judiciary with respect to such action, [the affected
250 business entity] **a partnership or S corporation** shall
251 designate an affected business entity representative for the
252 tax year, and such affected business entity representative
253 shall have the sole authority to act on behalf of the
254 affected business entity, and the affected business entity's
255 members shall be bound by those actions.

256 (2) The department of revenue may establish reasonable
257 qualifications and procedures for designating a person to be
258 the affected business entity representative.

259 (3) The affected business entity representative shall
260 be considered an authorized representative of the affected
261 business entity and its members under section 32.057 for the
262 purposes of compliance with this section, or participating
263 in a proceeding described in subdivision (1) of this
264 subsection.

265 14. The provisions of this section shall only apply to
266 tax years ending on or after December 31, 2022.

267 15. The department of revenue may promulgate rules to
268 implement the provisions of this section. Any rule or
269 portion of a rule, as that term is defined in section
270 536.010, that is created under the authority delegated in
271 this section shall become effective only if it complies with
272 and is subject to all of the provisions of chapter 536 and,
273 if applicable, section 536.028. This section and chapter
274 536 are nonseverable and if any of the powers vested with
275 the general assembly pursuant to chapter 536 to review, to
276 delay the effective date, or to disapprove and annul a rule
277 are subsequently held unconstitutional, then the grant of

278 rulemaking authority and any rule proposed or adopted after
279 August 28, 2022, shall be invalid and void.

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