RULES OF

Department of Revenue

Division 10—Director of Revenue

Chapter 2—Income Tax

TITLE 12 — DEPARTMENT OF REVENUE
Division 10 — Director of Revenue
Chapter 2 — Income Tax

12 CSR 10-2.005 Questions and Answers
(Rescinded October 30, 2002)

AUTHORITY: section 143.961, RSMo 1986. This rule was previously filed as Income Tax Release 73-11, Jan. 29, 1974, effective Feb. 8, 1974. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

***Mobil Oil Corp. v. State Tax Commission of Missouri**, 513 SW2d 319 (1974). In authorizing the prescription of rules relating to the administration of the income tax laws, former section 143.200, RSMo does not delegate to the director of revenue the power to promulgate rules of substantial law. The rules which the director of revenue is empowered by former section 143.200, RSMo to prescribe are limited to procedural rules useful in the administration and enforcement of the income tax laws. However, the statutory direction that the rules shall follow the federal rules as nearly as practicable does not require or authorize the director to ignore a specific, pertinent, applicable state statute and promulgate rules in conflict therewith (subject matter of section 143.200, RSMo now covered by section 143.961, RSMo Supp. 1973).*

12 CSR 10-2.010 Capital Loss Allocation Between Spouses, Allocation of Taxable Social Security Benefits Between Spouses, and Computation of an Individual's Missouri Adjusted Gross Income on a Combined Income Tax Return

PURPOSE: This rule sets forth the method to be used by married persons filing joint federal income tax returns in allocating capital losses between the spouses for Missouri income tax purposes and explains the proper method of determining and reporting the taxable portion of Social Security benefits in cases where both spouses have income and how the combined Missouri adjusted gross income is computed on a combined return for purposes of computing each spouse's separate income tax liability.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The following general rules have been issued by the Missouri Department of Revenue and should be used in arriving at Missouri adjusted gross income (MAGI) of each spouse in situations involving losses from sale or exchange of capital assets, but only if the spouses file a joint federal income tax return for the year.

(2) Losses: General Rule. If the losses from the sale or exchange of capital assets exceed the net gains from the sales, so a loss is reported on federal Form 1040 U.S. Individual Income Tax Return, then, subject to the limitation provided for in *Internal Revenue Code* (IRC) Section 1211, allocate the excess to the spouse responsible for the excess. (For examples 1-3 below, the Section 1211 limitation is $3,000.) If both spouses are responsible for the excess, then allocate the excess, subject to IRC Section 1211 limitation, between the spouses on a *pro rata* basis.

(A) Example No. 1: Assume the following facts on the joint federal income tax return for 2017:

	Spouse 1	Spouse 2	Total
Wages	$10,000	$5,000	$15,000
Gain (loss)	($2,000)	($3,000)	($5,000)
Section 1211 limitation			($3,000)
Federal adjusted gross income (FAGI)			$12,000

Missouri Answer: The amount of the excess is $5,000 but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to $3,000. Since both spouses are responsible for the excess, then allocate the $3,000 on a *pro rata* basis, that is — Spouse 1 (2/5 x 3,000) and Spouse 2 (3/5 x 3,000).

MAGI is therefore —

	Spouse 1	Spouse 2	Total
Wages	$10,000	$5,000	
Section 1211 deduction	($1,200)	($1,800)	
MAGI	$8,800	$3,200	$12,000

(B) Example No. 2: Assume the following facts on the joint federal income tax return for 2017:

	Spouse 1	Spouse 2	Total
Wages	$10,000	$5,000	$15,000
Short-term Gain (loss)	($200)	($300)	($500)
Long-term Gain (loss)	($8,000)	($3,000)	($5,000)
Section 1211 limitation			($3,000)
Federal adjusted gross income			$12,000

Missouri Answer: The amount of the excess is $5,500 but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to $3,000. The $5,500 excess includes $5,200 for Spouse 1 and $300 for Spouse 2. Since both spouses are responsible for the excess, then allocate the $3,000 on a *pro rata* basis, that is, Spouse 1 (5,200/5,500 x 3,000) and Spouse 2 (300/5,500 x 3,000).

MAGI is therefore —

	Spouse 1	Spouse 2	Total
Wages	$10,000	$5,000	
Section 1211 deduction	($2,850)	($150)	
MAGI	$7,150	$4,850	$12,000

(C) Example No. 3: Assume the following facts on the joint federal income tax return for 2017:

	Spouse 1	Spouse 2	Total
Wages	$10,000	$5,000	$15,000
Short-term Gain (loss)	$1,000	($1,000)	$0
Long-term Gain (loss)	($8,000)	$3,000	($5,000)
Section 1211 limitation			($3,000)
FAGI			$12,000

Missouri Answer: Since there are no net short-term losses, all

of the IRC Section 1211 limitation of $3,000 should be allocated from excess long-term losses. Since Spouse 1 is responsible for the excess, the entire amount of the limitation is allocated to Spouse 1.

MAGI is therefore:

	Spouse 1	Spouse 2	Total
Wages	$10,000	$5,000	
Section 1211 deduction	($3,000)	$0	
MAGI	$7,000	$5,000	$12,000

(3) Social Security benefits that are included in federal adjusted gross income (AGI) must be allocated between spouses on the Individual Income Tax Return – Long Form, Form MO-1040, for the appropriate tax year. They must be allocated between spouses based on the proportionate share of gross Social Security benefits received by each spouse, multiplied by the portion of the benefits included in federal taxable income.

(A) Example: A husband receives eight thousand dollars ($8,000) in Social Security benefits and the wife receives two thousand dollars ($2,000), for total gross benefit of ten thousand dollars ($10,000). The husband's proportionate share is eighty percent (80%) and the wife's is twenty percent (20%). If four thousand dollars ($4,000) in benefits were included in federal taxable income, then the husband's allocated portion on the Missouri return would be three thousand two hundred dollars ($3,200) and the wife's portion would be eight hundred dollars ($800). This is arrived at by multiplying four thousand dollars by eighty percent ($4,000 × 80%) for the husband and four thousand dollars by twenty percent ($4,000 × 20%) for the wife. These amounts must be used in calculating the Missouri AGI of the husband and wife.

(4) In general, if a married couple files a combined Missouri income tax return, the combined Missouri adjusted gross income equals the sum of each spouse's separate Missouri adjusted gross income. The spouse's separate Missouri adjusted gross income equals the federal adjusted gross income reportable by the spouse had the spouse filed a separate federal return, as adjusted by the modifications under sections 143.121 and 135.647, RSMo.

(A) Examples.

1. A married couple reported federal adjusted gross income of thirty-two thousand dollars ($32,000) on their joint federal income tax return. On their combined Missouri income tax return, one (1) spouse reported separate federal adjusted gross income of thirty-eight thousand dollars ($38,000), and the other spouse reported separate federal adjusted gross income of negative six thousand dollars (-$6,000). The combined Missouri adjusted gross income equals thirty-two thousand dollars ($32,000) (thirty-eight thousand dollars ($38,000) plus negative six thousand dollars (-$6,000)).

2. A married couple reported federal adjusted gross income of thirty-nine thousand dollars ($39,000) on their joint federal income tax return. On their combined Missouri income tax return, one (1) spouse reported separate federal adjusted gross income of thirty-eight thousand dollars ($38,000), and the other spouse reported separate federal adjusted gross income of one thousand dollars ($1,000) and a five thousand dollar ($5,000) subtraction for interest from exempt U.S. government obligations. The combined Missouri adjusted gross income equals thirty-four thousand dollars ($34,000) (thirty-eight thousand dollars ($38,000) plus negative four thousand dollars (-$4,000)).

3. A married couple reported federal adjusted gross income of thirty-nine thousand dollars ($39,000) on their joint federal income tax return. On their combined Missouri income tax return, one (1) spouse reported separate federal adjusted gross income of thirty-eight thousand dollars ($38,000), and the other spouse reported separate federal adjusted gross income of one thousand dollars ($1,000) and a five thousand dollar ($5,000) subtraction for a contribution to a Missouri Savings for Tuition (MOST) account. The combined Missouri adjusted gross income equals thirty-eight thousand dollars ($38,000) (thirty-eight thousand dollars ($38,000) plus zero) because the MOST subtraction is limited to the spouse's Missouri adjusted gross income.

(5) The form Individual Income Tax Return – Long Form, MO-1040 is incorporated by reference and made a part of this rule as published by Missouri Department of Revenue, and available at www.dor.mo.gov or Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO 65101, dated May 3, 2023. This rule does not incorporate any subsequent amendments or additions.

(6) The federal form 1040 U.S. Individual Income Tax Return is incorporated by reference and made a part of this rule as published by United States Internal Revenue Service, and available at www.irs.gov or Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO 65101, dated May 3, 2023. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 143.031, 143.111, 143.181, and 143.961, RSMo 2016, and section 135.647, RSMo Supp. 2023. This rule was previously filed as Income Tax Release 73-11, Jan. 29, 1974, effective Feb. 8, 1974. Amended: Filed Oct. 2, 2018, effective April 30, 2019. Amended: Filed July 17, 2023, effective Feb. 29, 2024.*

**Original authority: 135.647, RSMo 2007, amended 2013, 2018; 143.031, RSMo 1973; 143.111, RSMo 1972, amended 1999; 143.181, RSMo 1972, amended 1983, 2003; and 143.961, RSMo 1972.*

12 CSR 10-2.015 Withholding of Tax

PURPOSE: This rule provides guidance for the withholding of Missouri income taxes from wages or retirement income.

(1) Registration of Employers. Every employer required to deduct and withhold any amount of tax under section 143.191, RSMo, must register with the Missouri Department of Revenue by completing the Missouri Tax Registration Application Form 2643 or through the online business registration feature on the Missouri Department of Revenue's website. A Missouri tax identification number will be assigned. A new registration is required, and a new Missouri tax identification number will be assigned, when any change in ownership or ownership type occurs. An employer who receives a new Missouri tax identification number as a result of a change in ownership type must file a Final Report Form 5633, to close the old account. These Missouri tax identification numbers are not transferable. It is recommended that the Missouri tax identification number be included in all reports and correspondence from the employer to the Missouri Department of Revenue concerning withholding. If a business is discontinued, transferred, or sold, or if an employer closes or indefinitely ceases to pay wages, the employer must close the employer's withholding account by filing a Final Report (Form 5633). If the business

of another employer is acquired, do not use the Missouri tax identification number assigned to that business; a new Missouri tax identification number must be obtained. Employer With More Than One (1) Payroll Unit — Complex Employer. If a consolidated report and remittance of the tax withheld cannot be made by the employer because of the complexity of the organization, branch offices, or divisions may be designated as withholding agents. These agents can perform the actual withholding and remitting. However, regardless of any internal arrangements which may be established by the complex employer, the legal responsibility and liability under the law still rests with the home office. If the complex employer has designated withholding agents, and the agents wish to claim the compensation deduction, only one (1) agent will be entitled to the full deduction and the remaining agents will be entitled to one-half of one percent (1/2%) deduction of income taxes withheld if the returns are filed timely.

(2) Seasonal. If an employer is only open for several months out of the year, the employer may register as a seasonal employer on Form 2643. Notwithstanding any section of this rule to the contrary, a seasonal employer is not required to file the Employer's Return of Income Taxes Withheld (Form MO-941) for the withholding tax periods that the employer indicates to the Missouri Department of Revenue it will not have employees, if the seasonal employer does not pay wages during such periods.

(3) Wages and Employees. The term wages for Missouri withholding purposes means wages as defined by section 3401(a) of the Internal Revenue Code of 1986, as amended. The term employee for Missouri withholding purposes has the same meaning as used in section 3401(a) of the Internal Revenue Code of 1986, as amended.

(4) Interstate Transportation Employees. An employer is not required to withhold Missouri income tax from the wages of an interstate transportation employee if such withholding requirement is prohibited by an applicable federal statute, or if a federal statute exempts all the wages paid by an employer to the interstate transportation employee from Missouri income tax. For example, under 49 U.S.C. Section 11502, the compensation paid by certain rail carriers to employees who perform regularly assigned duties on a railroad in more than one (1) state is subject to income tax only in the employee's state of residence.

(5) Nonresident Employees. If a nonresident employee performs all services within Missouri, tax shall be withheld from all wages paid as in the case of a resident. If a nonresident employee performs all services outside Missouri, his or her wages are not subject to Missouri withholding. If services are performed partly within and partly outside the state, the nonresident employee shall provide a completed Certificate of Nonresidence or Allocation of Withholding Tax (Form MO W-4A) to the employer, and only wages paid for services performed within Missouri are subject to Missouri withholding tax. If only a portion of an employee's wages is subject to Missouri withholding tax, then the amount of Missouri tax required to be withheld is calculated using a percent of the amount listed in the withholding tables. The calculation begins by determining the amount that would be withheld if all the wages were subject to Missouri withholding. This amount is then multiplied by a percent, which is determined by dividing the wages subject to Missouri withholding tax by the total federal wages.

(A) Example: Nonresident earns $20,000 in wages, $12,000 from Missouri sources. Missouri withholding would be 60% ($12,000 ÷ $20,000 equals 60%) of the withholding required on $20,000. Therefore, if $100 per month should be withheld for an individual earning $20,000, then for this nonresident, $60 should be withheld each month (100 x 60% = $60).

(6) Resident of Missouri Employed in Another State. A Missouri resident paying income tax to another state because of employment in that state may complete and provide to the employer a Withholding Affidavit for Missouri Residents (Form MO W-4C). If the employee does not complete and provide the Form MO W-4C, the employer may withhold Missouri taxes on wages for all services performed, regardless of where performed. All wages received for services performed in another state not having a state income tax are subject to Missouri withholding. If services are performed partly within and partly outside the state, only wages paid for that portion of the services performed within Missouri are subject to Missouri withholding tax, provided that the services performed in the other state are subject to the other state's withholding provisions. If a service is partly within and partly outside Missouri and only a portion of an employee's wages is subject to Missouri withholding tax, then the amount of Missouri tax required to be withheld is calculated using a percentage of the amount listed in the withholding tables. The calculation begins by determining the amount that would be withheld if all the wages were subject to Missouri withholding. This amount is then multiplied by a percent, which is determined by dividing the wages subject to Missouri withholding tax by the total federal wages.

(A) Example: A resident employee earns $1,500 per month and is single. The employee performs 40% of his or her services in Kansas. The remaining 60% of the employee's services are performed in Missouri. If the total withholding on all earnings is $40 per month, the actual withholding for Missouri would be $24 ($40 x 60% = $24).

(7) Supplemental Wage Payments. If supplemental wages are paid, such as bonuses, commissions, a lump-sum distribution from the employer, overtime pay, back pay, including retroactive wage increases or reimbursements for nondeductible moving expenses in the same payment with regular wages, Missouri income tax shall be withheld as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid in a different payment from regular wages, the method of withholding income tax depends in part on whether income tax is withheld from the employee's regular wages.

(A) If income tax is withheld from the employee's regular wages, choose either one (1) of the following methods for withholding income tax on the supplemental wages:

1. Method One. Withhold at a flat percentage rate that is equal to the highest individual income tax rate determined under section 143.011, RSMo, for the current tax year of the supplemental wages; or

2. Method Two. Add the supplemental wages to the employee's regular wages paid to the employee within the same calendar year for the payroll period and determine the income tax to be withheld as if the aggregate amount were one (1) payment. Subtract the tax already withheld from the regular wage payment and withhold the remaining tax from the supplemental wage payment.

(B) If income tax has not been withheld from the regular wages (for example, where an employee's standard deduction exceeds his or her wages), use Method Two described in paragraph (7)(A)2. of this rule. Add the supplemental wages to the regular wages paid within the same calendar year for the payroll period and withhold income tax on the total amount as though the supplemental wages and regular wages were one (1) payment for a regular payroll period.

(8) Tips Treated as Supplemental Wages. Employers must withhold Missouri income tax based upon total tips reported by the employee, unless the amount of tips received by the employer and remitted to the employee is greater in which case the greater amount shall be withheld. If an employee shares tips, the employer shall withhold only from the employee who actually receives the shared tips. Employers shall withhold income tax on tips using the same options indicated for withholding on supplemental wage payments.

(9) Vacation Pay. Vacation pay received by an employee is subject to withholding as though it were a regular wage payment made for the payroll periods during the vacation. If vacation pay is paid in addition to regular wages for the vacation period, the vacation pay is treated as a supplemental wage payment. An employee who is not a resident of Missouri but works in Missouri is subject to withholding on his or her vacation pay.

(10) Retirement Income. Every Missouri resident receiving retirement income or a pension from an entity in this state may elect to have an amount withheld as a payment of state income tax provided such income is taxable in this state. The recipient should determine the amount to be withheld and file Withholding Certificate for Pension or Annuity Statements (Form MO W-4P) with the administrator of his or her retirement or pension plan. The administrator of the retirement or pension plan must retain the Form MO W-4P for a minimum of three (3) years after the date the taxes to which they relate become due, or the date the taxes are paid, whichever is later.

(11) Exemption for Certain Individuals. This section applies to a Missouri nonresident performing services in Missouri or a Missouri resident. Exemption from withholding for an individual is valid only if the employee submits to the employer a completed Employee's Withholding Allowance Certificate Form MO W-4, certifying that the employee has no income tax liability from the previous year and expects none for the current year. The employee must file a Form MO W-4 annually if the employee wishes to continue to be exempt.

(12) Employee Withholding Certificate. Each employee subject to Missouri income tax is required to complete and provide to the employee's employer a Form MO W-4 that reflects the filing status on his or her income tax return. The Form MO W-4 must be used by the employer to determine the amount of Missouri income tax which must be withheld from each paycheck. If an employee has more than one (1) employer, he or she may want to withhold an additional amount on Line 2 of Form MO W-4 for his or her principal employer to ensure that the total amount withheld approximates the actual income tax liability. Failure to withhold enough from each payroll period could cause an employee to be subject to underpayment penalties. If an employee expects to have income other than his or her wages, or income from multiple jobs, he or she may request additional amounts be withheld in addition to the standard withholding calculations that are based on the standard deduction for the filing status indicated on the Form MO W-4. The additional amount should be included on Form MO W-4, Line 2. Employees who expect to receive a refund (as a result of itemized deductions, modifications, or tax credits) on their tax returns may direct the employer to only withhold the amount indicated on Form MO W-4, Line 3, in which case the employer will not use the standard calculations for withholding. If the employee does not indicate an amount to be withheld or if the amount indicated is more than is available for the payroll period, the employer will use the standard calculations. Employers are required to submit a copy of each completed Form MO W-4 or an equivalent form for each new employee to the Missouri Department of Revenue within twenty (20) calendar days of hire. "Date of hire" is defined as the date the employee reports to work or the date the employee signs the federal W-4 form, whichever is earlier. The department will in turn forward the Form MO W-4 to the Division of Child Support Enforcement.

(13) Determining Amount to be Withheld. Except as otherwise provided in this rule, an employer required to deduct and withhold tax under sections 143.191, RSMo, must withhold the amount of tax set forth for that withholding tax period in the withholding tables published by the Missouri Department of Revenue, or by using a percentage withholding formula published by the Missouri Department of Revenue. To determine income tax withholding, an employer must take into account wages paid during the withholding tax period, as well as filing status, as there are different withholding calculations or amounts for single, married, and head of household employees.

(A) Withholding Tables. Withholding using the withholding tables prepared by the Missouri Department of Revenue is based on wages. In determining the amount of tax to be withheld, the employer should use the table for the correct payroll period — daily, weekly, bi-weekly, semimonthly, and monthly periods. Any other period would be a miscellaneous pay period. Tables show wage brackets in the two (2) left-hand columns. The filing status is shown at the top of each of the remaining columns.

(B) Percentage Withholding Formula. A percentage withholding formula has been published by the director of revenue and it may be used on electronic data processing equipment for withholding Missouri income tax. Missouri withholding is calculated by subtracting the annual standard deduction from the employee's annual wages and multiplying the result by the applicable tax rate. The formula is illustrated in the "Employer's Tax Guide (Form 4282)."

(14) Form MO-941 Reporting Requirement. Every employer withholding Missouri income tax from employee's wages is required by statute to report and remit the tax to the state of Missouri with the Employer's Return of Income Taxes Withheld (Form MO-941) or, for a quarter-monthly filer, as specified in section (16) of this rule.

(A) The employer's name, address, and Missouri tax identification number must appear as filed on previous returns and the period for which the remittance is made must be indicated. To avoid the issuance of non-filer notices, if an employer temporarily ceases to pay wages or has no payroll for a reporting period, a return must still be filed for each period indicating that no tax was withheld.

(15) Annual Filing of Forms W-2, 1099-R, and MO W-3. For each

year an employer is required to withhold Missouri income tax, the employer must also file with the Missouri Department of Revenue copies of all Forms W-2 and Forms 1099-R issued to employees subject to Missouri income tax, which shall be accompanied by a completed Transmittal of Tax Statements (Form MO W-3). This filing requirement applies only where the employer has paid or credited one thousand two hundred dollars ($1,200) or more to such an employee, and only if the Form W-2 or Form 1099-R is required to be filed with the United States Internal Revenue Service. The due date for this filing requirement is February 28 following the year for which the Forms W-2 or 1099-R were issued. However, for employers with two hundred and fifty (250) or more employees required to file Form(s) W-2 electronically, the due date to file the Form(s) W-2 is January 31 following the year for which the Form(s) W-2 were issued. Unless a copy of a waiver of the federal requirement to file electronically has been filed with the Missouri Department of Revenue, employers with two hundred and fifty (250) or more employees must file the Form(s) W-2 electronically. Do not include the fourth quarter or twelfth month return with the Form W-2(s)/1099-R(s) and Form MO W-3. The last annual remittance must be sent separately with Form MO-941.

(A) Filing by Mail or Non-Electronic Delivery. Paper filings must also be accompanied by a list, preferably an adding machine tape or a computer printout, of the total amount of the Missouri income tax withheld shown on all "Copy 1s" of Form W-2 and Form 1099-R. The Department of Revenue will accept computer-produced magnetic tape or digital records, including those stored in compact discs or flash drives, instead of the paper Form W-2 or Form 1099-R. The employer must meet tape data or digital file specifications which are included in the "Employer's Tax Guide" (Form 4282) published annually by the Department of Revenue.

(B) Electronic Filing. Electronic filing must be completed through the webpage or online portal specified on the Missouri Department of Revenue's website. Electronic filing of Form(s) W-2 and Form(s) 1099 must be completed in a manner consistent with the "Missouri Employer Reporting of W-2s Instructions and Specifications Handbook" and "Missouri Employer Reporting of 1099 Instructions and Specifications Handbook," respectively, which are published annually by the Missouri Department of Revenue. A separate Form MO W-3 is not required if the Form(s) W-2 and Form(s) 1099 are electronically filed.

(16) Time and Place for Filing Returns and Remitting Tax.

(A) All returns and remittances must be filed with the Department of Revenue at the specific mailing address indicated on the form, using an electronic filing and payment method provided by the Missouri Department of Revenue, or as otherwise provided in this rule. There are three (3) filing frequencies: monthly, quarterly, and annually, with some monthly filers being required to make quarter-monthly payments. A newly registered employer is initially assigned a filing frequency on the basis of the employer's estimation of future withholdings. If the assigned filing frequency differs from the filing requirements established by statute or rule, it is the employer's responsibility to immediately notify the Department of Revenue. The dates on which the returns and payments are due are as follows:

1. Quarter-Monthly. Employers required to withhold nine thousand ($9,000) or more per month for at least two (2) months during the preceding twelve (12) months shall remit payment to the Missouri Department of Revenue on a quarter-monthly basis. The quarter-monthly periods are the first seven (7) days of a calendar month; the eighth to the fifteenth day of a calendar month; the sixteenth to the twenty-second day of a calendar month; and the twenty-third day through the last day of a calendar month. Notwithstanding any provision of this rule to the contrary, remittances must be made electronically within three (3) banking days after the end of the quarter-monthly period. Banking days shall not include Saturday, Sunday, or legal holidays. If there is no payroll during a quarter-monthly period, no quarter-monthly payment is necessary for that quarter-monthly period. Quarter-monthly filers are required to pay by use of an electronic funds payment system established by the department. If quarter-monthly filers are unable to use the electronic funds payment system, alternative electronic payment methods are outlined in the "Employer's Tax Guide" Form 4282. An Employer's Return of Income Taxes Withheld (Form MO-941) reconciling the quarter-monthly payments and detailing any underpayment of tax shall be filed by the fifteenth day of the following month except for the third month of a quarter in which case the Employer's Return of Income Taxes Withheld (Form MO-941) shall be filed the last day of the succeeding month;

2. Monthly. Employers required to withhold five hundred dollars ($500) per month for at least two (2) months during the preceding twelve (12) months shall file on a monthly basis. Return and payment must be made by the fifteenth day of the following month except for the third month of a quarter in which case the return is due the last day of the succeeding month;

3. Quarterly. Employers not required to file and pay taxes withheld on a monthly basis who withheld at least one hundred dollars ($100) per quarter during at least one (1) quarter of the preceding four (4) quarters shall file on a quarterly basis. Return and payment must be made on or before the last day of the month following the close of the calendar quarter; and

4. Annually. Employers required to withhold less than one hundred dollars ($100) during each of the preceding four (4) quarters shall file on an annual basis. Return and payment must be made on or before January 31 of the succeeding year.

(B) When the due date falls on a Saturday, Sunday, or legal holiday in this state, the return and payment will be considered timely if made on the next business day (section 143.851, RSMo).

(C) An employer who has been placed on a quarter-monthly payment frequency who has not withheld nine thousand dollars ($9,000) or more in two (2) months of the prior twelve (12) months, may request permission from the Department of Revenue to pay on a less frequent basis. An employer that has been placed on a quarter-monthly payment frequency must pay on a quarter-monthly basis for a minimum of twelve (12) months before obtaining a change in payment frequency.

(17) Correcting Mistakes in Reporting or Withholding.

(A) Overpayment and Refund. If withholding tax has been over-reported, the employer must file an Amended Employer's Return of Income Taxes Withheld, Form MO-941, along with supporting documentation, such as a copy of the payroll ledger. If the employer will be requesting a refund of the overpayment, an Employer Withholding Tax Refund Request (Form 4854) must be attached to the Amended Employer's Return of Income Taxes Withheld (Form MO-941). No claim for credit or refund will be allowed after the expiration of the period of limitation prescribed in section 143.801, RSMo. Pursuant to section 143.781.3, RSMo, a refund will only be issued to the employer if the overpayment amount was not actually deducted and withheld from an employee's wages by the employer. Pursuant to section 143.211, RSMo, any amount of tax actually deducted and withheld under sections 143.011 to 143.996, RSMo, in a calendar year is deemed paid by the

employee from whom it was withheld for the employee's income tax year beginning in that calendar year, and is not considered paid by the employer for purposes of determining an overpayment by the employer. To reduce the risk of overpayment claim denial and inadvertent underpayment, before attempting to apply credit of an overpayment of Missouri withholding tax from one period to any other period, employers should first verify with the Missouri Department of Revenue the amount of overpayment the employer is authorized to claim.

(B) Underpayment. If withholding tax has been under-reported, the employer must file an Amended Employer's Return of Income Taxes Withheld (Form MO-941) to report the corrected withholding.

(18) Employer Compensation. For every remittance made to the director of revenue, on or before the respective due date for the payment involved, each employer (except the United States, the state of Missouri, and all agencies and political subdivisions of the state of Missouri or the United States government) may deduct and retain as compensation the following percentages of the total amount of the tax withheld and paid annually: two percent (2%) of the first five thousand dollars ($5,000) or less; one percent (1%) of the amount in excess of five thousand dollars up to ten thousand dollars ($5,000–$10,000); one-half of one percent (1/2%) of the amount collected in excess of ten thousand dollars ($10,000). The employer is not entitled to any compensation if the remittance is not made on or before the due date. Compensation for complex employers is covered in section (1).

(19) Responsible Party Liability – Corporations. Any officer, director, statutory trustee, or employee of any corporation who has direct control, supervision, or responsibility for filing returns and making payments of the Missouri withholding tax, who fails to file or make payment, may be personally assessed the unpaid tax, including interest, additions to tax and penalties pursuant to section 143.241.2, RSMo.

(20) Statements for Employees. Unless an alternative form is prescribed by the Department of Revenue, to comply with section 143.201, RSMo, two (2) copies of the "W-2 Wage and Tax Statement" published by the Internal Revenue Service must be provided to each employee to whom wages were paid and were subject to withholding whether or not tax was withheld on the payments. The employer shall show on the Form W-2 the amount of wages paid by the employer to the employee, and the amount, if any, deducted and withheld as Missouri income tax. If it becomes necessary to correct the amount of wages or, if applicable, the amount of Missouri income tax deducted and withheld, after the Form W-2 has been issued to an employee, two (2) corrected statements showing the amount of wages paid to the employees and the amount, if any, deducted and withheld as Missouri income tax must be issued to the employee and a copy mailed to the Department of Revenue. The corrected statements must be clearly marked "Corrected by Employer." In case a withholding statement is lost or destroyed, a substitute copy must be issued to the employee and must be clearly marked "Reissued by Employer." Withholding statements must be furnished to employees not later than January 31 following the calendar year covered by the statement. However, if employment terminates during the year, two (2) copies of Form W-2 must be provided to the employee within thirty (30) days of the last payment of wages, on which the employer shall show the amount of wages paid to the employee, and the amount, if any, deducted and withheld as Missouri income tax. Interrupted or intermittent employment is not considered terminated as long as there is reasonable expectation of further employment on the part of both the employer and the employee. If an employee's employment is terminated and a Form W-2 has been provided for the period worked during the year and the employee is later reemployed by the same employer during the calendar year, another withholding statement showing the amount of wages paid to the employee and the amount, if any, deducted and withheld as Missouri income tax must be provided to the employee covering only the later period of employment within the calendar year.

(21) Records to Be Kept by Employers.

(A) The following records must be retained:

1. Name, address, Social Security number, and period of employment for all employees;
2. Amounts and dates of all wage payments subject to the Missouri withholding tax for all employees;
3. All Form(s) W-2, Form(s) 1099-R, state income tax withholding certificate (Form MO W-4), Certificates of Nonresidence or Allocation of Withholding Tax (Form MO W-4A), and Withholding Affidavits for Missouri Residents (MO W-4C), provided to or by any employee;
4. Employer's Missouri tax identification number;
5. Record of quarter-monthly, monthly, quarterly, and annual returns filed including dates and amounts of payments; and
6. Records that would assist the Missouri Department of Revenue in auditing the employer's records.

(B) The above listed records must be kept by the employer for at least three (3) years after the date the taxes to which they relate become due, or the date the taxes are paid, whichever is later. However, any employee's copies of the Withholding Statement required by section 143.201, RSMo, which cannot be delivered to the employee after reasonable effort is exerted must be kept by the employer for at least four (4) years.

(C) In addition to the records listed in paragraphs (21)(A)1.–6., all records of the allocation of working days in the state of Missouri must be retained for all employees that, during the withholding period, worked one (1) or more days outside of Missouri and one (1) or more days in Missouri. This subsection (21)(C) does not require an employer to create such records of the allocation of working days.

(22) Interest at the statutory rate must be included on all payments of Missouri withholding tax not made on a timely basis. Interest is subject to change on an annual basis pursuant to section 32.065, RSMo.

(23) An employer's failure to file a timely return, unless due to reasonable cause and not due to willful neglect, will result in additions to tax of five percent (5%) per month or a fraction of a month not to exceed twenty-five percent (25%) pursuant to section 143.741.1, RSMo.

(A) Failure to timely pay tax requires a five percent (5%) addition to tax pursuant to section 143.751.3, RSMo, if such failure is due to negligence or intentional disregard of rules and regulations (but without intent to defraud).

(24) Quarter-Monthly Underpayment Penalty. A quarter-monthly penalty of five percent (5%) will be imposed on a quarter-monthly period underpayment determined pursuant to section 143.225.6, RSMo. The penalty imposed by section 143.225.6, RSMo, applies, in lieu of all other penalties, interest, or additions to tax, only to violations of section 143.225, RSMo,

in making quarter-monthly remittances. Where the quarter-monthly filer has failed to pay all or part of the withholding tax due for the month by the due date of the employer's monthly return for that month, the quarter-monthly filer is subject to addition to tax, penalties, and interest on such underpayment, pursuant to sections 143.731 and 143.751, RSMo, in the same manner as if the quarter-monthly filer were a monthly filer with regard to that month.

(25) Notwithstanding any provision of this rule to the contrary, nothing in this rule shall be interpreted or construed as incorporating by reference any rule, regulation, standard, or guideline of a federal agency.

AUTHORITY: sections 136.120, 143.191, 143.221, 143.225, 143.571, and 143.961, RSMo 2016. This rule was previously filed as "Missouri Employer's Tax Guide," Feb. 20, 1973, effective March 2, 1973. Original rule filed Jan. 29, 1974, effective Feb. 8, 1974. Emergency amendment filed Jan. 13, 1983, effective Jan. 23, 1983, expired May 23, 1983. Amended: Filed Jan. 13, 1983, effective April 11, 1983. Amended: Filed March 9, 1984, effective July 1, 1984. Amended: Filed June 2, 1993, effective Nov. 8, 1993. Amended: Filed July 28, 1995, effective Jan. 30, 1996. Amended: Filed Feb. 6, 1998, effective Aug. 30, 1998. Emergency amendment filed Nov. 30, 1999, effective Dec. 10, 1999, expired June 6, 2000. Amended: Filed Nov. 30, 1999, effective June 30, 2000. Amended: Filed April 1, 2002, effective Oct. 30, 2002. Emergency amendment filed April 16, 2019, effective April 26, 2019, expired Feb. 5, 2020. Amended: Filed April 16, 2019, effective Nov. 30, 2019. Amended: Filed Nov. 8, 2023, effective June 30, 2024.*

**Original authority: 136.120, RSMo 1945; 143.191, RSMo 1972, amended 1988, 1990, 1992, 1994, 2014, 2015; 143.221, RSMo 1972, amended 1983, 1985, 1998, 2016; 143.225, RSMo 1983, amended 2003; 143.571, RSMo 1972; and 143.961, RSMo 1972.*

12 CSR 10-2.016 Quarter-Monthly Period Reporting and Remitting Withholding Tax
(Rescinded May 30, 2024)

AUTHORITY: section 143.961, RSMo 1994. Emergency rule filed Oct. 13, 1982, effective Nov. 1, 1982, expired Feb. 28, 1983. Original rule filed Oct. 13, 1982, effective Jan. 13, 1983. Emergency amendment filed Nov. 12, 1982, effective Nov. 22, 1982, expired Feb. 28, 1983. Amended: Filed March 9, 1984, effective June 11, 1984. Amended: Filed June 2, 1993, effective Jan. 31, 1994. Amended: Filed April 14, 1995, effective Sept. 30, 1995. Amended: Filed Feb. 6, 1998, effective Aug. 30, 1998. Rescinded: Filed Nov. 8, 2023, effective May 30, 2024.

12 CSR 10-2.017 Transient Employer Financial Assurance Instrument for Employer's Withholding Tax

PURPOSE: This rule establishes guidelines for filing financial assurance instruments to secure payment of withholding tax by out-of-state transient employers.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Out-of-State Transient Employer Defined. "Transient employer" has the same meaning as used in section 285.230, RSMo.

(2) Every transient employer shall file with the director of revenue a financial assurance instrument including but not limited to a cash bond, surety bond, or an irrevocable letter of credit, which has the same meaning as used in section 400.5-103, RSMo.

(3) Types of Financial Assurance Instruments. Financial assurance instruments which may be posted to secure payments of taxes by out-of-state transient employers shall be in the form of a surety bond, cash bond, an irrevocable letter of credit issued by any state or federal financial institution, an assignment of certificate of deposit, or any other financial assurance instrument which is deemed acceptable by the director of revenue. Other financial assurance instruments will be reviewed for approval on a case-by-case basis.

(A) A surety bond shall be issued by an insurance company licensed for bonding in Missouri on behalf of the applicant on the Surety Bond Form 331. The form shall bear the seal of the insurance company, the effective date, and it shall be accompanied by a power of attorney letter or form if signed by the attorney-in-fact. Surety bond form shall also contain the signature of the applicant.

(B) A cash bond shall be paid to the director of revenue in the form of a cashier's check, money order, or certified check and be accompanied by a Cash Bond Form 332.

(C) An irrevocable letter of credit issued by any state or federal financial institution may be submitted to the Department of Revenue on a Irrevocable Letter of Credit Form 2879.

1. The letter of credit shall be irrevocable and the beneficiary shall be the Department of Revenue. Payment shall be made immediately upon presentment of a demand for payment signed by the director of revenue or a designated representative.

2. All letters of credit shall conform to the Department of Revenue's required format in the Irrevocable Letter of Credit Form 2879. The letter of credit must include an authorization for release of confidential information allowing the director of revenue or a designee to release confidential tax information to the issuing bank.

3. A demand for payment upon a letter of credit shall be presented for payment only for the reason that bond proceeds are needed to satisfy any delinquencies or claims as provided for in section 285.230, RSMo.

4. Letters of credit shall have a term of one (1) year and shall be automatically renewable on an annual basis for an additional one (1) year. A letter of credit may be canceled by the issuer sixty (60) days after written notice is delivered to the Department of Revenue. Upon the notice of cancellation, the transient employer shall be required to file a new financial assurance instrument on or before the expiration of the sixty-(60-) day period. If the required financial assurance instrument is not received within that time period, the employer commits the crime of failure to file a financial assurance instrument if the employer knowingly fails to comply.

5. If a transient employer ceases business or desires to substitute a financial assurance instrument for their letter of credit, the director of revenue shall retain the letter of credit for a period of ninety (90) days or until the director of revenue is satisfied that no claims exist against the letter of credit.

6. A transient employer shall be required to increase the amount of the letter of credit or provide an additional financial assurance instrument in any situation where the employer would be required to increase or provide an additional financial assurance instrument as provided for in section 285.230, RSMo. An increase to the amount of the letter of credit shall be deemed the submission of an additional financial assurance instrument for the amount of the increase.

(D) An assignment of certificate of deposit may be submitted to the Department of Revenue using Form 4172. The certificate of deposit must be issued by a state or federally chartered financial institution.

(4) Amount of Financial Assurance Instrument. The amount of the financial assurance instrument shall be determined by the director of revenue. This financial assurance instrument shall not be less than the average estimated quarterly withholding tax liability of the taxpayer, but in no case less than five thousand dollars ($5,000) nor more than twenty-five thousand dollars ($25,000).

(A) Example 1: Mr. Kansas Contractor has been awarded a contract to renovate a building in Kansas City, Missouri. Mr. Kansas Contractor has employed ten (10) Missouri residents to assist in the renovation. The employees are being paid four hundred dollars ($400) in wages per week. The average estimated quarterly withholding tax liability of Mr. Kansas Contractor is less than five thousand dollars ($5000). Mr. Kansas Contractor is required to post the minimum five thousand dollar ($5,000) financial assurance instrument.

(B) Example 2: Mrs. Illinois Drywaller accepts a contract to drywall several new apartment complexes in St. Louis, Missouri. Mrs. Illinois Drywaller hires numerous Missouri resident drywallers to assist in the work. Mrs. Illinois Drywaller's Missouri monthly withholding is two thousand three hundred dollars ($2,300). Mrs. Illinois Drywaller is required to post a financial assurance instrument in the amount of six thousand nine hundred dollars ($6,900). The six thousand nine hundred dollars ($6,900) is the approximate amount of withholding for these employees for one (1) calendar quarter.

(5) General Financial Assurance Instrument Examples. The following are general examples illustrating the out-of-state transient employer financial assurance instrument requirement:

(A) Example 1: Mr. Jones, an out-of-state contractor, has been awarded a contract to perform work in Missouri. He must obtain and file an application for a Missouri Employer's Withholding Tax Identification Number. Furthermore, he does not meet the criteria to be exempt from the financial assurance instrument requirement. Mr. Jones, therefore, must submit a financial assurance instrument with the application before he can obtain his Missouri Withholding Tax Identification Number;

(B) Example 2: Mrs. Davis is an out-of-state contractor whose principal place of business is in a county of another state which borders Missouri. Mrs. Davis is a transient employer and must file an application for a Missouri Employer's Withholding Tax Identification Number. Mrs. Davis has not been under contract to perform work in Missouri for at least sixty (60) days each year for the past two (2) calendar years and, therefore, must submit a financial assurance instrument with the Missouri Tax Registration Application; and

(C) Example 3: Mr. Smith, an out-of-state contractor, has been awarded a contract to perform work in Missouri. Mr. Smith is a transient employer and must file an application for a Missouri Employer's Withholding Tax Identification Number. Mr. Smith does meet all the criteria for exemption from the financial assurance instrument requirement. Therefore, he is not required to file a financial assurance instrument with the application but must notify the Department of Revenue of his exemption status.

(6) Replacing or Applying for Return of Financial Assurance Instrument.

(A) If a cash bond is replaced by a different type of financial assurance instrument, the cash bond will be refunded to the taxpayer, provided all taxes due are paid and the taxpayer files a request for refund on the forms provided by the Department of Revenue.

(B) If a surety bond is replaced by a different type of financial assurance instrument, the surety bond will be canceled, provided the issuing insurance company provides the Department of Revenue with a written notice sixty (60) days prior to the cancellation date. This cancellation shall not affect any liability incurred or accrued prior to the termination of the sixty- (60-) day period.

(C) If an irrevocable letter of credit is replaced by a different type of financial assurance instrument, the irrevocable letter of credit will be returned to the issuing financial institution, provided the financial institution provides the Department of Revenue with a written notice sixty (60) days prior to the cancellation date. Cancellation shall not affect any liability incurred or accrued prior to the termination of the sixty- (60-) day period.

(D) If an assignment of certificate of deposit is replaced by a different type of financial assurance instrument, the taxpayer may file a request with the Department of Revenue asking to assign and transfer the certificate of deposit back to the taxpayer. If the taxpayer has filed such a request and all of the taxpayer's taxes due are paid, the Department of Revenue will assign and transfer the certificate of deposit back to the taxpayer. The taxpayer must pay, and will solely be responsible for any fees, penalties, charges, or liability arising from any assignment and transfer of the certificate of deposit to or from the taxpayer.

(7) Exemptions from the Out-of-State Transient Employer Financial Assurance Instrument Requirement. Employers meeting all the criteria in section 285.230.2, RSMo, are not required to file a transient employer withholding tax financial assurance instrument.

(8) Certification of Workers' Compensation Insurance. Every transient employer shall certify to the director of revenue that the employer has sufficient Workers' Compensation insurance either through a self-insurance program or policy of workers' compensation insurance issued by an approved workers' compensation carrier. A transient employer shall provide the Department of Revenue with a copy of its Workers' Compensation insurance policy to be verified consistent with section 285.234.1(2), RSMo.

(9) The forms Surety Bond Form 331, Cash Bond Form 332, Irrevocable Letter of Credit Form 2879, and the Assignment of Certificate of Deposit Form 4172 are incorporated by reference and made a part of this rule as published by Missouri Department of Revenue, and available at www.dor.mo.gov or Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO 65101, dated June 1, 2023. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: section 136.120, RSMo 2016. Original rule filed Aug. 8, 1989, effective Nov. 26, 1989. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Amended: Filed July 13, 2023, effective Feb. 29, 2024.*

**Original authority: 136.120, RSMo 2016.*

12 CSR 10-2.019 Determination of Withholding for Work Performed at Temporary Work Location
(Rescinded October 30, 2023)

AUTHORITY: sections 136.120, 143.191.3(1), 143.511, and 143.961, RSMo 2016. Emergency rule filed Jan. 6, 2021, effective Jan. 21, 2021, expired July 19, 2021. Original rule filed Jan. 11, 2021, effective July 30, 2021. Rescinded: Filed April 5, 2023, effective Oct. 30, 2023.

12 CSR 10-2.020 Difference in Basis on December 31, 1972
(Rescinded July 30, 2018)

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.121-3(b) was originally filed March 15, 1974, effective March 25, 1974. Rescinded: Filed Jan. 18, 2018, effective July 30, 2018.

12 CSR 10-2.025 Adjustment to Avoid Double Taxation
(Rescinded July 30, 2018)

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.121-3(c) was originally filed March 15, 1974, effective March 25, 1974. Rescinded: Filed Jan. 18, 2018, effective July 30, 2018.

12 CSR 10-2.030 Non-Standard Tax Periods, Subsequent Change of Accounting Period, and Personal and Dependency Exemption Deductions

PURPOSE: This rule addresses changes in tax periods, short tax periods, 52-53 week tax periods, and the determination of the amount of an individual taxpayer's allowable personal and dependency exemption deductions.

(1) If a taxpayer's taxable year is changed for federal income tax purposes, the Missouri taxable year will automatically be changed. No application for change of accounting period for Missouri income tax purposes will be required. If a short taxable period for federal income tax purposes results from a change in the taxpayer's accounting period, the taxpayer also shall file a Missouri income tax return for that short taxable period.

(2) If there is a short taxable period, Missouri taxable income shall be computed on the basis of the short taxable period for which the return is made and in accordance with the statutory provisions of sections 143.011 to 143.996, RSMo, applicable to the determination of Missouri taxable income generally, except that the amount of deductions allowed by sections 143.151 and 143.161, RSMo, shall be reduced to the amount which bears the same ratio to the full amount for those deductions as the number of months in the short taxable period bears to twelve (12) months.

(3) Pursuant to section 143.151, RSMo, a resident shall generally be allowed a personal exemption deduction of two thousand one hundred dollars ($2,100) for such resident and two thousand one hundred dollars ($2,100) for such resident's spouse if the resident is entitled to a deduction for such personal exemptions for federal income tax purposes. A resident with a Missouri adjusted gross income of less than twenty thousand dollars ($20,000) shall generally be allowed an additional deduction of five hundred dollars ($500) for such resident and an additional five hundred dollars ($500) for such resident's spouse if the resident is entitled to a deduction for such personal exemptions for federal income tax purposes, and the spouse's Missouri adjusted gross income is less than twenty thousand dollars ($20,000). None of the deductions described in sections 143.151, RSMo, or in subsections 1 or 3 of section 143.161, RSMo, shall be allowed for a given tax period if the exemption amount as defined under 26 U.S.C. section 151 is zero (0) for that tax period.

(4) A resident who qualifies as an unmarried head of household or as a surviving spouse for federal income tax purposes may generally deduct an additional one thousand four hundred dollars ($1,400) pursuant to section 143.161.2, RSMo. This additional deduction for a taxpayer who qualifies as an unmarried head of household or a surviving spouse is not dependent on the taxpayer's eligibility for a dependency exemption deduction under section 143.161.1, RSMo.

(5) Example: Tom Taxpayer, a resident individual, has been filing his federal and Missouri income tax returns on the basis of a fiscal year ending September 30. He changes to a calendar year basis and files a federal income tax return for the short taxable period October 1 to December 31. He qualifies as a surviving spouse for federal income tax purposes. For his short taxable period, the exemption amount defined under 26 U.S.C. section 151 is zero (0). He has no federal income tax liability for the tax year. His federal adjusted gross income (FAGI) for the short taxable period is as follows:

Salary	$3,000
United States bond interest	$ 40
Savings bank interest	$ 60
FAGI	$3,100

His Missouri taxable income is as follows:

FAGI	$3,100
Less modification for United States bond interest	$ (40)
Missouri adjusted gross income	$3,060
Federal itemized deduction (note that no federal standard deduction is allowable for short-period returns resulting from a change in tax period; no Missouri modifications to the itemized deduction are applicable in this example)	$(250)
Surviving Spouse Additional Exemption Deduction ($1,400 × 3/12)=	$(350)
Missouri taxable income	$2,460

(6) A taxpayer which, for federal income tax purposes, has elected to use a taxable year that varies from 52 to 53 weeks is referred to by this rule as "52-53 Week Taxpayer." A 52-53 Week Taxpayer shall determine the effective date or the applicability of any provision of sections 143.011 to 143.996, RSMo, that is expressed in terms of taxable years beginning, including, or

ending with reference to a specified date which is the first or last day of a month by treating the taxpayer's 52-53 week taxable year as though it begins on the first day of the calendar month beginning nearest to the first day of such taxable year, or as though it ends with the last day of the calendar month ending nearest to the last day of such taxable year, as the case may be. See 26 U.S.C. section 441. The terms "tax year" and "taxable year" are generally used interchangeably for Missouri income tax purposes.

(A) Example: ABC Corporation is a 52-53 Week Taxpayer that has a tax year ending December 28, 2024. A new Missouri income tax deduction is created within sections 143.011 to 143.996, RSMo, and the new deduction expressly applies to all tax years ending on or after December 31, 2024. A new mandatory Missouri corporate income tax apportionment method is created, and expressly applies to all tax years ending on or after December 31, 2024. ABC Corporation is eligible for the new deduction, and must use the new mandatory corporate income tax apportionment method, for its 52-53 week taxable year ending December 28, 2024.

(B) Example: XYZ Corporation is a 52-53 Week Taxpayer that has a tax year beginning December 29, 2024. Pursuant to a change in law, a Missouri income tax subtraction that XYZ Corporation previously qualified for expressly no longer applies for any tax year beginning on or after January 1, 2025. XYZ Corporation is not eligible for this tax subtraction for its 52-53 week taxable year beginning December 29, 2024. A new statute, which became law on August 28, 2024, increases the corporate income tax rate by one percent (1%), and expressly applies to all tax years beginning on or after January 1, 2025. The new increased corporate income tax rate applies to the entirety of XYZ Corporation's tax year beginning December 29, 2024. Note that Missouri's income tax law contains no statute directly corresponding to 26 U.S.C. section 15.

AUTHORITY: sections 143.271 and 143.961, RSMo 2016. Regulation 1.271-2 was originally filed March 8, 1974, effective March 18, 1974. Amended: Filed Dec. 28, 2023, effective July 30, 2024.*

**Original authority: 143.271, RSMo 1972, and 143.961, RSMo 1972.*

12 CSR 10-2.035 Conformity of Missouri With Federal Accounting Methods

PURPOSE: The rule provides that a taxpayer must employ the same method of accounting for Missouri income tax purposes as is used for federal income tax purposes.

(1) A taxpayer must employ the same method of accounting in determining Missouri taxable income as is used for federal income tax purposes. The term method of accounting refers not only to the overall method of accounting (such as cash or accrual) but also to the accounting treatment of particular items of income, gain, loss or deduction, such as depreciation, bad debts, inventory valuation, research and experimental expenditures.

(2) If the taxpayer is allowed or is required to change an accounting method for federal income tax purposes, a similar change in the accounting method for Missouri income tax purposes will automatically be made. No application for change of accounting method for Missouri income tax purposes shall be required.

AUTHORITY: section 143.961, RSMo 1986. Regulations 1.281-1 and 1.281-2 were originally filed March 8, 1974, effective March 18, 1974.*

**Original authority: 143.961, RSMo 1972.*

***Armco Steel Corporation v. State Tax Commission**, 580 SW2d 242 (Mo. banc 1979). Appellant filed a consolidated federal tax return for 1969, making certain intercorporate payments to its subsidiaries for their tax losses incurred. Appellant then claimed as a deduction on its Missouri tax return the amount of federal tax that would have been paid if the appellant had filed as a separate entity. For deduction purposes on Missouri income tax returns, United States income taxes "assessed" are those that are actually paid. And, although the director of revenue is to "follow as nearly as practicable the rules and regulations prescribed by the United States government on income tax assessments and collection," the director cannot interpret the statute in accordance with the federal regulations if to do so will change the substantive rules of the Missouri statute.*

12 CSR 10-2.040 Transitional Adjustments in Accounting Methods

(Rescinded October 30, 2002)

AUTHORITY: section 143.301, RSMo 1986. Regulation 1.301 was originally filed April 3, 1974, effective April 13, 1974. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-2.045 Missouri Consolidated Income Tax Returns

PURPOSE: This rule sets forth the requirements for the filing of Missouri consolidated income tax returns by affiliated groups or corporations.

(1) Authority for Regulation. This rule is promulgated under the general regulatory powers granted to the director of revenue and the specific authority set forth in section 143.431.3(5), RSMo, relating to Missouri consolidated income tax returns.

(2) Affiliated group. The term affiliated group means those members of an affiliated group of corporations as defined by *Internal Revenue Code* (IRC) Section 1504 and the applicable treasury regulations which participate or are required to participate in the filing of a federal consolidated income tax return for the taxable year.

(3) Missouri consolidated return year. The term Missouri consolidated return year means a taxable year for which a Missouri consolidated return is filed or required to be filed by an affiliated group under this rule.

(4) New member. The term new member shall mean a corporation which is a member of an affiliated group during the current Missouri consolidated return year but which was not a member of the group for the immediately preceding Missouri consolidated return year.

(5) Multistate Tax Compact. The term Multistate Tax Compact shall mean the Multistate Tax Compact as enacted into law in Missouri as section 32.200, RSMo.

(6) IRC section. The term IRC section shall mean the pertinent provision of the *Internal Revenue Code* for the taxable year.

(7) Required member. The term required member shall mean any corporation included on the federal consolidated return for the affiliated group, except:

(A) An express company which pays an annual tax on its gross receipts in this state;

(B) An insurance company which pays an annual tax on its gross premium receipts in this state;

(C) A Missouri mutual or extended Missouri mutual insurance company organized under Chapter 380, RSMo; or

(D) An association or credit union which pays an annual tax pursuant to section 148.620, RSMo.

(8) Treas. Reg. Section. The term Treas. Reg. Section shall mean the pertinent provisions of the regulation promulgated by the United States Treasury for the taxable year.

(9) Director of revenue. The term director of revenue, except as otherwise specifically provided in this rule, shall mean the director of revenue or his/her duly authorized agent or designee.

(10) Computing Missouri consolidated taxable income from all sources. The Missouri consolidated taxable income (all sources) of an affiliated group shall be its federal consolidated taxable income for the taxable year, adjusted to reflect the modifications provided in section 143.121, RSMo, and the applicable modifications provided in section 143.141, RSMo, and to reflect the exclusion of any members of the affiliated group that are not required members. There shall be subtracted the federal income tax deduction provided in section 143.171, RSMo. There shall be subtracted, to the extent included in federal consolidated taxable income, corporate dividends from sources within Missouri.

(11) Computing Missouri consolidated taxable income from Missouri sources.

(A) The Missouri consolidated taxable income (Missouri sources) of an affiliated group shall be so much of its Missouri consolidated taxable income (all sources) as is derived from sources within Missouri pursuant to the interstate division of income rules set forth in section (18) of this rule. If only part of the Missouri consolidated taxable income (all sources) is derived from sources within Missouri, the Missouri consolidated taxable income (Missouri sources) shall only reflect the effect of the following listed deductions to the extent applicable to Missouri:

1. The deduction for federal income tax provided in section 143.171, RSMo; and

2. The effect on Missouri consolidated taxable income (all sources) of the deduction for consolidated net operating loss allowed by IRC Section 172 and the applicable Treas. Reg. issued under IRC Section 1502. The extent these deductions applicable to Missouri shall be determined by multiplying the amount that would otherwise affect Missouri consolidated taxable income (all sources) by the ratio of Missouri consolidated taxable income (Missouri sources) for the year divided by the Missouri consolidated taxable income (all sources) for the year. For the purpose of the preceding sentence, Missouri consolidated taxable income shall not reflect the deductions listed in subsections (A) and (B) of this section.

(B) If an affiliated group files a Missouri income tax return in which one or more members of the affiliated group are not required members, the federal income tax deduction for such Missouri income tax return shall be determined by multiplying the federal income tax liability of the affiliated group by a fraction, the numerator of which is the sum of the federal taxable incomes of the required members and the denominator of which is the sum of the federal taxable incomes of all members of the affiliated group.

(12) Qualifying for Privilege to File Consolidated Return. An affiliated group (other than one which is required to file a Missouri consolidated return for the year) shall be qualified to file a Missouri consolidated return if –

(A) It files a federal consolidated return for the taxable year;

(B) Each corporation which has been a member of the affiliated group during any part of the taxable year for which the Missouri consolidated return is to be filed consents to this rule in the manner provided in sections (24)–(26) of this rule; and

(C) The affiliated group is not disqualified from filing a Missouri consolidated return for the year under section (16) of this rule.

(13) Election to File. For tax years with a due date for filing the common parent's Missouri return (including extensions of time to file) after December 28, 1998, if an affiliated group qualified to file a Missouri consolidated return wishes to elect to file a Missouri consolidated return, the election must be exercised by the filing of a Missouri consolidated return on or before the due date (including extensions of time) for the filing of the common parent's separate Missouri return. For tax years with a due date for filing the common parent's Missouri return (including extensions of time to file) before December 28, 1998, an affiliated group qualified to file a Missouri consolidated return could elect to file a Missouri consolidated return by the filing of –

(A) A Missouri consolidated return on or before the due date (including extensions of time) for the filing of the common parent's separate Missouri return; or

(B) If the affiliated group did not file a Missouri consolidated return within such time because it was precluded from doing so under Missouri law, a Missouri consolidated return within the statute of limitations applicable to the filing of an amended return.

(14) Election Irrevocable. The exercise of an election to file a Missouri consolidated return is irrevocable and may not be withdrawn after the due date (including extensions of time) for the filing of the common parent's separate Missouri return.

(15) Continued Filing Requirement. Except as provided in sections (32)–(35) of this rule, an affiliated group which filed (or was required to file) a Missouri consolidated return for the immediately preceding taxable year is required to file a Missouri consolidated return for the current taxable year.

(16) Disqualification to File. If an affiliated group filed (or was required to file) a Missouri consolidated return for the immediately preceding taxable year and, by virtue of sections (32)–(35) of this rule, it does not file or is not permitted to file a Missouri consolidated return for the current taxable year, then it shall not be qualified to file a Missouri consolidated return for a period of five (5) years after its last preceding Missouri consolidated return year.

(17) Filing Consolidated Return in Special Circumstances. Notwithstanding that an affiliated group may be disqualified to file a Missouri consolidated return for the current taxable year under section (16) of this rule, the director of revenue may permit the affiliated group to file a Missouri consolidated return for the current taxable year. Application for permission shall be directed to the personal attention of the director of revenue, shall be made in writing, and shall set forth in detail the factual and legal arguments which the director of revenue is being requested to consider. No application for permission shall be granted until the affiliated group receives written permission bearing the signature of the director of revenue.

(18) Interstate Division of Income Rules for First Missouri Consolidated Return Year. In the determination of that portion of the Missouri consolidated taxable income (all sources) as is derived from sources within Missouri, the affiliated group shall select, in its first Missouri consolidated return year, one (1) of the applicable interstate division of income methods set forth in the following subsections:

(A) Method Under Section 143.451.2., RSMo. If each member of the affiliated group, if filing separate Missouri returns, would qualify to determine that portion of its Missouri taxable income as is derived from sources within Missouri by application of the interstate division of income methods set forth in section 143.451.2., RSMo, then the affiliated group, as a whole, shall use either –

1. The single factor sales (business transactions) method provided in section 143.451.2., RSMo; or

2. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue;

(B) Method Under Section 143.451.3.–143.451.6., RSMo. If each member of the affiliated group, if filing separate Missouri returns, would qualify to determine that portion of its Missouri taxable income derived from sources within Missouri by application of the interstate division of income methods, set forth in section 143.451.3–143.451.6., RSMo (and each member uses the same method), then the affiliated group, as a whole, shall use either –

1. The applicable method set forth in section 143.451.3.–143.451.6., RSMo; or

2. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue;

(C) Method Under Section 143.461, RSMo. If each member of the affiliated group, if filing separate Missouri returns, would qualify to determine that portion of its Missouri taxable income as is derived from sources within Missouri by application of the elective division of income method approved under section 143.461, RSMo (and each member uses the same approved method) then the affiliated group, as a whole, shall use either –

1. The elective division of income method approved under section 143.461, RSMo; or

2. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue;

(D) Members to Which Different Interstate Division of Income Methods Apply – General Rule. If the affiliated group is composed of a membership such that, if separate Missouri returns were filed by each member, the same interstate division of income method under section 143.451.2., RSMo (relating to general business corporations), 143.451.3., RSMo (relating to transportation), 143.451.4., RSMo (relating to railroads, and the like), 143.451.5., RSMo (relating to interstate bridges), 143.451.6., RSMo (relating to telephone or telegraph companies), or 143.461, RSMo (other approved methods), would not apply to each member, then the affiliated group, as a whole, shall determine that portion of its Missouri consolidated taxable income (all sources) as is derived from sources within Missouri by application of –

1. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue;

2. The method the director of revenue may approve after a finding of special circumstances; or

3. The percentage obtained by the method set forth in subsection (18)(E) of this rule; and

(E) Members to Which Different Interstate Divisions of Income Methods Apply – Special Rule. If an affiliated group described in subsection (18)(D) of this rule and it elects to use the interstate division of income method referred to in paragraph (18)(D)2. of this rule, it shall arrive at an interstate division of income percentage in the following manner:

1. Each member shall determine its own federal taxable income (loss) for the year, computed as though each member had filed a separate federal income tax return for the year. For the purposes of this paragraph, the separate federal taxable income (loss) of each member shall not reflect the deduction for net operating loss allowable by IRC Section 172 and shall not reflect dividend income from sources within Missouri;

2. Each member shall adjust its own separate federal taxable income (loss) so determined to reflect the modifications provided in sections 143.121 and 143.141, RSMo, applicable to those members. If, as a result of the computation contained in this paragraph (18)(E)2., a member has a separate Missouri taxable loss for the year, that member, for purposes of subsection (18)(E), shall be considered to have had a positive Missouri taxable income for the year in an amount equal to the loss;

3. The amount determined pursuant to paragraphs (18)(E)1. and 2., for the purposes of subsection (18)(E), shall be considered the separate Missouri taxable income (all sources) of each member for the year;

4. Each member shall determine that portion of its own separate Missouri taxable income (all sources) as is derived from sources within Missouri by application of whichever interstate division of income method under section 143.451 or 143.461, RSMo, is applicable to each member; and

5. The combined amounts of the Missouri taxable income (Missouri sources) of each member, so determined, shall be divided by the combined amounts of the Missouri taxable income (all sources) of each member, so determined, to arrive at a percentage and the percentage thus obtained shall be deemed to be that percentage of the Missouri consolidated taxable income (all sources) as is derived from sources within Missouri.

(19) Intercompany Transactions. For the purposes of determining the amount of sales or business transactions under the interstate division of income methods provided in sections 143.451.2. and 143.461, RSMo, and in the Multistate Tax Compact, the term sales and business transactions shall include all intercompany sales (business transactions) as defined in Treas. Reg. Section 1.1502–13.

(20) Subsequent Missouri Consolidated Re-turn Years. In the determination of Missouri consolidated taxable income (Missouri sources) for its second and succeeding Missouri consolidated return years, the affiliated group shall use the

same interstate division of income method as it used in its first year, or select a different interstate division of income method pursuant to section (18) of this rule.

(21) Election of Interstate Division of Income Method. For any taxable year, the interstate division of income method may not be changed following the due date (including extensions of time) for filing the return for such year.

(22) Computation of Tax Liability. The Mis-souri income tax liability of an affiliated group for a Missouri consolidated return year shall be determined by adding together –

(A) The tax imposed by section 143.071, RSMo, on the Missouri consolidated taxable income (Missouri sources) for each year;

(B) The additions to tax imposed by section 143.741, RSMo;

(C) The additions to tax and penalties imposed by section 143.751, RSMo; and

(D) The additions to tax imposed by section 143.761, RSMo.

(23) Liability For Tax. The common parent corporation and each required member which was a member of the affiliated group during any part of the Missouri consolidated return year shall be jointly and severally liable for the tax computed in accordance with this rule, together with the interest on the tax, computed in accordance with section 143.731, RSMo. No agreement entered into by one (1) or more members of the affiliated group with any other member of the group or with any other person in any case shall have the effect of reducing the liability prescribed.

(24) Consent to This Rule. Each required member must execute a Form MO-22 (Authorization and Consent of Subsidiary Corporation to be Included in a Missouri Consolidated Income Tax Return) for the first Missouri consolidated return year in which it first becomes a member of the affiliated group. If a required member fails to execute a Form MO-22, the director of revenue may: a) treat such failure as a request by the affiliated group to discontinue, for good cause, the filing of a Missouri consolidated return with respect to the year of the failure and all Missouri consolidated return years after that; b) recalculate the Missouri tax liability of the affiliated group to include the required member; or c) accept the return without the consent pursuant to section (25) of this regulation. The affiliated group shall continue to be subject to section (15) of this rule unless and until the director of revenue grants written permission to the affiliated group to discontinue the filing of Missouri consolidated returns.

(25) Consent Under Facts and Circumstances. If a required member fails to execute a Form MO-22, the director of revenue may determine that the member has joined in the making of the Missouri consolidated return of the affiliated group.

(26) Failure to Consent Due to Mistake. If any required member has failed to join in the making of a Missouri consolidated return and the common parent establishes to the satisfaction of the director of revenue that the failure was due to a mistake of law or fact, or to inadvertence, then the member shall be allowed to file a Form MO-22 and join in the making of the Missouri consolidated return.

(27) Consolidated Return Made by Common Parent. The Missouri consolidated return shall be made by the common parent on Form MO-1120 (Corporation Income Tax Return) and shall be filed by the common parent.

(28) Attachments to Form MO-1120. In addition to those matters required of all corporations, an affiliated group shall be required to submit the following items:

(A) For the first Missouri consolidated return year, a Form MO-22 executed by each member of an affiliated group;

(B) For the second and succeeding Missouri consolidated return years, a Form MO-22 executed by each new required member of an affiliated group;

(C) A detailed schedule i) identifying any members of the affiliated group that are not required members and the reason for exclusion, and ii) showing all adjustments to federal consolidated taxable income due to the exclusion of any members of the affiliated group that are not required members; and

(D) The affiliated group shall attach to its Form MO-MS (Corporation Allocation and Apportionment of Income) a detailed schedule which the interstate division of income data of each member of the affiliated group is set forth.

(29) Common Parent as Agent for All Other Members. The common parent, for all purposes other than the making of the consent required by subsection (12)(B) of this rule, shall be the sole agent for each subsidiary member in the affiliated group, duly authorized to act in its own name in all matters relating to the Missouri tax liability for the Missouri consolidated return year. No subsidiary member shall have authority to act for or to represent itself in any matter. For example, all correspondence will be carried on directly with the common parent; the common parent shall file for all extensions of time, including extensions of time for payment of Missouri tax; notices of deficiencies will be mailed to the common parent and the mailing only to the common parent shall be considered as a mailing to each subsidiary member in the affiliated group; notice and demand for payment of taxes will be given only to the common parent and the notice and demand will be considered as a notice and demand to each subsidiary member; the common parent will file petitions and conduct proceedings before the director of revenue and the Administrative Hearing Commission; and any petition shall be considered as also having been filed by each subsidiary. The common parent will file claims for refund or credit and any refund will be made directly to and in the name of the common parent and will discharge any liability of Missouri in respect to that refund to any subsidiary member; and the common parent in its name will execute closing agreements and all other documents and any agreement or any other documents so executed shall be considered as having also been given or executed by each subsidiary member. Notwithstanding the provisions of this section, any notice of deficiency, in respect to the tax for a Missouri consolidated return year, will name each corporation which was a member of the affiliated group during any part of the period (but a failure to include the name of any member will not affect the validity of the notice of deficiency as to the other members); any notice and demand for payment will name each corporation which was a member of the affiliated group during any part of the period (but a failure to include the name of any member will not effect the validity of the notice and demand as to the other members); and any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which the collection is to be made. The provisions of this section shall apply whether or not a Missouri consolidated return is made for any subsequent year and whether or not one

(1) or more subsidiaries have become or have ceased to become members of the affiliated group at any time. Notwithstanding the provisions of this section, the director of revenue, upon notifying the common parent, may deal directly with any subsidiary member of the affiliated group with respect to its liability, in which event that member shall have full authority to act for itself.

(30) Notification of Deficiency to Corporation Which Has Ceased to be a Member of an Affiliated Group. If a subsidiary has ceased to be a member of an affiliated group and if the subsidiary files written notice of the cessation with the director of revenue, then the director of revenue, upon written request of that subsidiary, will furnish it with a copy of any notice of deficiency with respect to the tax for a Missouri consolidated return year for which it was a member and a copy of any notice and demand for payment of the deficiency. The filing of the written notification and request by a subsidiary corporation shall not limit the scope of the agency of the common parent provided in section (29) of this rule. Failure by the director of revenue to comply with the written request shall not limit the liability of the corporation provided in section (29) of this rule.

(31) Effect of Dissolution of Common Parent. If a common parent contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall notify the director of revenue of that fact and designate, subject to the approval of the director of revenue, another member of the affiliated group to act as agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If the notice thus required is not given by the common parent, or the designation is not approved by the director of revenue, the remaining members of the affiliated group, subject to the approval of the director of revenue, may designate another member of the group to act as the agent and notice of that designation shall be given to the director of revenue. Until a notice in writing designating a new agent has been approved by the director of revenue, any notice of deficiency or other communication mailed to the common parent shall be considered as having been properly mailed to the agent of the affiliated group; or if the director of revenue has reason to believe that the existence of the common parent has terminated, if s/he deems it advisable, s/he may deal directly with any member of the affiliated group with respect to its Missouri consolidated tax liability.

(32) Automatic Termination of Right to File Missouri Consolidated Return. The right of an affiliated group to file a Missouri consolidated return for the taxable year shall be dependent upon that group filing a federal consolidated return for the same year. Upon the discontinuance of the filing of a federal consolidated return, the filing of a Missouri consolidated return shall similarly be discontinued.

(33) Permission to Discontinue Filing Missouri Consolidated Return — Substantial Change in Law or Regulation. Upon timely written application to the director of revenue, an affiliated group may discontinue the filing of a Missouri consolidated return for the taxable year (or may withdraw a Missouri consolidated return previously filed for the taxable year) if the net result of all amendments to applicable law and the corresponding rules with effective dates commencing within the taxable year has a substantial adverse effect on the Missouri consolidated tax liability of the affiliated group for that year relative to what the aggregate Missouri tax liability would be if the members of the affiliated group filed separate Missouri returns for the year.

(A) *Prima Facie* Substantial Change. The difference between the Missouri consolidated tax liability, taking into account the changes in the law or regulations effective for the year and the aggregate Missouri tax liability of the members of the affiliated group computed as if each member filed a separate Missouri return for the year, also taking into account the changes in the law or regulations effective for the year (postlaw difference) shall be compared with the difference between the Missouri consolidated tax liability of the affiliated group for the taxable year, without regard to the changes in the law or regulations, and the aggregate Missouri tax liability of the members of the affiliated group computed as if separate Missouri returns had been filed by the members for the year, also without regard to the changes in the law or regulations (prelaw difference). If the postlaw difference is one hundred fifteen percent (115%) greater than the prelaw difference and that difference is at least five thousand dollars ($5,000), a substantial adverse change shall be deemed to have occurred.

(B) Timely Application. Any application to discontinue the filing of Missouri consolidated returns on account of section (33) shall be made in writing to the director of revenue on or before the later of —

1. The due date (including extensions of time) for the filing of the Missouri consolidated return for the taxable year; or
2. Ninety (90) days after the effective date of the Missouri law or Missouri Department of Revenue regulation on account of which a substantial change is alleged to have occurred.

(34) Permission to Discontinue Filing Missouri Consolidated Returns For Good Cause. Upon the timely written application by the affiliated group and upon showing of good cause for the action, the director of revenue may permit the affiliated group to discontinue the filing of Missouri consolidated returns upon the terms and conditions as s/he may prescribe. Any application for permission to discontinue the filing of Missouri consolidated return on account of section (34) shall be made to the director of revenue on or before the due date (including extensions of time) for the filing of the Missouri consolidated return for the year.

(35) Revocation of Right to File Missouri Consolidated Return. The director of revenue, upon finding that the filing of Missouri consolidated returns by the affiliated group does not clearly reflect the Missouri taxable income derived from sources within Missouri and for the purpose of preventing avoidance of Missouri tax liability, may terminate the right of an affiliated group to file a Missouri consolidated return for that year or, in the alternative, may distribute, apportion, or allocate items of income, deductions, credits, or allowances between or among the members of the affiliated group so that the portion of the Missouri consolidated taxable income (all sources) as is derived from sources within Missouri is clearly reflected. The procedure outlined in sections 143.611–143.691, RSMo, inclusive, shall be applicable to actions of the director of revenue under this section.

(36) Estimated Tax on Consolidated Basis. Beginning with its third Missouri consolidated return year, an affiliated group shall file its declaration of estimated tax on a consolidated basis for that year and for each subsequent Missouri consolidated return year. The group shall be treated as a single corporation for purposes of sections 143.531 and 143.541, RSMo (relating to the declaration and payment of estimated tax). If separate

Missouri returns are filed by the members for a taxable year, the amount of any estimated tax payments made with respect to a Missouri consolidated declaration of estimated tax for that year shall be credited against the separate Missouri tax liabilities of the members in any manner designated by the common parent which is satisfactory to the director of revenue. The consolidated declaration of estimated tax shall be filed and payment shall be made by the common parent.

(37) Estimated Tax on Separate Basis. For each taxable year preceding the third Missouri consolidated return year, each member of the affiliated group shall be treated as a separate corporation for the purposes of sections 143.531 and 143.541, RSMo. For the first two (2) Missouri consolidated return years, the amount of any estimated tax payments made for the year by the members of the affiliated group shall be credited against the Missouri consolidated tax liability of the affiliated group for that year. A statement shall be attached to the declaration setting forth the name, address, and federal employer identification number of each member of the affiliated group as well as the amount of declaration of estimated tax payments by each member together with the date of each payment.

(38) Additions to Tax For Failure to Pay Estimated Tax on Consolidated Basis. If the affiliated group is required to file a Missouri consolidated declaration of estimated tax under section (36) of this rule, then, if the group –

(A) Files a Missouri consolidated return for the taxable year with the term tax shown on the return, for the purposes of section 143.761.4(1), RSMo, the tax shall be shown on the Missouri consolidated return for the preceding taxable year, and the term facts shown on the return, for purposes of section 143.761.4(4), RSMo, the facts shall be shown on the Missouri consolidated return for the preceding taxable year; or

(B) Does not file a Missouri consolidated return for the taxable year, the term amount, if any, of the installment paid by any member, for the purposes of section 143.761.2(2), RSMo, an amount shall be apportioned to that member in a manner designated by the common parent which is satisfactory to the director of revenue. For the purposes of section 143.761.4(1), RSMo, the tax shown on the return for any member shall be the portion of the tax shown on the Missouri consolidated return for the preceding year allocated to that member in a manner designated by the common parent which is satisfactory to the director of revenue. For purposes of section 143.761.4(4), RSMo, the facts shown on the return shall be the facts shown on the Missouri consolidated return for the preceding year and the tax computed under that section shall be allocated to the members in a manner designated by the common parent and satisfactory to the director of revenue.

(39) Additions to Tax For Failure to Pay Estimated Tax on Separate Basis. If the members of an affiliated group are treated as separate corporations for the taxable year under section (37) of this rule and the affiliated group files a Missouri consolidated return for the year, then, for the purposes of section 143.761.2(1), RSMo, the tax shown on the return for any member shall be the portion of the tax shown on the Missouri consolidated return allocable to that member in a manner designated by the common parent and satisfactory to the director of revenue.

AUTHORITY: section 143.431.3(5), RSMo Supp. 2009. Regulation 1.431-3 was first filed July 21, 1975, effective July 31, 1975. Amended: Filed Oct. 16, 2002, effective June 30, 2003. Amended: Filed Dec. 1, 2009, effective June 30, 2010.*

**Original authority: 143.431, RSMo 1972, amended 2004, 2007.*

12 CSR 10-2.050 Elective Division of Income

PURPOSE: This rule sets forth the fundamental requirements for a petition by a corporate taxpayer for permission to use a special method of allocating income to Missouri.

(1) Authority for Rule. This rule is being issued under the general regulatory powers granted to the director of revenue in section 143.961, RSMo which became effective on January 1, 1973.

(2) Applicability and Scope of Rule. This rule is intended as an interpretive guideline in the application of section 143.461, RSMo and it sets forth the fundamental requirements for a petition for permission to use a special method of allocation under section 143.461.2., RSMo. This rule applies to all taxable years beginning on or after January 1, 1973, and it also applies with respect to all fiscal year taxable periods which contained parts of each of the years 1972 and 1973 for those corporate taxpayers which had properly elected to determine their tax and taxable income under the provisions of sections 143.011–143.996, RSMo. Chapter 143, RSMo and the corresponding regulations shall continue in force and effect with respect to all other taxable years.

(3) Definitions. As used in this rule –

(A) The term director, except as specifically otherwise provided in this rule, shall mean the director of revenue or his/her duly authorized agent or designee; and

(B) The term Missouri taxable income from all sources shall mean so much of the federal taxable income of the corporation for the taxable year increased or decreased, as the case may be, by the modifications provided for in sections 143.121 and 143.141, RSMo. There shall be subtracted, to the extent included in federal taxable income, corporate dividends from sources within Missouri and there also shall be subtracted the federal income tax deduction provided for in section 143.171.1., RSMo. The amount of dividends deducted shall depend on the apportionment method selected. If single factor apportionment is selected, the corporation shall deduct dividends based on whether they are Missouri source dividends or non-Missouri source dividends. This also applies to special methods selected.

1. If the three (3)-factor apportionment method is selected, the dividend deduction shall be based on the apportionment percentage calculated before taking into account any allowable nonbusiness income. Business dividends, as defined by the Multistate Tax Compact, are to be multiplied by the apportionment factor in order to calculate the deduction. Also, a corporation with a commercial domicile in Missouri can deduct any nonbusiness dividends as defined by the compact.

2. The director of revenue may adopt procedures for verifying the actual amount of dividends deducted and may prescribe what documents are necessary for verification.

(4) Required Use of Statutory Methods. A corporate taxpayer shall determine income applicable to this state for the taxable year by either – a) multiplying the total Missouri taxable income from all sources for the taxable year by the fraction determined under section 143.451, RSMo, or b) allocating

and apportioning the total Missouri taxable income from all sources for the year in the manner determined under section 32.200 article IV. 1.–17., RSMo and by subtracting from the amount so determined, its deduction, if any, for a prior year's federal income tax under section 143.171.2., RSMo. The preceding sentence shall not apply to those corporations which have received written permission from the director of revenue him/herself to — a) use another method of allocation pursuant to section 143.461, RSMo for the taxable year, or b) use another method of allocation and apportionment pursuant to section 32.200 article IV.18., RSMo if the other approved method is applicable to the taxpayer year and the corporate taxpayer actually uses the other approved method for the taxable year. A corporate taxpayer which uses an authorized method of determining income applicable to this state for the taxable year shall not be entitled to subsequently change to another method with respect to that same taxable year.

(5) Request for Permission to Use Other Method. A corporation may make a written petition to the director for permission to determine income applicable to this state for the taxable year by use of its own allocation method if the books and records of the taxpayer are kept in a manner as to show such other method of allocation between this state and other states involved, of income from transactions partly within and partly without this state, including gross income and deductions applicable to gross income, and the method does show the income applicable to this state, including gross income and deductions applicable to gross income.

(6) Petition for Use of Other Approved Method. A petition for permission to use a method of allocation disclosed in the taxpayer's books and records shall be typewritten, delivered to the director of revenue in Jefferson City, Missouri at least sixty (60) days before the end of the taxable year with respect to which the permission is sought, shall be made on the best information, knowledge and belief of the petitioner and shall be subscribed under a declaration that it is made under penalties of perjury. The petition shall contain the name, federal identification number and address of the principal place of business of the petitioner; the address of each location at which the taxpayer conducts business and the nature of the business conducted at each location; the place(s) at which the books and records of the taxpayer are located; the beginning and ending dates of the first taxable year with respect to which permission to use another method is sought; a detailed explanation of the allocation method disclosed in the corporation's books and records; a clear demonstration of the application of the method by showing each item of income and expense for the taxable year immediately preceding the taxable year with respect to which permission is sought, the states to which income and expense are allocated, and the amounts of each item of income and expense allocated to each state; and other data and information which the corporate taxpayer would urge upon the director in his/her consideration of the petition.

(7) Granting of Permission to Use Other Approved Method. If, upon the basis of the facts contained in the petition, other facts which may come to the attention of the director of revenue and all hearings, if any, held with respect to the petition, the director of revenue shall find that the allocation method disclosed in the books and records of the corporate taxpayer does show the income applicable to this state including gross income and deductions applicable to gross income, the director of revenue him/herself or his/her specifically designated representative shall send written notification over his/her personal signature to the corporation at least thirty (30) days prior to the last day on which the corporation's return for that taxable year is required to be filed (determined with regard to extensions of time for filing) that it may use that method as long as the method shows the income applicable to this state, including gross income and deductions applicable to gross income. No permission shall be deemed to have been granted unless it is granted by the director of revenue him/herself or his/her specifically designated representative in writing over his/her personal signature. The mere use or continued use by the corporate taxpayer of a special method without specific disapproval by the director of revenue or his/her specifically designated representative shall not constitute the granting of permission. A corporate taxpayer which does not receive explicit written permission from the director of revenue him/herself or his/her specifically designated representative as provided shall be required to determine income applicable to this state under section (4) of this rule.

(8) Revocation of Prior Approved Method. A corporation having previously received explicit written permission from the director of revenue him/herself of his/her specifically designated representative to use a special method of allocation shall cease using that method whenever that method ceases to show income applicable to this state, including gross income and deductions applicable to gross income and shall further cease using that method whenever the director of revenue him/herself or his/her specifically designated representative finds and notifies the corporation in writing on or before ninety (90) days before the end of the taxable year that the method does not so show. The revocation of a prior approved method shall not preclude the taxpayer from petitioning to the director of revenue, as prescribed, for permission to use some other method of allocation determined under its books and records.

(9) Failure to Timely Acquire Permission for Other Approved Method or to Continue Use of a Prior Approved Method. The failure, after a prior approved method has been revoked, to timely submit a petition for permission to use another method or the failure to make a return on a basis which has been approved by the director of revenue and which stands unrevoked shall constitute an election by the taxpayer to determine income applicable to this state by use of the method provided for in section (4) of this rule. A corporation may use a method which had been approved by the director of revenue for the taxable year only if the prior approved method was applicable to the immediately preceding taxable year and the corporate taxpayer used that other approved method in the immediately preceding taxable year.

(10) Information Required to be Submitted With Missouri Income Tax Return. For each taxable year with respect to which a corporation files a Missouri income tax return determining income applicable to this state by use of a special method approved by the director of revenue, there shall be submitted with the return for that taxable year the following items: a copy of the written notice bearing the signature of the director of revenue him/herself where permission to use the other approved method was granted and a statement indicating whether or not there has been a material change in the business operations or accounting procedures from those in existence in the first taxable year with respect to which

the permission was originally granted. The failure, refusal or inability of a corporation to submit the items mentioned in the preceding sentence shall constitute an election by the corporation to determine income applicable to this state by use of the methods described in section (4) of this rule.

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.461 was originally filed on Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed April 4, 1984, effective July 12, 1984. Amended: Filed Aug. 14, 1990, effective Feb. 14, 1991.*

**Original authority: 143.961, RSMo 1972.*

***In re Kansas City Star Co.**, 142 SW2d 1029 (1940). Trial court did not err by rejecting offered finding that state auditor had promulgated a rule during the years 1934, 1935 and 1936 declaring the total net income of manufacturing and business companies subject to income tax unless they had a branch house or capital investment outside the state. This rule had been promulgated under former Missouri St. Ann. section 10115, but subsequently overturned by Supreme Court.*

12 CSR 10-2.052 Optional Single Sales Factor
(Rescinded February 29, 2024)

AUTHORITY: section 143.961, RSMo 2000, and section 143.451.2(3), RSMo Supp. 2013. Original rule filed Sept. 18, 2013, effective March 30, 2014. Rescinded: Filed July 11, 2023, effective Feb. 29, 2024.

12 CSR 10-2.055 Failure to File Tax Returns
(Rescinded May 30, 2004)

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.741 was originally filed Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed Sept. 1, 1993, effective April 9, 1994. Rescinded: Filed Nov. 7, 2003, effective May 30, 2004.

***United States v. Boyle**, 105 S. Ct. 687 (1985). The issue in this case was whether the taxpayer had proved reasonable cause for the late filing of a federal estate tax return under Internal Revenue Code 6651(a)(1). The language in this section is very similar to the language contained in section 143.741, RSMo and other Missouri revenue penalty statutes. To show reasonable cause, the Supreme Court said the taxpayer must "demonstrate that he exercised 'ordinary business care and prudence' but nevertheless was 'unable to file the return within the prescribed time;"*

***Estate of Clifford Bockelman v. Director of Revenue**, Case No. RV-83-3510 (A.H.C. 5/14/86). The personal representative's attorney had told her that they did not need to worry about the Missouri estate tax return until such time as all federal estate tax matters had been completed. The Administrative Hearing Commission determined that the personal representative had exercised ordinary business care and prudence and thus the failure to file Missouri estate tax return in a timely fashion was due to reasonable cause and not willful neglect.*

***Estate of Orpha T. Neusteter v. Director of Revenue**, Case No. RV-86-2063 (A.H.C. 11/6/87). The personal representative had not established the daily volume of mail handled by his office nor a record of timely filings over a period of time. These facts, the commission stated, were essential. In addition, the commission noted that the personal representative had nine months to file and the taxpayer in **Armco** had fifteen days. Based on this, the personal representative did not establish that his failure to file was due to reasonable cause and not willful neglect. Therefore, the additions were properly imposed by the department.*

12 CSR 10-2.060 Failure to Pay Tax
(Rescinded May 30, 2004)

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.751 was first filed Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed Sept. 1, 1993, effective April 9, 1994. Rescinded: Filed Nov. 7, 2003, effective May 30, 2004.

12 CSR 10-2.065 Failure to Pay Estimated Tax
(Rescinded October 30, 2002)

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.761 was originally filed Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 5, 1982, effective Feb. 11, 1983. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-2.067 Failure to Pay Estimated Tax for Tax Years Ending After December 31, 1989

PURPOSE: This rule clarifies the requirement for filing declaration of estimated income tax by individuals and corporations, the determination of the amount of the installments required to be paid by the appropriate due dates, and the additions to tax imposed for the underpayment of estimated tax.

(1) Applicability and Scope of Rule. This rule is applicable only with respect to taxable years ending after December 31, 1989, and is intended as an interpretive guideline in the application of Chapter 143, RSMo.

(2) Definitions. As used in this rule —

(A) The term "director" shall mean the director of revenue or his/her duly authorized agent or designee;

(B) The term "farmer" shall mean an individual described in section 143.531.2, RSMo. The term does not include a corporation and income from catching, taking, harvesting, cultivating, or farming any aquatic forms of animal and vegetable life (other than oyster farming) does not constitute gross income from farming; and

(C) The term "other corporation" shall mean any corporation not defined as a "large corporation" in section 143.761, RSMo.

(3) General Rule. Section 143.761, RSMo, imposes an addition to tax in the case of any underpayment of estimated tax by an individual or a corporation (with certain exceptions described in section 143.761.4., RSMo). This addition to tax is in addition to any applicable civil or criminal penalties (including, but not limited to, an addition to tax or penalty under section 143.751, RSMo). If the amount of Missouri estimated tax is reasonably expected to be at least the amount that requires a declaration of estimated tax under section 143.521, RSMo, then the addition to tax under section 143.761, RSMo, is imposed without regard to any reasonable cause or lack of willful neglect for the underpayment. There is no provision for the payment of interest with respect to any underpayment of estimated tax.

(4) Amount of Underpayment. The amount of the underpayment

for any installment date is the excess of –

(A) Ninety percent (90%) in the case of corporations or individuals (sixty-six and two-thirds percent (66 2/3%) in the case of a farmer) of the tax shown on the return for the taxable year, or if no return was filed, ninety percent (90%) in the case of corporations or individuals (sixty-six and two-thirds percent (66 2/3%) in the case of a farmer) of the tax for the year, divided by the number of installment dates prescribed for the taxable year, over; and

(B) The amount, if any, of the installment paid on or before the last day prescribed for its payment.

(5) The amount of the addition is determined by the application of the rate set forth in section 32.065, RSMo, to the amount of underpayment of any installment of estimated tax for the period beginning with the date the installment was required to be paid until the earliest of the following:

(A) The fifteenth day of the fourth month following the close of the taxable year; or

(B) With respect to any portion of the underpayment, the date on which such portion is paid.

For the purpose of determining the period of underpayment, the date prescribed for the payment of any installment of estimated tax shall be determined without regard to any extension of time; and a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under subsection (4)(A) of this rule for the installment date, shall be considered a payment of any previous underpayment.

(6) In determining the amount of the installment paid on or before the last day prescribed for payment of the installment, the estimated tax shall be computed without any reduction for the amount which the taxpayer estimates as his/her credit for taxes withheld at the source on wages, and the amount of that credit shall be deemed a payment of estimated tax. An equal part of the amount of the credit shall be considered paid on each installment date for the taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In the latter case, all amounts withheld shall be considered as payments of estimated tax on the dates the amounts were actually withheld.

(7) Statement Relating to Underpayment. If there has been an underpayment of estimated tax as of any installment date prescribed for its payment and the taxpayer believes that one (1) or more of the exceptions described in section 143.761.4, RSMo, precludes the imposition of the addition to the tax, the appropriate Missouri form should be attached to the income tax return for the taxable year showing the applicability of an exception. Failure to show the applicability of an exception will result in the imposition of the additions to tax on the total amount of the underpayment of the installment and not on the amount by which the taxpayer fails to come within one (1) of the five (5) exceptions.

(8) Exceptions to Imposition of Additions to Tax. Exceptions shown in subsections (8)(A)–(D) apply to individuals. Exceptions shown in subsections (8)(A)–(E) apply to all corporations except large corporations as defined in section 143.761, RSMo. Only the exceptions shown in subsections (8)(B), (C), and (E) apply to large corporations. The addition to the tax under section 143.761, RSMo, will not be imposed for any underpayment of any installment of estimated tax, if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax equals or exceeds the least of the following amounts.

(A) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were the tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a year of twelve (12) months and a return showing a liability for tax was filed for that year.

(B) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to ninety percent (90%) in the case of other corporations or individuals (sixty-six and two-thirds percent (66 2/3%) in the case of a farmer) of the tax computed by placing on an annualized basis the taxable income for the calendar months in the taxable year preceding that date. The taxable income shall be placed on an annualized basis as follows.

1. Multiply by twelve (12) (or the number of months in the taxable year if less than twelve (12)) the taxable income (computed without the standard deduction and without the deduction for personal and dependency exemptions, if any) or the Adjusted Gross Income (AGI) if the standard deduction is to be used for the calendar months.

2. Divide the resulting amount by the number of those calendar months.

3. Deduct from that amount the standard deduction, if applicable, the deductions for personal and dependency exemptions, if any, determined as of the date prescribed for payment, and the deduction for federal income tax liability.

4. Multiply, in the case of an other corporation, the amount determined in paragraph (8)(B)3. of this rule by the applicable apportionment percentage determined as of the last day of the month preceding the date prescribed for payment. For tax years beginning on or after January 1, 2020, the applicable apportionment percentage is determined under section 143.455, RSMo. For tax years beginning before January 1, 2020, the applicable apportionment percentage is determined under either section 143.451 or 32.200, RSMo.

(C) An amount equal to ninety percent (90%) of the tax computed, at the rate applicable to the taxable year, on the basis of the actual taxable income for the calendar months in the taxable year preceding the date prescribed for payment.

(D) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a tax determined on the basis of the tax rates and the taxpayer's status with respect to personal and dependency exemptions, if any, for the taxable year, but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to that year, in case of a taxpayer required to file a return for the preceding taxable year.

(E) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to ninety percent (90%) of the tax computed by placing on an annualized basis the taxable income for the calendar months in the taxable year preceding that date. The taxable income shall be placed on an annualized basis as follows.

1. Multiply by twelve (12) the taxable income for the "applicable period" identified in paragraph (8)(E)3. below.

2. Divide the resulting amount by the whole number of months within the "applicable period" used in paragraph (8)(E)1. above (that is, 3, 5, 6, 8, 9, or 11, as the case may be).

3. Determine the "applicable period" for use in paragraphs (8)(E)1. and 2. as follows.

A. The first three (3) months of the taxable year, in the case of an installment required to be paid in the fourth month.

B. The first three (3) months or the first five (5) months of the taxable year, in the case of an installment required to be paid in the sixth month.

C. The first six (6) months or the first eight (8) months of the taxable year, in the case of an installment required to be paid in the ninth month.

D. The first nine (9) months or the first eleven (11) months of the taxable year, in the case of the installment required to be paid in the twelfth month.

(F) Example: An individual filed an income tax return for his/her taxable year 2022, which showed an income tax of four thousand dollars ($4,000). The individual always files on a calendar year basis. The individual pays installments of estimated tax of one thousand dollars ($1,000) each on April 15, June 15, and September 15 of 2023, and on January 15 of 2024. The individual files an income tax return for his/her taxable year 2023 on April 15, 2024, and the return shows an income tax of thirteen thousand dollars ($13,000). The individual is not liable for an addition to tax for the failure to pay estimated tax, as the individual has timely paid installments of estimated tax in amounts that meet the exception in subsection (8)(A) of this rule.

(G) Example: A farmer files an income tax return on February 15 of the succeeding year paying his/her total tax liability of five thousand dollars ($5,000) on that date. In this case, there is no underpayment of estimated tax since the filing of the return and full payment of the tax on or before March 1 of the succeeding year is considered as the farmer's declaration of estimated tax which was required to be filed by January 15 of the succeeding taxable year pursuant to section 143.521.6, RSMo. In the event that the farmer in this example had filed his/her declaration of estimated tax on or before January 15 of the succeeding year, s/he would have only been required to pay sixty-six and two-thirds percent (66 2/3%) of his/her total tax liability for the year on that date.

(H) Example: An individual (other than a farmer) files an income tax return on February 15 of the succeeding year paying his/her total tax liability of five thousand dollars ($5,000) on that date. In this case, there is an underpayment of estimated tax. The individual has not paid any installments of estimated tax. Unless the individual meets one (1) of the exceptions in subsections (8)(A)-(D) of this rule, an addition to tax for failure to pay estimated tax will be imposed.

(9) Example: The following example illustrates the application of the exception in subsection (8)(E) of this rule to the imposition of the addition to tax for an underpayment of estimated tax for a calendar year corporation. Assume that a corporation has eighty thousand dollars ($80,000) of Missouri taxable income from January through June, and one hundred thousand dollars ($100,000) of Missouri taxable income from January through August. Further assume that the corporate income tax rate is four percent (4%), and that the first two (2) installments for the year already meet the exception in subsection (8)(E) of this rule. The third installment payment must be at least four thousand fifty dollars ($4,050) for it to meet the exception in subsection (8)(E) of this rule, calculated as follows:

The lesser of:

$80,000 × 12 = $960,000
$960,000 divided by 6 = $160,000
$160,000 × 4% = $6,400
$6,400 × 90% = $5,760
$5,760 × 75% = $4,320

or

$100,000 × 12 = $1,200,000
$1,200,000 divided by 8 = $150,000
$150,000 × 4% = $6,000
$6,000 × 90% = $5,400
$5,400 × 75% = $4,050.

(10) Statutory Changes Require Amended Installment. Taxpayers required to make a declaration of estimated tax shall make a recalculation of the installment due when there is a change in statute which affects the estimated liability and installments for their taxable period. Example: Assume Z Corporation had a state income tax estimated tax for its fiscal year beginning July 1, 1983, and ending June 30, 1984, based upon a Missouri taxable income of two million dollars ($2,000,000) with a tax of one hundred thousand dollars ($100,000) at the five percent (5%) tax rate then in effect. To avoid additions to tax, the former exception provided in section 143.761.4(2), RSMo, of eighty percent (80%) was used. Effective January 1, 1984, House Bill No. 10, First Extraordinary Session, 82nd General Assembly, increased the eighty percent (80%) to ninety percent (90%) for corporations. The taxpayer had paid two (2) installments of twenty thousand dollars ($20,000) each prior to the change in statute. The calculation to determine the amount of the third and fourth installment would be as follows:

(A) Missouri taxable income	$2,000,000;
(B) Missouri tax (historical 5% rate)	$100,000;
(C) Estimated tax after change of statute 90% × $100,000	$90,000;
(D) Amount required to be paid through 3 installments ($90,000 ÷ 4 × 3)	$67,500;
(E) Amount paid first 2 installments ($20,000 × 2)	$40,000;
(F) Amount of 3rd installment (line (D) minus (E))	$27,500;
and	
(G) Amount of 4th installment (line (C) × 1/4)	$22,500.

If the corporation's estimated tax payment equals ninety percent (90%) of the amount due for the three (3) installments no additions to tax would be imposed with respect to the third installment. This same calculation method would apply to a calendar year situation when the statute was changed and applied during their taxable period.

(11) Determination of Taxable Income for Installment Periods. In determining the applicability of the exceptions in section 143.761.4(2) or (3), RSMo, there must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment date as of which the determination is made. For example, if a taxpayer distributes year-end bonuses to its employees but does not determine the amount of the bonuses until the next to the last month of the taxable year, it may not deduct any portion of the year-end bonuses in determining the taxable income for any installment period other than the final installment period for the taxable year. If a taxpayer on an accrual method of accounting wishes to use either of the exceptions in section 143.761.4(2) or (3), RSMo, s/he must establish the amount of income and deductions for each applicable installment

period. If income is derived from business in which the production, purchase, or sale of merchandise is an income-producing factor requiring the use of inventories, the taxpayer will be unable to determine accurately the amount of the taxable income for the applicable period unless there can be established, with reasonable accuracy, the cost of goods sold for the applicable installment period. Unless a more exact determination is available, the cost of goods sold for the period shall be determined based on the same proportion of the cost of goods sold during the entire taxable year as the ratio of gross receipts from the sales for the installment period to the gross receipts from the sale for the entire taxable year.

(12) Members of Partnerships. In determining a partner's taxable income for the months in his/her taxable year which precede the month in which the installment date occurs, each partner shall take into account all items for any partnership taxable year ending with or within this taxable year to the extent that those items are attributable to months in the partnership taxable year which preceded the month in which the installment date occurs together with any guaranteed payments from the partnership to the extent that the guaranteed payments are includable in his/her taxable income for those months. The provisions of this section may be illustrated by the following examples.

(A) A, who is an individual calendar year taxpayer, is a member of a partnership whose taxable year ends on January 31. A must take into account, in the determination of his/her taxable income for the installment due on April 15, 1984, all of his/her distributive share of partnership items and the amount of any guaranteed payments made to him/her which were deductible by the partnership in the partnership taxable year beginning on February 1, 1983, and ending on January 31, 1984.

(B) Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30. A must take into account, in the determination of his/her taxable income for the installment due on April 15, 1984, his/her distributive share of partnership items for the period July 1, 1983, through March 31, 1984; and for the installment due on June 15, 1984, s/he must take into account the amounts for the period July 1, 1983, through May 31, 1984; and for the installment due on September 15, 1984, s/he must take into account the amounts for the entire partnership taxable year of July 1, 1983, through June 30, 1984 (the date on which the partnership taxable year ends).

(13) Beneficiaries of Estates and Trusts. In determining the applicability of the exceptions in subsections (8)(B) and (C) of this rule as of any installment date, the beneficiary of an estate or trust must take into account his/her distributable share of income from the estate or trust for the applicable period (whether or not actually distributed) if the trust or estate is required to distribute income to him/her currently. If the estate or trust is not required to distribute income currently, only the amounts actually distributed to the beneficiary during the period must be taken into account. If the taxable year of the beneficiary and the taxable year of the estate or trust are different, there shall be taken into account the beneficiary's distributable share of income, or the amount actually distributed to him/her, as the case may be, during the months in the taxable year of the estate or trust ending within the taxable year of the beneficiary which precedes the month in which the installment date occurs. This rule is similar to the rule that applies for a member of a partnership when a partner and a partnership of which s/he is a member have different taxable years.

AUTHORITY: section 143.961, RSMo 2016. Original rule filed Dec. 30, 1983, effective April 12, 1984. Amended: Filed Oct. 12, 2021, effective April 30, 2022.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.070 Interest on Overpayments

PURPOSE: This rule sets forth the circumstances under which a taxpayer who has paid too much tax will receive interest on the amount of the tax refund.

(1) Authority for Rule. This rule is being issued under the general regulatory powers granted to the director of revenue and the specific authority set forth in section 143.811, RSMo.

(2) Applicability and Scope of Rule. This rule shall apply to those instances in which an overpayment of the taxes imposed by sections 143.011–143.996, RSMo has occurred and shall apply only with respect to taxable periods beginning on or after January 1, 1973. It is intended to serve as an interpretive guideline in the application of section 143.811.1., 2., 4. and 5., RSMo as affected by sections 143.601 and 143.801, RSMo.

(3) The term sections 143.011–143.996, RSMo shall mean the Missouri Income Tax Law, which became effective on January 1, 1973.

(4) As used in this rule, the term director shall mean the director of revenue or his/her duly authorized agent or designee.

(5) Subject to the limitations provided in this rule, interest shall be allowed and paid upon any overpayment with respect to the taxpayer's liability for taxes, computed on a daily basis at the rate provided by statute, from the dates of the overpayment to the date shown on the refund check that is issued by the treasurer of Missouri. If the taxpayer elects to have all or a part of the overpayment shown on the return applied to the taxpayer's estimated tax for a succeeding year, the portion of the overpayment that is credited to the estimated tax for the succeeding year or any installment shall be considered to be refunded to the taxpayer on the date that the original return was filed and no interest shall be allowed on the portion of the overpayment so credited or applied.

(6) Time Return Filed. For purposes of this rule, a return filed before the last day prescribed for the filing of the return shall be considered as filed on the last day (determined without regard to any extensions of time for filing the return). For returns filed after the fifteenth day of the fourth month following the close of the taxpayer's taxable year, the time filed shall be the actual time filed.

(7) Time Tax Paid. For purposes of this rule, payment of any portion of the tax made before the fifteenth day of the fourth month following the close of the taxpayer's taxable year shall be considered as paid on the fifteenth day of the fourth month. For payments made after the fifteenth day of the fourth month following the close of the taxpayer's taxable year, whether or not a valid extension of time to pay is in effect, the time paid shall be the actual time paid.

(8) Limitations. If any overpayment is refunded within four (4) months after the last date prescribed (or permitted by extension of time) for filing the original return of the tax or within four (4) months after the return was filed, whichever is later, no interest shall be allowed on the overpayment as provided by section 143.811.4., RSMo. Where the taxpayer's return is not complete, delaying the processing by the director and requiring the director to request additional information from the taxpayer, the four (4)-month period referred to in this rule shall begin at such time as the additional requested information is submitted.

(9) Carrybacks of Net Operating Loss and Corporate Capital Loss. Any overpayment resulting from a carryback, including a net operating loss and a corporate capital loss, shall be deemed not to have been made prior to the close of the taxable year in which the loss arises, per section 143.811.5., RSMo. The carryback will be deemed to be an amended federal income tax return under section 143.601, RSMo which requires that any taxpayer filing an amended federal income tax return shall also file, within ninety (90) days after that, an amended return under sections 143.011–143.996, RSMo.

(10) Examples: The amounts used in any of the following examples for additions to tax and interest are for illustrative purposes only and do not necessarily reflect the actual additions to tax and interest that might be due in those situations. For purposes of these examples, current year returns shall mean returns filed, or required to be filed, for the immediately preceding taxable year for taxes imposed by sections 143.011–143.996, RSMo:

(A) Taxpayer files his/her 1974 calendar year return on January 15, 1975 indicating an overpayment. If the director makes a refund of the overpayment on or before August 15, 1975, no interest shall be allowed on the overpayment. In this example, the return is considered filed on the last day prescribed for the filing (April 15, 1975) and the director has four (4) months in which to make the refund. If the refund is not made by August 15, 1975, interest shall be allowed and paid for the period April 15, 1975 (the date the tax is considered paid) until the date of the refund;

(B) Taxpayer files his/her 1974 calendar year return on June 15, 1975 with a valid sixty (60)-day extension of time to file in effect, indicating an overpayment. All tax payments were made on or before April 15, 1975. If the director makes a refund of the overpayment on or before October 15, 1975, no interest shall be allowed on the overpayment. In this example, even though the tax is considered paid on April 15, 1975, the director has four (4) months in which to make the refund from the date the return is filed. If the refund is not made by October 15, 1975, interest shall be allowed and paid for the period April 15, 1975 until the date of the refund. The result in this example would be the same whether or not a valid extension of time to file or pay the tax had been in effect;

(C) Taxpayer files his/her 1974 calendar year return on June 15, 1975 indicating a balance due of one hundred fifty dollars ($150) which is paid with the return, there being no valid extension of time to file the return or pay the tax in effect. Upon subsequent review of the return, a mathematical error is discovered overstating the taxpayer's 1974 tax liability by two hundred dollars ($200). If the director makes a refund of the overpayment on or before October 15, 1975, no interest shall be allowed on the overpayment. If the refund is not made on or before October 15, 1975, interest shall be allowed and paid on the overpayment in the following manner. On the fifty-dollar ($50) overpayment that would have been shown on the original return, if correctly filed, from April 15, 1975 to the date of the refund; and on the one hundred and fifty dollars ($150) paid with the original return, from June 15, 1975 (the date the tax was paid) to the date of the refund. The result in this example would be the same whether or not a valid extension of time to file or pay the tax had been in effect; and

(D) Taxpayer, a corporation, files its estimated tax declaration for calendar year 1975 with the director and pays the first two installment payments of five hundred dollars ($500) each on April 15, 1975 and June 15, 1975, respectively. Taxpayer incurs a net operating loss for calendar year 1975 and files his/her Missouri income tax return on April 15, 1976, requesting a refund of the resulting overpayment. The taxpayer fails to attach to its Missouri return a copy of the federal form 1120 as required. Upon timely review of the taxpayer's Missouri return, the director requests from the taxpayer a copy of the federal return which is not submitted until December 15, 1976. If the director makes a refund of the overpayment on or before April 15, 1977, no interest shall be allowed on the overpayment. If the refund is made after April 15, 1977, interest shall be allowed and paid from April 15, 1976 to the date of the refund. In this example, the four (4)-month noninterest payment period does not begin until the required information is submitted.

(11) Change in Federal Taxable Income. Section 143.601, RSMo provides that if the amount of the taxpayer's federal taxable income reported on his/her federal income tax return, for any taxable year, is changed or corrected by the United States Internal Revenue Service (IRS) or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report the change or correction in federal taxable income within ninety (90) days after the final determination of the change, correction or renegotiation. Any taxpayer filing an amended federal income tax return also shall file, within ninety (90) days after that, an amended return under sections 143.011–143.996, RSMo and shall provide information as the director may require. The examples under this section do not apply where the federal change is on account of a net operating or a corporate capital loss carryback.

(A) On January 15, 1975, taxpayer's federal taxable income for calendar year 1973 is changed by the United States IRS indicating an overpayment. Taxpayer files an amended return with the director on April 15, 1975 (the ninetieth day) reflecting the federal changes and indicating an overpayment of his/her 1973 income tax liability. Taxpayer filed his/her 1973 income tax return and paid the tax on or before April 15, 1974. In this situation, interest shall be allowed and paid from April 15, 1974 until the date of the refund.

(B) On January 15, 1975, taxpayer's federal taxable income for calendar year 1973 is changed by the United States IRS indicating an overpayment. Taxpayer files an amended return with the director on April 30, 1975 (after the ninetieth day) reflecting the federal change and indicating an overpayment of his/her 1973 income tax liability. Taxpayer filed his/her 1973 income tax return and paid the tax prior to April 15, 1974. In this situation, interest shall be allowed and paid from April 15, 1974 until April 15, 1975 (the ninetieth day). Note that in this case, failure to file an amended return within the ninety (90)-day period required by section 143.601, RSMo shall cause the interest to cease to accrue after the ninetieth day.

(C) Assume the same fact as in subsection (11)(A) of this rule except taxpayer filed his/her original 1973 income tax return on June 15, 1974, with a valid extension of time to file attached,

and all taxes were paid on or before April 15, 1974 until the date of the refund. Note that an extension of time to file has no bearing on the interest payment period if all taxes were paid before April 15, 1974. In this situation, interest shall be allowed and paid from April 15, 1974. If the amended return was filed with the director after the ninetieth day, the interest would cease to accrue on the ninetieth day.

(D) On January 15, 1975, taxpayer's federal taxable income for calendar year 1973 is changed by the United States IRS indicating an overpayment. Taxpayer files an amended return with the director on April 10, 1975 (before the ninetieth day) reflecting the federal change and indicating an overpayment of his/her 1973 income tax liability. Taxpayer filed his/her 1973 income tax return on July 1, 1974 indicating a balance due, indicating additions to tax and interest, and paid the liability on that date. In this situation, interest shall be allowed and paid from July 1, 1974, the date the tax was actually paid, until the date of the refund. If the taxpayer's amended return was not filed on or before the ninetieth day, interest would be allowed and paid only until the ninetieth day (July 1, 1974 through April 15, 1975). Note that interest will be paid not only with respect to the taxes previously paid by the taxpayer but also with respect to the additions to tax and interest previously paid.

(E) On April 15, 1976, taxpayer's federal taxable income for calendar year 1973 is changed by the United States IRS resulting in an overpayment of his/her 1973 tax liability. On April 16, 1977, taxpayer files an amended return with the director, reflecting the federal changes, and also indicating an overpayment. Taxpayer filed his/her original 1973 income tax return on April 15, 1974 and all taxes were paid on that date. In this example, the taxpayer has filed his/her claim for credit or refund within one (1) year from the time the amended return was required to be filed (within one (1) year after ninety (90) days after April 15, 1976). Note that even though the three (3)-year limitation of section 143.801.1., RSMo, and the two (2)-year limitation of section 143.801.2., RSMo have elapsed, section 143.801.4., RSMo allows the claim to be filed within one (1) year. Interest shall be allowed and paid in this situation from April 15, 1974 until the ninetieth day after April 15, 1976.

(12) Carrybacks — Example 1: In calendar year 1976, taxpayer incurs a net operating loss, or a corporate capital loss, which is allowable as a carryback to calendar year 1973. Taxpayer's original 1973 Missouri income tax return was filed on April 15, 1974, and all tax payments were made prior to that date. Taxpayer files an amended 1973 federal income tax return on January 1, 1977, and an amended 1973 Missouri income tax return on the same day requesting refund of the resulting overpayment for 1973. In this situation, interest shall be allowed and paid from January 1, 1977 to the date of the refund. In this example, the overpayment is deemed not to have been made prior to the close of the taxable year in which the loss arises.

(13) Carrybacks — Example 2: Assume the same facts as in section (12) of this rule except the taxpayer does not file his/her amended Missouri income tax return until April 2, 1977, which is after the ninetieth day after January 1, 1977. In this situation, interest shall be allowed and paid for the period January 1, 1977 until the ninetieth day (March 31, 1977). Note that the failure of the taxpayer to file within the ninety (90)-day period required under section 143.601, RSMo caused the interest to cease to accrue on the ninetieth day.

(14) Amended Returns — Example 1: On January 15, 1975, taxpayer files an amended Missouri income tax return for calendar year 1973 correcting an error or omission on his/her original 1973 return. The original return for 1973 was filed on March 3, 1974 with a balance due that was paid on that date. The amended return indicates an overpayment for 1973. In this situation, interest shall be allowed and paid for the period April 15, 1974 until the date of the refund.

(15) Amended Returns — Example 2: On January 15, 1975, taxpayer files an amended Missouri income tax return for calendar year 1973 correcting an error or omission on the 1973 return. The original return for 1973 was filed on June 15, 1974 (with no valid extension of time to file or pay the tax) indicating a balance due of two hundred dollars ($200) which was paid on that date. On November 15, 1974, taxpayer was assessed additions to tax and interest of twenty-five dollars ($25) under sections 143.731 and 143.741, RSMo which s/he remitted on that date. The amended return indicates an overpayment for 1973 of three hundred dollars ($300). Interest shall be allowed and paid in the following manner: on the one hundred dollar ($100) overpayment that would have been shown on the original return, if correctly filed, from April 15, 1974 to the date of the refund; on the two hundred dollars ($200) paid with the original return, from June 15, 1974 to the date of the refund; and on the twenty-five dollar ($25) additions to tax and interest, from November 15, 1974 to the date of the refund. The interest payments begin from the time the tax was paid or considered paid. Note that the interest payment dates would not have been affected if a valid extension of time to file the return or pay the tax had been in effect.

(16) Amended Returns — Example 3: On May 15, 1977, taxpayer files an amended Missouri income tax return for calendar year 1973 indicating an overpayment. Taxpayer filed his/her original 1973 return on April 15, 1974. In this example, no credit or refund shall be allowed or paid. A claim for credit or refund of an overpayment of any tax imposed by sections 143.011–143.996, RSMo shall be filed by the taxpayer within three (3) years from the time the return was filed, or two (2) years from the time the tax was paid, whichever of those periods expires the later; or if no return was filed by the taxpayer, within two (2) years from the time the tax was paid. Nor credit or refund shall be allowed or made after the expiration of the period of limitation prescribed for the filing of a claim for credit or refund, unless the claim for credit or refund is filed by the taxpayer within that period.

(17) Amended Returns — Example 4: On May 15, 1977, taxpayer files an amended Missouri income tax return for calendar year 1973 indicating an overpayment of one thousand dollars ($1,000). Taxpayer filed his/her original 1973 return on May 14, 1974 showing a balance due of five hundred dollars ($500) which the taxpayer did not pay until June 15, 1975. Taxpayer was assessed and paid additions to tax and interest in the amount of fifty dollars ($50) on August 15, 1975. In this example, taxpayer has not filed a claim within three (3) years of the date the return was filed (which would expire on May 14, 1977) but has filed within two (2) years from the time some (but not all) of the tax was paid. In this situation, the refund shall not exceed the portion of the tax paid during the two (2) years immediately preceding the filing of the claim, section 143.801.2., RSMo. In this example, interest shall be allowed and paid in the following manner: on the five hundred dollar ($500) overpayment from June 15, 1975 to the date of the refund; and on the fifty dollars ($50) from August 15, 1975 until the date of the refund.

(18) Flood Loss. If the taxpayer elects under the Disaster Relief Act of 1974 to deduct a disaster loss in the taxable year immediately preceding the taxable year in which the loss occurs, the overpayment will deemed to have occurred in the taxable year for which the deduction is claimed on the federal return.

(A) Example: On January 15, 1975, taxpayer files an amended federal income tax return and an amended Missouri income tax return for calendar year 1973 as the result of a flood loss which occurred in 1974, indicating an overpayment for 1973. Taxpayer's original 1973 income tax return was filed before April 15, 1974, with all taxes paid by that date. In this example, interest shall be allowed and paid from April 15, 1974 until the date of the refund. The interest calculation date begins on April 15, 1974, because the overpayment on account of the 1974 flood loss is deemed to have occurred in the 1973 taxable year (the taxable year immediately preceding the taxable year in which the loss actually did occur).

(B) Example: On January 15, 1975, taxpayer files an amended federal income tax return and an amended Missouri income tax return for calendar year 1973 as the result of a flood loss which occurred in 1974. Taxpayer's original 1973 income tax return was filed on June 1, 1974 showing a balance due of five hundred dollars ($500) which was paid on that date. On November 15, 1974, taxpayer was assessed additions to tax and interest in the amount of fifty dollars ($50) under sections 143.731 and 143.741, RSMo which was paid by the taxpayer on that date. Taxpayer's amended 1973 income tax return indicates an overpayment of his/her 1973 income tax liability of seven hundred dollars ($700). In this situation, interest shall be allowed and paid in the following manner: on the two hundred dollar ($200) overpayment that would have been shown on the original return had the amount of the disaster loss been shown on the original return from April 15, 1974 to the date of the refund; on the five hundred dollars ($500) paid with the original return from June 1, 1974 to the date of the refund; and on the fifty dollars ($50) additions to tax and interest from November 15, 1974 to the date of the refund.

AUTHORITY: section 143.811, RSMo 1986. Regulation 1.811 was originally filed Dec. 22, 1975, effective Jan. 2, 1976.*

**Original authority: 143.811, RSMo 1972, amended 1982, 1988.*

12 CSR 10-2.075 Multistate Allocation and Apportionment

PURPOSE: This rule represents the methods to be used in allocating and apportioning income to Missouri under that part of Chapter 32, RSMo which is commonly known as the Multistate Tax Compact.

(1) Authority for Rule. This rule is being issued under the general regulatory powers granted to the director of revenue in section 143.961, RSMo which became effective January 1, 1973, and in accordance with subsection 3 of article VII of the Multistate Tax Compact, section 32.200, RSMo.

(2) Applicability and Scope of Rule. This rule is intended as an interpretive guideline in the application of Article VI of the Multistate Tax Compact, section 32.200, RSMo, implemented by adopting the Multistate Tax Commission's allocation and apportionment regulations which were adopted by the commission February 21, 1973. The apportionment rules set forth in this rule are applicable to any taxpayer having business income, regardless of whether or not it has nonbusiness income, and the allocation rules set forth in this rule are applicable to any taxpayer having nonbusiness income, regardless of whether or not it has business income. The numerical references contained in this rule are to Article IV of the Multistate Tax Compact, section 32.200, RSMo, and its subsections. The only exceptions to the allocation and apportionment rules contained in this rule are those set forth in sections (63)–(66) of this rule under the authority of Article IV.18. of the Multistate Tax Compact, section 32.200, RSMo. This rule is not intended to modify existing regulations concerning jurisdictional standards.

(3) As used in this rule, the term director of revenue shall mean the director of revenue or his/her duly authorized agent or designee.

(4) Business and Nonbusiness Income. Section 32.200 (Article IV.1.), RSMo defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of section 32.200 (Article IV), RSMo, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income. Nonbusiness income means all income other than business income. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, and the like, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity which are the elements of a particular trade or business. In general all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business.

(5) Business and Nonbusiness Income – Application of Definitions. The following are rules and examples for determining whether particular income is business or nonbusiness income (The examples used throughout this rule are illustrative only and do not purport to set forth all pertinent facts.):

(A) Rents From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business, or incidental to the trade or business and therefore is includable in the property factor under sections (21)–(24) of this rule.

1. Example: The taxpayer operates a multistate car rental business. The income from car rentals is business income.

2. Example: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors and earth-moving vehicles. The taxpayer

makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business income.

3. Example: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five (5)-story office building for use in connection with its trade or business. It uses the street floor as one (1) of its retail stores and the second and third floors for its general corporate headquarters. The remaining two (2) floors are leased to others. The rental of the two (2) floors is incidental to the operation of the taxpayer's trade or business. The rental income is business income.

4. Example: The taxpayer operates a multistate chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not business income of the grocery store trade or business. Therefore, the net rental income is nonbusiness income.

5. Example: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a twenty (20)-story office building and uses the street floor as one (1) of its retail stores and the second floor for its general corporate headquarters. The remaining eighteen (18) floors are leased to others. The rental of the eighteen (18) floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. The net rental income is not business income of the clothing store trade or business. Therefore, the net rental income is nonbusiness income.

6. Example: The taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold eighteen (18) months later. The rental income is business income and the gain on the sale of the plant is business income.

7. Example: The taxpayer operates a multistate chain of grocery stores. It owned an office building which it occupied as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an investment company under a five (5)-year lease. Upon expiration of the lease, taxpayer sold the building at a gain (or loss). The net rental income received over the lease period is nonbusiness income and the gain (or loss) on the sale of the building is nonbusiness income;

(B) Gains or Losses From Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income or otherwise was removed from the property factor before its sale, exchange or other disposition, the gain or loss will constitute nonbusiness income.

1. Example: In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines and other equipment used in the business. The gains or losses resulting from those sales constitute business income.

2. Example: The taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later sold the property at a gain while it was in operation by the taxpayer. The gain is business income.

3. Example: Same as paragraph (5)(B)2. of this rule except that the plant was closed and put up for sale but was not in fact sold until a buyer was found eighteen (18) months later. The gain is business income.

4. Example: Same as paragraph (5)(B)2. of this rule except that the plant was rented while being held for sale. The rental income is business income and the gain on the sale of the plant is business income.

5. Example: The taxpayer operates a multistate chain of grocery stores. It owned an office building which it occupied as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an unrelated investment company under a five (5)-year lease. Upon expiration of the lease, taxpayer sold the building at a gain (or loss). The gain (or loss) on the sale is nonbusiness income and the rental income received over the lease period is nonbusiness income;

(C) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of, or was created in, the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to the trade or business operations.

1. Example: The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are business income.

2. Example: The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment bore interest. The interest income is business income.

3. Example: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover these items as Workers' Compensation claims, rain and storm damage, machinery replacement, and the like. The moneys in those accounts are invested at interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state and local tax obligations. The interest income is business income.

4. Example: The taxpayer is engaged in a multistate money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income.

5. Example: The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling two hundred thousand dollars ($200,000) which it regularly invests in short-term interest bearing securities. The interest income is business income.

6. Example: In January, the taxpayer sold all the stock of subsidiary for twenty (20) million dollars. The funds are placed in an interest-bearing account pending a decision by management as to how the funds are to be utilized. The interest income is nonbusiness income;

(D) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations.

1. Example: The taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income.

2. Example: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as Workers' Compensation claims, etc. A portion of the moneys in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are business income.

3. Example: The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock in order to obtain a source of supply of materials used in its manufacturing business. The dividends are business income.

4. Example: The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. In order to maintain an adequate bonding capacity, the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income.

5. Example: The taxpayer receives dividends from the stock of its subsidiary or affiliate which acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income.

6. Example: The taxpayer is engaged in a multistate glass manufacturing business. It also holds a portfolio of stock and interest-bearing securities, the acquisition and holding of which are unrelated to the manufacturing business. The dividends and interest income received are nonbusiness income; and

(E) Patent and Copyright Royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the patent or copyright is related to or incidental to the trade or business operations.

1. Example: The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income.

2. Example: The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. After these acquired copyrights are used by the taxpayer in its business, any royalties received on these copyrights are business income.

3. Example: Same as example in paragraph (5)(E)2. of this rule, except that the acquired company also held the patent on a type of phonograph needle. The taxpayer does not manufacture or sell phonographs or phonograph equipment. Any royalties received on the patent would be nonbusiness income.

(6) Proration of Deductions. In most cases, an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases, an allowable deduction may be applicable to the business incomes of more than one (1) trade or business or to several items of nonbusiness income. In those cases, the deduction shall be prorated among the trades or businesses and the items of nonbusiness income in a manner which fairly distributes the deduction among the classes of income to which it is applicable. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any of the deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the return or reports filed by a taxpayer with all states to which the taxpayer reports under section 32.200 (Article IV), RSMo of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(7) Taxpayer means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one (1) state.

(8) Apportionment refers to the division of business income between states by the use of a formula containing apportionment factors.

(9) Allocation refers to the assignment of nonbusiness income to a particular state.

(10) Business activity refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

(11) Application of Article IV – Apportionment. If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state and, if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business which is derived from sources within this state shall be determined by apportionment in accordance with section 32.200 (Articles IV.9.–IV.17), RSMo.

(12) Application of Article IV – Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with section 32.200 (Articles IV.4.–IV.8), RSMo.

(13) Consistency and Uniformity in Reporting. In filing returns with this state if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under section 32.200 (Article IV), RSMo of the Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(14) Taxable in Another State – In General. Under section 32.200 (Article IV.2.), RSMo the taxpayer is subject to the allocation and apportionment provisions of section 32.200 (Article IV), RSMo if it has income from business activity that is taxable

both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of the business activity (that is, the transaction and activity occurring in the regular course of a particular trade or business), is taxable in another state within the meaning of section 32.200 (Article IV.3.), RSMo. A taxpayer is taxable within another state if it meets either one (1) of two (2) tests —

(A) If by reason of business activity in another state, the taxpayer is subject to one (1) of the types of taxes specified in section 32.200 (Article IV.3(1)), RSMo, namely, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or

(B) If by reason of the business activity, another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes this tax on the taxpayer.

(15) Taxable in Another State — Nonbusiness Income Only. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in the other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

(16) Taxable in Another State. A taxpayer is subject to one (1) of the taxes specified in section 32.200 (Article IV.3(1)), RSMo if it carries on business activities in the state and that state imposes the tax on business activities. Any taxpayer which asserts that it is subject to one (1) of the taxes specified in section 32.200 (Article IV.3(1)), RSMo in another state shall furnish to the director of revenue of this state, upon his/her request, evidence to support the assertion. The director of revenue of this state may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state; the taxpayer's failure to produce proof that may be taken into account in determining whether the taxpayer in fact is subject to one (1) of the taxes specified in section 32.200 (Article IV.3(1)), RSMo in the other state. If the taxpayer voluntarily files and pays one (1) or more of the taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in the state, but does not actually engage in business activity in that state, or does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one (1) of the taxes specified within the meaning of section 32.200 (Article IV.3(1)), RSMo. Example: State A has a corporation franchise tax measured by net income, for the privilege of doing business in that state. Corporation X files a return and pays the fifty-dollar ($50) minimum tax, although it carries on no business activity in State A. Corporation X is not taxable in State A.

(17) Taxability. The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in section 32.200 (Article IV.3(1)), RSMo which may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is subject to one (1) of the taxes specified in section 32.200 (Article IV.3(1)), RSMo in another state.

(A) Example: State A requires all nonresident corporations which qualify or register in State A to pay to the secretary of state an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute set a minimum fee of fifty dollars ($50) and a maximum fee of five hundred dollars ($500). Failure to pay the tax bars a corporation from utilizing the state courts for enforcement of its rights. State A also imposes a corporation income tax. Nonresident Corporation X is qualified in State A and pays the required fee to the secretary of state but does not carry on any business activity in State A (although it may utilize the courts of State A). Corporation X is not taxable in State A.

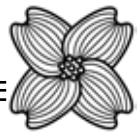
(B) Example: Same facts as in subsection (17)(A) of this rule except that Corporation X is subject to and pays the corporation income tax. Payment is *prima facie* evidence that Corporation X is subject to the net income tax of State A and is taxable in State A.

(C) Example: State B requires all nonresident corporations qualified or registered in State B to pay to the secretary of state an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of outstanding capital stock, surplus and undivided profits. The fee or tax base attributable to State B is determined by a three (3)-factor apportionment formula. Nonresident Corporation X which operates a plant in State B pays the required fee or tax to the secretary of state. Corporation X is taxable in State B.

(D) Example: State A has a Corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based upon its business activity in the state but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax.

(18) Taxable in Another State. The second test, that of section 32.200 (Article IV.3(2)), RSMo, applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of the business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of P.L. 86-272, 15 U.S.C.A. Sections 381–385. In the case of any state as defined in section 32.200 (Article IV.1(8)), RSMo, other than a state of the United States or political subdivision of that state, the determination of whether that state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standard applicable to a state of the United States applies in that state. If jurisdiction is otherwise present, that state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States. Example: Corporation X is actively engaged in manufacturing farm equipment in State A and in Foreign Country B. Both State A and Foreign Country B impose a net income tax but Foreign Country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and Foreign Country B.

(19) Apportionment Formula. All business income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in 32.200 (Article IV.9), RSMo. The elements of the apportionment formula are the property factor (see sections (20)–(24) of this rule), the payroll factor (see sections (34)–(41) of this rule) and the sales



factor (see sections (42)–(46) of this rule) of the trade or business of the taxpayer.

(20) Property Factor – In General. The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of that trade or business. The term real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment and other real and tangible personal property but does not include coin or currency. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor (see sections (31)–(33) of this rule).

(21) Property Factor – Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventory type goods in process) shall be excluded from the factor until that property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale or the lapse of an extended period of time (normally five (5) years) during which the property is held for sale.

(A) Example: Taxpayer closed its manufacturing plant in State X and held the property for sale. The property remained vacant until its sale one (1) year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

(B) Example: Same as subsection (21)(A) of this rule except that the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold.

(C) Example: Taxpayer closed its manufacturing plant and leased the building under a five (5)-year lease. The plant is included in the property factor until the commencement of the lease.

(D) Example: The taxpayer operates a chain of retail grocery stores. Taxpayer closed Store A, which was then remodeled into three (3) small retail stores such as a dress shop, dry cleaning and barber shop, which were leased to unrelated parties. The property is removed from the property factor on the date the remodeling of Store A commenced.

(22) Property Factor – Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor used in returns for prior years in the return for the current year, the taxpayer shall disclose the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under section 32.200 (Article IV), RSMo of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, in its return to this state, the taxpayer shall disclose the nature and extent of the variance.

(23) Property Factor – Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to whom it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property, such as construction equipment, trucks or leased electronic equipment, which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor or the state to which the employee's compensation is assigned under that payroll factor or in the numerator of the state in which the automobile is licensed.

(24) Property Factor – Valuation of Owned Property. Property owned by the taxpayer shall be valued at its original cost. As a general rule, original cost is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements and partial disposition, by reason of sale, exchange, abandonment, and the like.

(A) Example: The taxpayer acquired a factory building in this state at a cost of five hundred thousand dollars ($500,000) and eighteen (18) months later expended one hundred thousand dollars ($100,000) for major remodeling of the building. Taxpayer filed its return for the current taxable year on the calendar-year basis. Depreciation deduction in the amount of twenty-two thousand dollars ($22,000) was claimed on the building for its return for the current taxable year. The value of the building includable in the numerator and denominator of the property factor is six hundred thousand dollars ($600,000) as the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor.

(B) Example: During the current taxable year, X Corporation merges into Y Corporation in a tax-free reorganization under the *Internal Revenue Code* (IRC). At the time of the merger, X Corporation owns a factory which X built five (5) years earlier at a cost of one (1) million dollars. X has been depreciating the factory at the rate of two percent (2%) per year, and its basis in X's hands at the time of the merger is nine hundred thousand dollars ($900,000). Since the property is acquired by Y in a transaction in which, under the IRC, its basis in Y's hands is the same as its basis in X's, Y includes the property in Y's property factor at X's original cost, without adjustment for depreciation,

that is one (1) million dollars.

(C) Example: Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under Section 334(b)(2) of the 1954 IRC (that is, stock possessing eighty percent (80%) control is purchased and liquidated within two (2) years). Under these circumstances, Y's cost of the assets is the purchase price of the X stock prorated over the X assets.

(D) If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of the acquisition by the taxpayer.

(E) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

(F) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

(25) Property Factor — Valuation of Rented Property. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer (see sections (61) and (62) of this rule for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate).

(26) Subrentals. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing that income. Accordingly there is no reduction in its value.

(A) Example: The taxpayer receives subrents from a baker's concession in a food market operated by the taxpayer. Since the subrents are business income, they are not deducted from rent paid by the taxpayer for the food market.

(B) Example: The taxpayer rents a five (5)-story office building primarily for use in its multistate business, uses three (3) floors for its offices and subleases two (2) floors to various other businesses and persons such as professional people, shops and the like. The rental of the two (2) floors is incidental to the operation of the taxpayer's trade or business. Since the subrents are business income, they are not deducted from the rent paid by the taxpayer.

(C) Example: The taxpayer rents a twenty (20)-story office building and uses the lower two (2) stories for its general corporation headquarters. The remaining eighteen (18) floors are subleased to others. The rental of the eighteen (18) floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. Since the subrents are nonbusiness income, they are to be deducted from the rent paid by the taxpayer.

(27) Annual rental rate is the amount paid as rental for property for a twelve (12)-month period (that is, the amount of the annual rent). Where property is rented for less than a twelve (12)-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of twelve (12) or more months and the current tax period covers a period of less than twelve (12) months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than twelve (12) months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(A) Example: Taxpayer A which ordinarily files its returns based on a calendar year is merged into taxpayer B on April 30. The net rent paid under a lease with five (5) years remaining is two thousand five hundred dollars ($2,500) a month. The rent for the tax period January 1 to April 30 is ten thousand dollars ($10,000). After the rent is annualized, the net rent is thirty thousand dollars ($30,000) ($2,500 × 12).

(B) Example: Same facts as in subsection (27)(A) of this rule except that the lease would have terminated on August 31. In this case, the annualized net rent is twenty thousand dollars ($20,000) ($2,500 × 8).

(28) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part of that property, whether designated as a fixed sum or money, or as a percentage of sales, profits or otherwise. Example: A taxpayer, pursuant to the terms of a lease, pays a lessor one thousand dollars ($1,000) per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of four hundred thousand dollars ($400,000). The annual rent is sixteen thousand dollars ($16,000) – (($12,000) plus one percent (1%) of four hundred thousand dollars ($400,000) or four thousand dollars ($4,000)); and

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are require to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, and the like. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

1. Example: A taxpayer, under the terms of a lease, pays the lessor twelve thousand dollars ($12,000) a year rent plus taxes in the amount of two thousand dollars ($2,000) and interest on a mortgage in the amount of one thousand dollars ($1,000). The annual rent is fifteen thousand dollars ($15,000).

2. Example: A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was one thousand dollars ($1,000) of which seven hundred dollars ($700) was for the use of storage space and three hundred dollars ($300) for inventory insurance, handling and shipping charges, and cash on delivery collections. The annual rent is seven hundred dollars ($700).

(29) Annual rent does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles and the like.

(30) Leasehold improvements, for the purposes of the property factor, shall be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(31) Property Factor — Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and

ending of the tax period. However, the director of revenue may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(32) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period. Example: The monthly value of the taxpayer's property was as follows:

January	$ 2,000
February	$ 2,000
March	$ 3,000
April	$ 3,500
May	$ 4,500
June	$ 10,000
July	$ 15,000
August	$ 17,000
September	$ 23,000
October	$ 25,000
November	$ 13,000
December	$ 200
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$$\frac{\$120,000}{12} = \$10,000$$

(33) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of that property as set forth in sections (25)–(30) of this rule.

(34) Payroll Factor – In General. The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(35) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report that compensation under the method for unemployment compensation purposes. The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.

(A) Example: The taxpayer uses some of its employees in the construction of a storage building which, upon completion, is used in the regular course of taxpayer's trade or business. The wages paid to those employees are treated as a capital expenditure by the taxpayer. The amount of those wages is included in the payroll factor.

(B) Example: The taxpayer owns various securities which it holds as an investment separate and apart from its trade or business. The management of the taxpayer's investment portfolio is the only duty of Mr. X, an employee. The salary paid for Mr. X is excluded from the payroll factor.

(36) The term compensation means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services; provided, that those amounts constitute income to the recipient under the federal IRC. In the case of employees not subject to the federal IRC (for example, those employed in foreign countries), the determination of whether the benefits or services would constitute income to the employees shall be made as though those employees are subject to the federal IRC.

(37) The term employee means any officer of a corporation, or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally a person will be considered to be an employee if s/he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act (FICA); except that, since certain individuals are included within the term, employees in FICA who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of FICA is not an employee for purposes of this rule.

(38) Return Consistency. In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under section 32.200 (Article IV), RSMo of this the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(39) Payroll Factor – Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, is included in the denominator of the payroll factor. Example: A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition the taxpayer has other employees whose services are performed entirely in State C where the taxpayer is immune from taxation by P.L. 86-272. As to these latter employees, the compensation will be assigned to State C where their services are performed (that is, included in the denominator – but not the numerator – of the payroll factor) even though the taxpayer is not taxable in State C.

(40) Payroll Factor – Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in section 32.200 (Article IV.14.), RSMo to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report the compensation under that

method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under sections (34)–(41) of this rule. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(41) Payroll Factor — Compensation Paid in This State. Compensation is paid in this state if any one (1) of the following tests, applied consecutively, are met:

(A) The employee's service is performed entirely within the state;

(B) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service which is temporary or transitory in nature or which is rendered in connection with an isolated transaction; and

(C) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state if —

1. The employee's base of operations is in this state. The term base of operations is the place of more or less permanent nature from which the employee starts his/her work and to which s/he customarily returns in order to receive instructions from the taxpayer or communications from his/her customers or other persons or to replenish stock or other materials, repair equipment or perform any other functions necessary to the exercise of his/her trade or profession at some other point(s);

2. There is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

3. The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state. The term place from which the service is directed or controlled refers to the place from which the power to direct or control is exercised by the taxpayer.

(42) Sales Factor — In General. Section 32.200 (Article IV.1(7)), RSMo defines the term sales to mean all gross receipts of the taxpayer not allocated under section 32.200 (Article IV.5.–8.), RSMo. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of that trade or business. The following are rules for determining sales in various situations:

(A) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of those goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges or time-price differential charges incidental to those sales. Federal and state excise taxes (including sales taxes) shall be included as part of the receipts if those taxes are passed on to the buyer or included as part of the selling price of the product;

(B) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales include the entire reimbursed cost, plus the fee;

(C) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, sales include the gross receipts from the performance of those services including fees, commission and similar items;

(D) In the case of a taxpayer engaged in renting real or tangible property, sales include the gross receipts from the rental, lease or licensing the use of the property;

(E) In the case of a taxpayer engaged in the sale, assignment or licensing of intangible personal property, such as patents and copyrights, sales include the gross receipts from them; and

(F) If a taxpayer derives receipts from the sale of equipment use in its business, these receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(43) Exceptions. In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business.

(44) Return Consistency. In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under section 32.200 (Article IV), RSMo of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion of exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(45) Sales Factor — Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business except receipts excluded under section (64) of this rule.

(46) Sale Factor — Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade of business. All interest income, service, charges, carrying charges or time-price differential charges incidental to the gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(47) Sales of Tangible Personal Property in This State. Gross receipts from sales of tangible personal property (except sales to the United States government; see section (54) of this rule) are in this state if the property is —

(A) Delivered or shipped to a purchaser within this state regardless of the free on board (f.o.b.) point or other conditions of sale; or

(B) Shipped from an office, store, warehouse, factory or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(48) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state. Example: The taxpayer, with inventory in State A, sold one hundred thousand dollars ($100,000) of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. Twenty-five thousand dollars ($25,000) of the purchaser's order was shipped directly to purchaser's branch store in this state. The branch store in this state is the purchaser within this state with respect to twenty-five thousand dollars ($25,000) of the taxpayer's sales.

(49) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state. Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in another state for sale. All of taxpayer's products shipped to the purchaser's warehouse in this state is property delivered or shipped to a purchaser within this state.

(50) The term purchaser within this state shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state. Example: A taxpayer in this state sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state pursuant to purchaser's instructions. The sale by the taxpayer is in this state.

(51) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state. Example: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute, the produce is diverted to the purchaser's place of business in this state in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to this state.

(52) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory or other place of storage in this state. Example: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in this state. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in this state for approval and are filled by shipment from the inventory in this state. Since taxpayer is immune under P.L. 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to this state, the state from which the merchandise was shipped.

(53) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply: if the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state; and if the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state. Example: The taxpayer in this state sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in this state.

(54) Sales Factor – Sales of Tangible Personal Property to United States Government in This State. Gross receipts from sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller under the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(A) Example: A taxpayer contracts with General Services Administration to deliver X number of trucks which were paid for by the United States government. The sale is a sale to the United States government.

(B) Example: The taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for one (1) million dollars. The sale by the subcontractor to the prime contractor is not a sale to the United States government.

(55) Sales Factor – Sales Other Than Sales of Tangible Personal Property in This State. Section 32.200 (Article IV.17.), RSMo provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government); under that section, gross receipts are attributed to this state if the income-producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income-producing activity is performed in this state, based on costs of performance.

(56) Income-Producing Activity. The term income-producing activity applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. This activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income-producing activity includes, but is not limited to, the following:

(A) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(B) The sale, rental, leasing, licensing or other use of real property;

(C) The rental, leasing, licensing or other use of tangible personal property; and

(D) The sale, licensing or other use of intangible personal property.

(57) The mere holding of intangible personal property is not, of

itself, an income-producing activity.

(58) Costs of Performance. The term costs of performance means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(59) Receipts (other than from sales of tangible personal property), in respect to a particular income-producing activity, are in this state if the income-producing activity is performed –

(A) Wholly within this state; or

(B) Both inside and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(60) Special Rules. The following are special rules for determining when receipts from the income-producing activities described in the following are in this state:

(A) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state;

(B) Gross receipts from the rental, lease or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income-producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during that period. Example: Taxpayer is the owner of ten (10) railroad cars. During the year, the total of the days each railroad car was present in this state was fifty (50) days. The receipts attributable to the use of each of the railroad cars in this state are a separate item of income and shall be determined as follows:

$$\frac{(10 \text{ X } 50) = 500}{3650} \text{ X Total Receipts}$$

= Receipts Attributable to this State; and

(C) Gross receipts for the performance of personal services are attributable to this state to the extent those services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of those services shall be attributable to this state only if a greater proportion of the services was performed in the state, based on costs of performance. Usually, where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income-producing activity; in that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing the services in this state bears to the total time spent in performing the services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to the gross receipts. Personal service not directly connected with the performance of the contract, or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

1. Example: Taxpayer, a road show, gave theatrical performances at various locations in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state.

2. Example: Taxpayer, a public opinion survey corporation, conducted a poll by its employees in State X and in this state for the sum of nine thousand dollars ($9,000). The project required six hundred (600) man-hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man-hours were expended in this state. The receipt attributable to this state is:

$$\$3{,}000 \left(\frac{200}{600} \times \$9{,}000 = \$3{,}000 \right)$$

(61) Section 32.200 (Article IV.18.), RSMo provides that, if the allocation and apportionment provisions of section 32.200 (Article IV), RSMo do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the director of revenue may require, in respect to any part of the taxpayer's business activity, if reasonable –

(A) Separate accounting;

(B) The exclusion of any one (1) or more of the additional factors;

(C) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(62) Section 32.200 (Article IV.18.), RSMo permits a department from the allocation and apportionment provisions of section 32.200 (Article IV), RSMo only in limited and specific cases. Section 32.200 (Article IV.18.), RSMo may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in section 32.200 (Article IV), RSMo. In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics etc., the sections of this rule in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors. Nothing in section 32.200 (Article IV.18.), RSMo or in sections (61)–(64) of this rule shall preclude the director of revenue from establishing appropriate procedures under section 32.200 (Article IV.10.–17.), RSMo for determining the apportionment factors for these industries, but those procedures shall be applied uniformly.

(63) Special Rules – Property Factor. The following special rules are established in respect to the property factor of the apportionment formula:

(A) If the subrents taken into account in determining the net annual rental rate under sections (25)–(30) of this rule produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the director of revenue or requested by the taxpayer. In no case, however, shall that value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. Example: The taxpayer rents a ten (10)-story building at an annual rental rate of one (1) million dollars.

Taxpayer occupies two (2) stories and sublets eight (8) stories for one (1) million dollars a year. The net annual rental rate of the taxpayer must not be less than two-tenths (2/10) of the taxpayer's annual rental rate for the entire year or two hundred thousand ($200,000); and

(B) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for that property shall be determined on the basis of a reasonable market rental rate for the property.

(64) Special Rules — Sales Factor. The following special rules are established in respect to the sales factor of the apportionment formula:

(A) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded;

(B) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from transactions such as the sale of office furniture, business automobiles, and the like; and

(C) Where the income-producing activity in respect to business income from intangible personal property can be readily identified, that income included in the denominator of the sales factor and, if the income-producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income-producing activity can be readily identified in respect to interest income received on deterred payments on sales of tangible property (subsection (42)(A) of this rule) and income from the sale, licensing or other use of intangible personal property (subsection (56)(D) of this rule). Where business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, that income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends and interest shall be excluded from the denominator of the sales factor.

(65) Single Trade or Business. The determination of whether the activities of the taxpayer constitute a single trade or business or more than one (1) trade or business will be established by the facts in each case. In general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the segments under consideration are integrated with, dependent upon or contribute to each other and the operations of the taxpayer as a whole. The following factors are considered to be good indicia of a single trade or business and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business:

(A) Same Type of Business. A taxpayer is generally engaged in a single trade or business when all of its activities are in the same general line. For example, a taxpayer which operates a chain of retail grocery stores will almost always be engaged in a single trade or business;

(B) Steps in a Vertical Process. A taxpayer is almost always engaged in a single trade or business when its various divisions or segments are engaged in different steps in a large, vertically structured enterprise. For example, a taxpayer which explores for and mines copper ores; concentrates, smelts and refines the copper ores; and fabricates the refined copper into consumer products in engaged in a single trade or business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the taxpayer's executive offices; and

(C) Strong Centralized Management. A taxpayer which might otherwise be considered as engaged in more than one (1) trade or business is properly considered as engaged in one (1) trade or business when there is a strong central management, coupled with the existence of centralized departments for functions, such as financing, advertising, research or purchasing. Thus, some conglomerates may properly be considered as engaged in only one (1) trade or business when the central executive officers are normally involved in the operations of the various divisions and there are centralized offices which perform for the divisions the normal matters which a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising or financing.

(66) Combined Reports Prohibited. Returns which combine and apportion the taxable income of more than one (1) corporation are prohibited, except to the extent that they satisfy the requirements of section 143.431.3., RSMo.

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.32.200-IV was first filed Dec. 30, 1975, effective Jan. 9, 1976. Amended: Filed Feb. 24, 1984, effective June 11, 1984. Amended: Filed July 2, 1985, effective Oct. 11, 1985. Amended: Filed Oct. 8, 1986, effective Jan. 30, 1987.*

**Original authority: 143.961, RSMo 1972.*

***In re Kansas City Star Co.**, 142 SW2d 1029 (1940). Trial court did not err by rejection offered finding that state auditor had promulgated a rule during the years 1934, 1935 and 1936 declaring the total net income of manufacturing and business companies subject to income tax unless they had a branch house or capital investment outside the state. This rule had been promulgated under former Missouri St. Ann, section 10115, but subsequently overturned by Supreme Court.*

12 CSR 10-2.076 Allocation and Apportionment (Beginning on or After January 1, 2020)

PURPOSE: This rule interprets sections 143.431 and 143.455, RSMo for purposes of the apportionment and allocation of a corporate taxpayer's income where that taxpayer is taxable in another state.

(1) Income Derived from Sources Within this State. On or after January 1, 2020, a corporation's income derived from sources within Missouri is its federal taxable income allocated to Missouri or apportioned to Missouri pursuant to section 143.455, RSMo. Section 143.455, RSMo replaces all methods and tests previously used in Missouri to apportion and allocate corporate income, including the 'source of income test' and the Multistate Tax Compact three-factor method.

(2) Definitions.

(A) "Allocation" refers to the assignment of a portion of net

income to a particular state. Any taxpayer subject to the taxing jurisdiction of this state shall assign all of its nonapportionable income within or without this state in accordance with sections 143.455.5.-143.455.9., RSMo.

(B) "Apportionment" refers to the division of apportionable income between states by the use of a formula containing one (1) or more apportionment factors.

(C) "Director" or "Director of Revenue" shall mean the Missouri Director of Revenue or his/her duly authorized agent or designee.

(D) "Franchise tax," as that term is used in section 143.455.4., RSMo and in this regulation, means a tax, or a portion of a tax, charged for the privilege of doing business in a state.

(E) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital in a transaction which produces apportionable income in which the income or loss is recognized under the *Internal Revenue Code*, and, where the income of foreign entities is included in apportionable income, amounts which would have been recognized under the *Internal Revenue Code* if the relevant transactions or entities were in the United States. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold.

(F) "Net Income," for purposes of section 143.455, RSMo, means the taxpayer's federal taxable income, net of Missouri additions, subtractions and deductions; except, that in section 143.455.10., RSMo the phrase "net income" refers to that portion of the taxpayer's federal taxable income, net of Missouri additions, subtractions, and deductions which also constitutes apportionable income.

(G) "Petition" or "Petitioning," as those terms are used in section 143.455.13.(2)-(3), RSMo, means the filing of written or electronic document(s) with the director at least sixty (60) days before the end of the tax year to which alternative apportionment is sought to apply, in the manner prescribed, and containing the following information:

1. The name and tax identification number of the taxpayer seeking alternative apportionment;

2. The name, telephone number, email address, and mailing address of each individual filing the petition on behalf of the taxpayer;

3. A power of attorney form (Form 2827) signed by an officer of the corporation authorizing the person(s) named in paragraph (2)(G)2. above to serve as an authorized agent with respect to any of the tax years to which the alternative apportionment may apply and all previous tax years that may be discussed in connection with the petition;

4. A statement describing with particularity the alternative apportionment method sought;

5. A statement setting forth the facts and arguments from the facts to the conclusion that the ordinary allocation and apportionment provisions of section 143.455, RSMo do not fairly represent the extent of the corporation's income applicable to this state;

6. A statement setting forth the facts and arguments from the facts to the conclusion that the alternative apportionment method sought by the taxpayer is reasonable;

7. A Missouri tax return for the first tax year the alternative apportionment method is to be applied, completed using the ordinary apportionment and allocation provisions of section 143.455, RSMo, and prepared using reasonably estimated figures; and

8. A Missouri tax return for the first tax year the alternative apportionment method is to be applied, completed using the alternative apportionment method sought, and prepared using reasonably estimated figures.

(H) "Receipts" has the meaning given in section 143.455.3.(6), RSMo, with the following clarifications:

1. Receipts from the maturity of a bond or other debt instrument are excluded from the definition of "receipts" used in section 143.455.3.(6), RSMo;

2. Receipts from the sale or exchange of a security are excluded from the definition of "receipts" used in section 143.455.3.(6), RSMo, even if the sale or exchange was made as part of a corporation's regular business; and

3. Receipts from the sale or exchange of currency, including foreign currencies or cryptocurrencies, are excluded from the definition of "receipts" used in section 143.455.3.(6), RSMo.

(I) "Receipts Factor" means the fraction stated in section 143.455.10., RSMo, the numerator of which is the total receipts of the corporation in Missouri during the tax period and the denominator of which is the total receipts of the corporation everywhere during the tax period.

(J) "Securities," means any interest or instrument commonly treated as a security as well as other instruments which are customarily sold in the open market or on a recognized exchange, including, but not limited to, transferable shares of a beneficial interest in any corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness, accounts receivable and notes receivable, cash and cash equivalents including foreign currencies, and repurchase and futures contracts.

(K) "Taxpayer" or "Entity" means any individual, corporation, partnership, firm, association, or governmental unit.

(L) "Ultimate beneficiary of the service," as that term is used in section 143.455.12.(1)(c), RSMo and except for bartering or similar in-kind transactions, means the entity that receives benefit or value from, but does not also receive monetary or credit-based payment (other than refunds, cashback, or discount-equivalents) in direct connection with, the service at issue. Examples of the ultimate beneficiary of the service include:

1. For entertainment services, the individual(s) viewing, interacting with, experiencing, or otherwise deriving entertainment value from such services;

2. For education services, the individual(s) receiving instruction, teaching, coaching, or lectures from the education provider, regardless of the medium used to transmit such educational content (e.g. telephonically or by internet or mail);

3. For investment advising or investment management services, the location of the ultimate investor, determined by ignoring investment intermediaries such as investment funds; and

4. For advertising services, the entities which have their products, services, or messages advertised through the provider of advertising services.

(3) Apportionable Income. All income is presumed to be apportionable unless it is clearly nonapportionable under the *U.S. Constitution* or the laws of this state. Sections 143.455.5. through 143.455.9., RSMo provide for the allocation of certain categories of income only if that income is nonapportionable. In general all transactions and activities of the taxpayer which are dependent upon, or contribute to, the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, or will constitute integral parts of, a trade or business. Income from such

transactions and activities is apportionable income, although the concept of apportionable income extends to all income of the taxpayer unless nonapportionable.

(4) Accounting Terms and Classification Conventions. The categories and terms to describe income items used in financial or other forms of accounting, or as conventions by any taxpayer or industry, are not conclusive in determining whether any item of income constitutes apportionable or nonapportionable income. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, and the like, is not conclusive in determining whether income is apportionable or nonapportionable income.

(5) Taxable in Another State. For purposes of section 143.455.4.(2), RSMo, another state has jurisdiction to subject the taxpayer to a net income tax in the following circumstances. The circumstances provided are non-exclusive and a taxpayer may be subject to a net income tax in another state even if it fails to meet any of the following:

(A) The taxpayer has its commercial domicile in another state; or

(B) The taxpayer derives income from a part of its unitary business in another state, and that taxpayer is not entitled to the protections of the *Interstate Income Act of 1959* with respect to that state.

Even if a state cannot impose a tax on a taxpayer's net income by operation of the *Interstate Income Act of 1959*, a taxpayer is still taxable in that state if the taxpayer is subject to a franchise measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax in that state. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in the other state pertaining to the production of nonapportionable income or business activities relating to a separate trade or business not taxable by that state under the *U.S. Constitution*.

(6) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which the same item of income has been classified as apportionable income or nonapportionable income in returns for prior years, the taxpayer shall disclose in an attachment to the return for the current year the nature and extent of the modification.

(7) Taxable In Another State — Reporting. Any taxpayer which asserts that it is subject to one (1) of the taxes generally described in section 143.455.4., RSMo in another state shall furnish to the director, upon his/her request, evidence to support the assertion. The director may request proof the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce proof may be taken into account in determining whether the taxpayer in fact is subject to tax in another state. If the taxpayer pays a minimal fee for qualification, organization, or for the privilege of doing business in the state, but does not actually engage in business activity in that state, or does actually engage in some business activity, not sufficient for income tax, franchise tax, or stock tax nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to tax in another state for purposes of section 143.455.4., RSMo.

(A) Example: State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the fifty-dollar ($50) minimum tax, although it carries on no business activity in State A. Corporation X is not taxable in State A.

(8) Taxability. The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income, franchise, or stock tax even though every state does not do so. In states which do not impose such taxes, other types of taxes, fees, or even penalties may be imposed as a substitute for an income, franchise, or stock tax. Therefore, only those taxes generally described in section 143.455.4., RSMo, which are essentially revenue raising, rather than penalties or occupational/business licenses that are not essentially revenue raising, shall be considered in determining whether the taxpayer is subject to one of the taxes generally described in section 143.455.4., RSMo, in another state. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of P.L. 86-272, 15 USCA Sections 381-385, and is further prohibited by federal law from imposing a franchise tax measured by net income or for the privilege of doing business, or a corporate stock tax.

(A) Example: State A requires all nonresident corporations which qualify or register in State A to pay to the secretary of state an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation, and the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of fifty dollars ($50) and a maximum fee of five hundred dollars ($500). Failure to pay the tax bars a corporation from utilizing the state courts for enforcement of its rights. State A also imposes a corporation income tax. Nonresident Corporation X is qualified in State A and pays the required fee to the secretary of state but does not carry on any business activity in State A (although it may utilize the courts of State A). Corporation X is not taxable in State A.

(B) Example: Same facts as in the previous subsection except that Corporation X is subject to and pays the corporation income tax. Payment is *prima facie* evidence that Corporation X is subject to the net income tax of State A and is taxable in State A.

(C) Example: State B requires all nonresident corporations qualified or registered in State B to pay to the secretary of state an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of outstanding capital stock, surplus, and undivided profits. The fee or tax base attributable to State B is determined by a three-factor apportionment formula. Nonresident Corporation X which operates a plant in State B pays the required fee or tax to the secretary of state. Corporation X is taxable in State B.

(D) Example: State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based upon its business activity in the state but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax.

(9) Receipts Factor. Generally, all gross receipts of a taxpayer that are received from transactions and activity in the regular course of the taxpayer's trade or business are considered receipts for purposes of the receipts factor. Where a taxpayer's entire activity in the regular course of trade or business is

composed of hedging transactions or the disposition of cash or securities, such that the denominator of the receipts factor would be zero, the total receipts factor shall be one hundred percent (100%); in such instances, taxpayers are invited to apply for alternative apportionment pursuant to section 143.455.13., RSMo. Exclusion of an item from the definition of "receipts" is not determinative of its character as apportionable or nonapportionable income. The following are additional rules for determining "receipts" in various situations:

(A) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "receipts" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances;

(B) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

1. Example: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route, the produce is diverted to the purchaser's place of business in this state in which state the taxpayer is subject to tax. Receipts from this sale by the taxpayer are attributed to this state;

(C) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "receipts" includes the entire reimbursed cost plus the fee;

(D) In the case of a taxpayer engaged in providing services, such as the performance of equipment service contracts or research and development contracts, "receipts" includes the gross receipts from the performance of such services, including fees, commissions, and similar items;

(E) In the case of a taxpayer engaged in the sale of equipment used in the taxpayer's trade or business, where the taxpayer disposes of the equipment under a regular replacement program, "receipts" includes the gross receipts from the sale of this equipment. For example, a truck-based delivery company that owns a fleet of trucks and sells its trucks under a regular replacement program the gross receipts from the sale of the trucks would be included in "receipts"; and

(F) For purposes of determining the receipts factor, receipts are presumed not to include: 1) damages and other amounts received as the result of litigation; 2) where the taxpayer is an agent of another, property acquired by that agent on behalf of another; 3) tax refunds and other tax benefit recoveries; 4) contributions to capital; 5) income from forgiveness of indebtedness; 6) amounts realized from exchanges of inventory that are not recognized by the *Internal Revenue Code*; or 7) amounts realized as a result of factoring accounts receivable recorded on an accrual basis; and 8) repayment of loan principal.

(10) Ultimate Beneficiary Approximation. In the event that the ultimate beneficiary is a corporation or other entity that owns, or operates in, locations in multiple states, and the extent to which the ultimate beneficiary is located in Missouri is not reasonably determinable —

(A) The extent to which the ultimate beneficiary is located in Missouri may be reasonably approximated as the ratio of the ultimate beneficiary's locations in Missouri to the number of its locations throughout the United States;

(B) If the ratio in subsection (10)(A) above is not reasonably determinable, the extent to which that ultimate beneficiary is located in Missouri may be approximated as the ratio of one to the number of states in which the ultimate beneficiary operates; and

(C) If the ratio in subsection (10)(B) is not reasonably determinable, the extent to which the ultimate beneficiary is located in Missouri may be approximated as fifty percent (50%). A taxpayer shall not be subject to an addition to tax for negligence in relying upon this approximation.

(11) Alternative Apportionment by the Director. Consistent with section 143.455.13., RSMo, the director may adjust a taxpayer's return to utilize, or if no return was filed the director may utilize in estimating Missouri taxable income, an alternative apportionment method in order to equitably allocate and apportion the corporation's income. In this event, a taxpayer adversely affected by this determination challenges such a determination by raising it as an issue in the taxpayer's protest of a notice of deficiency under section 143.631, RSMo, or refund denial under section 143.841, RSMo. Whether the director has proven the requirements of section 143.455.13.(3)(a)-(b), RSMo, by a preponderance of the evidence is a determination within the director's discretion.

(12) Petition for Alternative Apportionment by the Taxpayer. A taxpayer may seek alternative apportionment under section 143.455.13.(2), RSMo by filing a petition in the manner prescribed on the director's website or latest corporate income tax return instructions. A petition is subject to denial if it fails to comport with the definition of petition set forth in this regulation. A denial by the director may be appealed to the Administrative Hearing Commission consistent with section 621.050, RSMo.

(13) Transactions and Activity in the Regular Course of the Taxpayer's Trade or Business. For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities are not in the regular course of the taxpayer's trade or business. Examples of income from activity in the regular course of the taxpayer's trade or business include, but are not limited to:

(A) Income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business; and

(B) Income from the sale of property used in the production of apportionable income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(14) Unitary Business of the Taxpayer.

(A) A unitary business is a single economic enterprise that is made up either of separate parts of a single entity or of a commonly controlled group of entities that are sufficiently interdependent, integrated, or interrelated through their activities so as to provide synergy, mutual benefit, the sharing

or exchange of value among them, or a significant flow of value to the separate parts of the economic enterprise. This sharing, exchange, or flow of value may also be described as requiring that the operation of one (1) part of the business be dependent upon, or contribute to, the operation of another part of the business. If the activities of one (1) business either contributes to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business. A single taxpayer may have more than one (1) unitary business.

(B) A unitary business may exist within a single taxpayer or among a commonly controlled group of taxpayers. A taxpayer's formal business organization structure is not determinative of a taxpayer's unitary business.

(C) The purpose of this subsection is to clarify the concept of "unitary business" to aid in determining a taxpayer's apportionable income. A taxpayer's apportionable income includes, but is not necessarily limited to, the income from one (1) or more unitary business(es) of the taxpayer, any part of which is conducted within Missouri. An item of income is from a unitary business if it is described by either sections 143.455.3.(1)(a)a. or 143.455.3.(1)(a)b., RSMo, but the concept of unitary business income is not necessarily limited to income described in those statutory provisions.

(D) The factors of functional integration, centralization of management, and economies of scale, alone or in combination, provide evidence of whether a set of business activities constitutes a unitary business. Further indicators providing evidence of a unitary business include business activities in the same line of business or business activities which are steps in a vertical business process.

(E) Nothing in this section should be construed to create a "combined reporting" requirement under which a taxpayer is obligated to include in its consolidated group on its consolidated Missouri tax return all entities with which the taxpayer has a unitary business relationship.

(F) A taxpayer's unitary business is presumed to include, but is not presumptively limited to, the industry description within the North American Industry Classification System corresponding to the Principal Business Activity Code(s) reported on the taxpayer's federal income tax return or related filings.

AUTHORITY: section 143.961, RSMo 2016, and section 143.455, RSMo Supp. 2020. Original rule filed Sept. 8, 2020, effective March 30, 2021.

**Original authority: 143.455, RSMo 2018 and 143.961, RSMo 1972.*

12 CSR 10-2.080 Domestic International Sales Corporations

PURPOSE: The director of revenue has the responsibility of administering the Missouri income tax laws and, in that capacity, is required to interpret the taxing statute. This rule sets forth the interpretation of Chapter 143, RSMo by the Missouri Department of Revenue regarding income taxation of domestic international sales corporations.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Any corporation which satisfies the requirements of Section 992 of the *Internal Revenue Code* of 1986 for a taxable year and is excepted from the imposition of federal income taxes as a domestic international sales corporation (DISC) shall not be subject to the Missouri income tax on corporations for that same taxable year.

AUTHORITY: section 143.961, RSMo 2016. Original rule filed July 13, 1976, effective Oct. 11, 1976. Amended: Filed July 13, 2023, effective Feb. 29, 2024.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.085 Credit for New or Expanded Business Facility
(Rescinded April 30, 2022)

AUTHORITY: section 135.150, RSMo 1986. Original rule filed Jan. 15, 1985, effective June 13, 1985. Rescinded: Filed Oct. 12, 2021, effective April 30, 2022.

12 CSR 10-2.090 Computation of Federal Income Tax Deduction for Consolidated Groups

PURPOSE: This rule sets out the formula that will be used to determine the federal income tax deduction of a member of the affiliated group for each taxable year an affiliated group of corporations filed a federal consolidated income tax return and did not file a Missouri consolidated income tax return.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) For each taxable year an affiliated group of corporations filing a federal consolidated income tax return does not file a Missouri consolidated income tax return, the federal income tax deduction of a member of the affiliated group shall be determined by applying the formula set forth as follows:

(A) The group's consolidated federal income tax liability under Chapter 1 of the *Internal Revenue Code* (IRC) for the same taxable year for which the Missouri return is being filed after reduction for all credits on the return, except for the credit for the overpayment of any federal tax and the credits allowed by the IRC of 1986 by Section 31 (tax withheld on wages), Section 27 (taxes of foreign countries and possessions of the United States) and Section 34 (certain uses of gasoline and special fuels) shall be multiplied by a fraction, the numerator of which shall be the federal taxable income of the member in question and the denominator of which shall be the sum of the federal taxable incomes of each member of the consolidated group with a positive federal taxable income; and

(B) The product computed in subsection (1)(A) shall be multiplied by the apportionment factor of the member in

question calculated under section 143.455, RSMo, or such other apportionment factor as is computed under the apportionment method applicable to the member in question.

AUTHORITY: sections 143.431 and 143.961, RSMo 2016. Original rule filed Feb. 24, 1984, effective June 11, 1984. Amended: Filed Aug. 17, 1984, effective Dec. 13, 1984. Amended: Filed Nov. 9, 2023, effective May 30, 2024.*

**Original authority: 143.431, RSMo 1972, amended 2004, 2007, 2018, and 143.961, RSMo 1972.*

12 CSR 10-2.105 Report of Changes in Federal Income Tax Return

PURPOSE: Under the State Income Tax Law (section 143.011, RSMo), this rule establishes the proper procedures for reporting any change in the taxpayer's federal taxable income or federal income tax liability for the purpose of the determination of the correct state income tax liability.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) In General. If the taxpayer's federal taxable income or federal tax reported on their federal income tax return is changed, the taxpayer shall file an amended return with the Department of Revenue reflecting the final determination.

(2) Time of Notice. The taxpayer must report any change within ninety (90) days after the final determination of the change and pay any tax due. Interest is due pursuant to section 143.731, RSMo. Failure to pay the tax due within ninety (90) days will result in additions to tax of five percent (5%).

(3) Final Determination. For the purposes of this rule, the following shall be deemed a final determination:

(A) Payment of any additional federal income tax, not the subject of any other final determination described in subsections (3)(B)–(F) of this rule;

(B) The signing of a Federal Form 870 Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment or other IRS form consenting to the deficiencies, accepting any over-assessment shown on the form, or both. However, where the signature of an authorized representative of the IRS is also required, the final determination shall occur when the taxpayer receives notice of the signing by the IRS;

(C) The expiration of the ninety (90)-day time period (one hundred fifty (150)-day period in the case of notice addressed to a person outside the United States and the District of Columbia) within which a petition for redetermination may be filed with the United States Tax Court with respect to a statutory notice of deficiency issued by the IRS, if a petition is not filed with that court within that time;

(D) A closing agreement entered into with the IRS under Section 7121 of the *Internal Revenue Code* (IRC). The final determination shall occur when the taxpayer receives notice of the signing by the commissioner of internal revenue;

(E) A decision by the United States Tax Court, United States District Court, United States Court of Appeals, United States Court of Claims or the United States Supreme Court which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case; and

(F) The allowance of a tentative carryback adjustment in accordance with Section 6411 of the IRC based on a net operating loss carryback.

(4) Requirements for Reporting Federal Change. An amended return shall be filed as specified in section (5) reflecting and explaining all changes affecting the original return filed. In addition, a copy of the Summary of the Federal Revenue Agent's Report (commonly referred to as an RAR) using Form 886-A or Form 4549, a copy of a closing agreement entered into with the IRS under Section 7121 of the IRC or a copy of a final court decision, as appropriate, shall be submitted in support of the Report of Change.

(5) Amended Returns. If a taxpayer files an amended federal income tax return, an amended state income tax return reflecting the same changes shall be filed with the Department of Revenue. The amended tax return and any additional tax due shall be filed and paid within ninety (90) days after the amended return is filed with the IRS or within ninety (90) days of the final determination.

(6) Assessment. If a taxpayer fails to comply with the requirements of reporting a federal change as outlined in this rule, a notice of deficiency may be issued at any time within one (1) year after the director of revenue becomes aware of any change. The amount of any proposed assessment, set forth in the notice of deficiency, shall be limited to the changes outlined in the federal determination and how they affect Missouri taxable income. However, the limitations contained in this section shall not be construed to reduce the statute of limitations that would otherwise be applicable.

(7) Claim for Refund Period. A taxpayer may file a claim for refund not later than one (1) year and ninety (90) days after the date of final determination as specified in section (3) except as provided in subsections 143.801.5. and 6., RSMo. The claim shall be limited to the changes set forth in the federal determination. The limitations contained in this section shall not be construed to reduce the statute of limitations that would otherwise be applicable. Interest on a claim for refund filed after the ninety (90)-day period specified in section (2), will cease to accrue after the ninetieth day.

(8) The Federal Forms 886-A, Form 4549, and Form 870 Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment dated May 2, 2023, are incorporated by reference and made a part of this rule as published by the Internal Revenue Service, and available at www.irs.gov or Harry S Truman State Office Building, 301 West High Street, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: section 143.961, RSMo 2016. Original rule filed July 31, 1984, effective Jan. 12, 1985. Amended: Filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed Oct. 24, 1997, effective April 30, 1998. Amended: Filed May 15, 2023, effective Dec. 30, 2023.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.110 Penalty for Filing Incomplete or Misleading Income Tax Returns
(Rescinded December 26, 1985)

AUTHORITY: section 143.961, RSMo 1978. Original rule filed Aug. 13, 1984, effective Dec. 13, 1984. Rescinded: Filed July 23, 1985, effective Dec. 26, 1985.

12 CSR 10-2.115 Enterprise Zone Credit and Exemption
(Rescinded July 30, 1994)

AUTHORITY: section 135.250, RSMo 1986. Original rule filed Jan. 15, 1985, effective June 13, 1985. Rescinded: Filed Feb. 4, 1994, effective July 30, 1994.

12 CSR 10-2.120 Information at Source Reporting Requirements
(Rescinded July 30, 2018)

AUTHORITY: section 143.591, RSMo 1994. Original rule filed Jan. 15, 1985, effective June 13, 1985. Rescinded: Filed Jan. 18, 2018, effective July 30, 2018.

12 CSR 10-2.125 Cultural Contributions

PURPOSES: This rule establishes the requirements and procedures for claiming the deduction provided in section 143.141, RSMo for contributions of literary, musical, scholarly and artistic compositions.

(1) The itemized deduction authorized by section 143.141(3), RSMo for cultural contributions will be allowed if the following requirements are met:

(A) The taxpayer must itemize deductions on both the federal and Missouri returns for the tax year in which the cultural contribution is made;

(B) The not-for-profit agency or institution to which the contribution is made must be exempt from taxation as specified in section 501 of the *Internal Revenue Code* (IRC);

(C) The taxpayer must be the original creator of the literary, musical, scholarly or artistic composition which constitutes the cultural contribution;

(D) The cultural contribution must be appraised within one (1) year of donation by a qualified appraiser who is not a relative of the donor or donee as defined in Title 26, IRC section 168(e)(4)(D). The appraisal must contain a detailed description of the composition, the appraiser's name, address, phone number and be signed and dated by the appraiser under penalties of perjury;

(E) The appraisal must be attached to the income tax return and be accompanied by a sworn statement from the donor and donee which indicates acceptance, by both, of the fair market value fixed by the appraiser. The statement shall also show the actual date of the donation of the cultural contribution, the donor's address and telephone number and the address where the composition may be viewed, if applicable; and

(F) The cultural contribution and the appraisal are subject to review and approval by the Department of Revenue. The amount of the deduction for the cultural contribution shall not exceed the appraised value established in subsection (1)(E) reduced by any amount deducted from federal adjusted gross income attributable to the contribution. Those parts of the federal income tax return pertaining to that deduction shall be attached to the Missouri return.

AUTHORITY: section 143.591, RSMo 1994. Original rule filed Jan. 15, 1985, effective June 13, 1985.*

**Original authority: 143.591, RSMo 1972.*

12 CSR 10-2.130 Allocation of Taxable Social Security Benefits Between Spouses
(Rescinded March 30, 2024)

AUTHORITY sections 143.031, 143.111, and 143.181, RSMo 1994. Original rule filed Jan. 15, 1985, effective June 13, 1985. Rescinded: Filed Aug. 15, 2023, effective March 30, 2024.

12 CSR 10-2.135 Frivolous Returns

PURPOSE: This rule provides examples of misleading or incomplete returns and when the penalty for filing that return will be imposed.

(1) A penalty of up to five hundred dollars ($500) will be imposed for filing an incomplete or misleading income tax return. Any taxpayer(s) who files a misleading or incomplete return will be mailed a notice stating that fact. The notice will be sent, by regular mail, to the address on the return or the best address available. The taxpayer(s) will have ninety (90) days (one hundred fifty (150) days if the taxpayer(s) is outside the United States) from the date the notice is mailed to file a proper tax return. The date the notice is mailed will be the date of the letter unless shown to be otherwise by the taxpayer(s).

(2) The filing of a legitimate return will not abate the assessment after the expiration of the time period for filing a legitimate return. Some examples of misleading or incomplete returns which will incur the penalty are listed in this rule, but are not limited to these examples only:

(A) A return is filed on which the format has been changed without consent of the Missouri Department of Revenue;

(B) A return is filed which the taxpayer claims s/he cannot legally pay because the *United States Constitution* requires gold or silver standard and not federal reserve notes as legal tender;

(C) A return is filed on which the taxpayer claims to be a wage earner and refuses to pay or file a return because wages are not income;

(D) Any instance where the taxpayer fails to file or complete a return citing violation of his/her constitutional rights;

(E) A return is filed where the taxpayer lowers his/her income by discounting his/her income because of inflation or other factors; and

(F) Any return filed which does not meet the previous criteria but is determined by the Department of Revenue to be misleading or incomplete for any other reason.

AUTHORITY: section 143.773, RSMo 1994. Original rule filed Jan. 15, 1985, effective June 13, 1985. Amended: Filed Aug. 14, 1986, effective Nov. 28, 1986.*

**Original authority: 143.773, RSMo 1984.*

12 CSR 10-2.140 Partnership Filing Requirements

PURPOSE: This rule explains the circumstances under which a partnership return shall be filed and the general contents of that return.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) All partnerships, as defined in the *Internal Revenue Code* (IRC) section 761, which have a resident partner, or any income derived from sources in this state shall file a properly completed return. This return shall be filed regardless of whether the partnership has elected not to file for federal purposes pursuant to section 761 of the IRC.

(2) The return shall be made using Missouri Department of Revenue Form MO-1065 Partnership Return of Income. Each return shall have attached to it a copy of federal Form 1065 U.S. Return of Partnership Income and all its schedules, including K-1.

(3) An entity electing to be completely excluded from the partnership provisions of the IRC which has nonresident partners shall be required to file Form MO-1065 Partnership Return of Income containing only its name, address, and required signature and attach a copy of federal Form 1065 U.S. Return of Partnership Income and the statement required with that return for the first taxable year to which the exclusion applied.

(4) An entity electing to be completely excluded from the partnership provision of the IRC shall not file if it has no nonresident partners.

(5) The return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. Taxable year means a year or period which would be a taxable year if the partnership were subject to tax under sections 143.011–143.996, RSMo.

(6) The form MO-1065 Partnership Return of Income, dated May 5, 2023, is incorporated by reference and made a part of this rule as published by Missouri Department of Revenue, and available at www.dor.mo.gov or Harry S Truman State Office Building, 301 West High Street, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.

(7) The federal Form 1065 U.S. Return of Partnership Income, dated May 5, 2023, is incorporated by reference and made a part of this rule as published by Missouri Department of Revenue, and available at www.dor.mo.gov or Harry S Truman State Office Building, 301 West High Street, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 143.091, 143.401, and 143.581, RSMo 2016. Original rule filed July 11, 1985, effective Dec. 26, 1985. Amended: Filed May 15, 2023, effective Dec. 30, 2023.*

**Original authority: 143.091, RSMo 1972, amended 1989; 143.401, RSMo 1972; and 143.581, RSMo 1972.*

12 CSR 10-2.145 Regulation for Computation of Interest on Investment Tax Credit Carryback
(Rescinded October 30, 2002)

AUTHORITY: sections 143.601, 143.711 and 143.731, RSMo 1994. Original rule filed Oct. 1, 1985, effective Dec. 26, 1985. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-2.150 Tax Exempt Status of United States Government-Related Obligations

PURPOSE: This rule notifies the public of the exempt or nonexempt status of United States government obligations pursuant to section 143.121, RSMo.

(1) Obligations of the United States Government made exempt from income taxation by Missouri pursuant to 31 U.S.C. section 3124 are tax exempt.

(2) Obligations issued by the following United States government-related agencies are not tax-exempt: Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Export-Import Bank of United States, Farmers Home Administration, and the Washington Metropolitan Area Transit Authority. Additionally, Repurchase Agreements and New Communities Debentures are not tax-exempt.

(3) The identification of obligations by this regulation is not necessarily all-inclusive.

AUTHORITY: section 143.961, RSMo 2016. Original rule filed Dec. 23, 1985, effective May 29, 1986. Emergency amendment filed Dec. 2, 1992, effective Jan. 1, 1993, expired April 30, 1993. Emergency amendment filed April 14, 1993, effective May 1, 1993, expired Aug. 28, 1993. Amended: Filed Dec. 2, 1992, effective July 7, 1993. Amended: Filed June 2, 2025, effective Nov. 30, 2025.*

**Original authority: 143.961, RSMo 1972.*

*31 U.S.C. 3124, **Farmers & Traders State Bank v. Johnson**, 458 N.E. 2d 1365 (Ill. App. 4th Dist. 1984).*

12 CSR 10-2.155 Regulated Investment Companies

PURPOSE: This rule explains when a corporate or individual taxpayer may subtract or must add back income from a regulated investment company on its Missouri return.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The term regulated investment company (RIC or mutual fund), as used in this rule, shall mean an organization which meets the qualifications of, and has made the proper election required by, *Internal Revenue Code* (IRC) section 851.

(2) Pass Through of Exempt-Interest on United States Obligations. As used in this section, the term United States Obligations means those obligations described in section 143.121.3(1), RSMo. An RIC having income from United States Obligations may pass the exempt character of that income through to its shareholders as state income tax exempt-interest dividends. To the extent provided in this section, this exempt-interest is allowable as a modification on the shareholder's income tax return. The modification allowed will be the amount received by the shareholder as a state income tax exempt-interest dividend, less the amounts described in subsections (2)(A) and (B). A state income tax exempt-interest dividend means any dividend or part of a dividend paid by an RIC, attributable to United States Obligations (not including exempt-interest dividends as defined in *Internal Revenue Code* (section 852(b)(5))), and designated by the RIC as a state income tax exempt-interest dividend in a written notice mailed or otherwise sent (e.g., through electronic communication) to its shareholders not later than sixty (60) days after the close of its taxable year. The notice also must state the amount of interest paid or expense incurred by an RIC in the production of the state income tax exempt-interest dividends. The taxpayer's state income tax exempt-interest dividends shall be reduced by the amount of —

(A) The federal corporate dividend received deduction attributable to the state tax exempt-interest dividends; and

(B) Interest paid or expense incurred to produce the state tax exempt-interest dividends, to the extent that the interest paid or expense incurred equals or exceeds five hundred dollars ($500) and to the extent that such expenses would trigger a reduction in the subtraction modification under section 143.121.3(1), RSMo.

(3) A taxpayer claiming state income tax exempt-interest dividends for a tax year shall attach to that tax year's Missouri income tax return a copy of the year-end statement received from the RIC identifying all United States Obligations by issuer or a summary document indicating the percentage of dividends attributable to interest on United States Obligations. The percentage referred to in the preceding sentence shall be identical for every person who was a shareholder at any time during a calendar year, irrespective of whether that shareholder acquired or disposed of their interest during that year.

(4) Amounts excluded from a taxpayer's federal adjusted gross income or, in the case of a corporation, federal taxable income as exempt-interest dividends, as defined in IRC section 852(b)(5), must be included in determining Missouri taxable income pursuant to section 143.121.2(2), RSMo, subject to any reduction required by section 143.121.2(2), RSMo. The previous sentence shall not apply to the extent such exempt-interest dividends are derived from interest on obligations of the state of Missouri or any of its political subdivisions or authorities or interest described in section 143.121.3(1), RSMo.

(A) Example: An RIC with only individual shareholders declares and pays a federal exempt-interest dividend pursuant to IRC section 852(b)(5) of ten thousand dollars ($10,000) to all of its shareholders. The dividend is therefore exempt from federal income taxation. Two thousand dollars ($2,000) of the federal exempt-interest paid is attributable to the net interest earned by the RIC on obligations issued by Missouri and its political subdivisions. One thousand dollars ($1,000) of the federal exempt-interest dividend is attributable to the net interest earned on obligations of the territory of Puerto Rico, the interest on which, pursuant to federal law and section 143.121.3(1), RSMo, is exempt from Missouri income taxation. The remaining seven thousand dollars ($7,000) of the federal exempt-interest dividend is attributable to the net interest earned on obligations from other states, the interest on which is not excludable from Missouri taxable income. Assume that IRC section 265 did not prohibit any deduction related to the aforementioned interest amounts. An RIC may designate three thousand dollars ($3,000) of the federal exempt-interest dividend as a dividend which need not be included in Missouri taxable income. Each shareholder of the RIC may exclude thirty percent (30%) of their federal exempt-interest dividend (two thousand dollars ($2,000) plus one thousand dollars ($1,000) divided by ten thousand dollars ($10,000)) from Missouri taxable income by excluding such amount from federal adjusted gross income. The remaining seventy percent (70%) of the federal exempt-interest dividend is includable in Missouri taxable income as a Missouri addition modification by the shareholders of the RIC pursuant to section 143.121.2(2), RSMo.

AUTHORITY: section 143.961, RSMo 2016. Original rule filed Jan. 7, 1986, effective May 11, 1986. Emergency amendment filed Dec. 2, 1992, effective Jan. 1, 1993, expired April 30, 1993. Emergency amendment filed April 14, 1993, effective May 1, 1993, expired Aug. 28, 1993. Amended: Filed Dec. 2, 1992, effective July 8, 1993. Amended: Filed June 2, 2025, effective Nov. 30, 2025.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.160 State Income Tax Deduction Add-Back

PURPOSE: This rule lends guidance to taxpayers in determining the proportion of their state income taxes which must be added to Missouri adjusted gross income pursuant to section 143.141(1) and (2), RSMo.

(1) Background. Included in the Revenue Reconciliation Act of 1990 was a provision which required individuals with federal adjusted gross income over certain income thresholds to reduce the amount allowable for federal itemized deductions by three percent (3%) of the excess over that threshold (26 U.S.C. 68). Certain deductions such as medical expenses, investment interest and casualty, theft or wagering losses are not subject to this reduction. The threshold amounts are adjusted annually for inflation.

(2) Section 143.141, RSMo defines Missouri itemized deductions. This section allows a taxpayer who itemized at the federal level to elect to itemize at the state level. The state itemized deductions are those allowable by the federal government subject to certain modifications. One modification is that state income taxes included in federal itemized deductions must be subtracted to arrive at Missouri itemized deductions. Missouri does not allow state income taxes as an itemized deduction, where the IRS does allow state income taxes as an itemized deduction. Therefore, any state income tax included in federal itemized deductions must be eliminated to arrive at Missouri itemized deductions. For the remainder of this rule, this subtraction from federal itemized deductions will be referred to as an add-back. This term is used because when

itemized deductions are decreased Missouri taxable income is increased. Hence, taxpayer is actually adding state income taxes to federal adjusted gross income to arrive at Missouri taxable income.

(3) House Bill 1155, passed during the 86th General Assembly, changed the language in section 143.141(1) and (2), RSMo. Previously, taxpayers were required to add-back all state income taxes regardless of any reductions at the federal level. This law changed the language regarding the state income tax add-back to read that Missouri itemized deductions, which begin with federal itemized deductions, must be reduced by the proportional amount of those deductions representing any income taxes imposed by this state, another state of the United States or a political subdivision of the United States or the District of Columbia. This law is effective for all tax years beginning on or after January 1, 1993. Under this new law, the amount of state income taxes added to Missouri adjusted gross income will be the ratio of state income taxes (numerator) over total reducible itemized deductions (denominator) multiplied by the total reduction in federal itemized deductions; this product is then subtracted from the pre-reduction total of state income taxes shown on the federal return.

(A) Example 1: Assume the federal threshold amounts are $100,000 for married filing joint and $50,000 for married filing separate. Taxpayer's filing status is married filing joint. federal adjusted gross income (AGI) $250,000

Federal AGI in excess of $100,000 limit $250,000 – $100,000 = $150,000

Three percent (3%) of amount in excess of $100,000 $150,000 × 3% = $4,500

Total itemized deductions $20,000
$10,000 of state income taxes (reducible)
$10,000 in charitable contributions (reducible)

Allowable federal itemized deductions $20,000 – $4,500 = $15,500

Ratio of state income taxes to total reducible federal itemized deductions $10,000 ÷ $20,000 = 50%

Portion of reduction of federal itemized deductions attributable to state income taxes $4,500 × 50% = $2,250

State income tax added back (amount of allowable federal itemized deductions attributable to state income taxes) $10,000 – $2,250 = $7,750

Missouri itemized deductions $15,500 – $7,750 = $7,750

(B) Example 2: Assume the federal threshold amounts are $100,000 for married filing joint and $50,000 for married filing separate. Taxpayer's filing status is married filing joint. Taxpayer's federal adjusted gross income (AGI) is $80,000. Taxpayer has $30,000 in itemized deductions ($10,000 from each; state income taxes, charitable contributions and medical expenses). Because taxpayer's federal AGI is below $100,000, his/her federal itemized deductions will not be reduced. Therefore, in calculating Missouri itemized deductions, the full amount of state income taxes ($10,000) which were included in federal itemized deductions, must be added-back to arrive at Missouri itemized deductions ($30,000 – $10,000 = $20,000).

(C) Example 3. Assume the federal threshold amounts are $100,000 for married filing joint and $50,000 for married filing separate. Taxpayer's filing status is married filing joint.

Federal AGI $250,000

Federal AGI in excess of $100,000 limit $250,000 – $100,000 = $150,000

Three percent (3%) of amount in excess of $100,000 $150,000 × 3% = $4,500

Total itemized deductions $30,000
$10,000 of state income taxes (reducible)
$10,000 in charitable contributions (reducible)
$10,000 in medical expenses (not subject to reduction per 26 U.S.C. 68)

Allowable federal itemized deductions $30,000 – $4,500 = $25,500

Ratio of state income taxes to total reducible federal itemized deductions (medical expenses cannot be reduced) $10,000 ÷ $20,000 = 50%

Portion of reduction of federal itemized deductions attributable to state income taxes $4,500 × 50% = $2,250

State income tax added back (amount of allowable federal itemized deductions attributable to state income taxes) $10,000 – $2,250 = $7,750

Missouri itemized deductions $25,500 – $7,750 = $17,750

(4) The proportional language in section 143.141, RSMo only applies while the *Internal Revenue Code* provides for a reduction in itemized deductions. Otherwise, all state income taxes must be added back.

AUTHORITY: section 143.961, RSMo 1986. Original rule filed March 14, 1986, effective June 28, 1986. Rescinded and readopted: Filed June 2, 1993, effective Nov. 8, 1993.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.165 Net Operating Losses on Corporate Income Tax Returns

PURPOSE: This rule explains the proper Missouri income tax treatment of net operating losses by corporations.

(1) Federal Taxable Income Less Than Zero (0). Federal taxable income is the starting point for computing a corporation's Missouri taxable income. Federal taxable income, as it is used

to compute a corporation's Missouri taxable income, may be a positive figure, a negative figure, or zero.

(2) Net Operating Loss (NOL).

(A) Taxpayers who file a consolidated Missouri return must treat NOLs identically on the federal and Missouri returns.

(B) Taxpayers who file separate federal and Missouri returns must treat NOLs identically on the federal and Missouri returns.

(C) Consolidated Federal and Separate Missouri Return. Taxpayers who file consolidated federal and separate Missouri returns shall compute separate federal taxable income as if each member filed a separate federal return with the limitation that the taxpayer shall be bound by the election to carry losses forward or backward made on the consolidated return. If there is a consolidated gain, then the Missouri taxpayer may elect to carry loss backward or forward to the extent allowed under *Internal Revenue Code* section 172.

(D) Notwithstanding the foregoing subsections of section (2) of this rule, to the extent an NOL is carried backward for more than two (2) years or carried forward for more than twenty (20) years on the federal income tax return, that amount of the NOL generally must be added to federal taxable income in arriving at Missouri taxable income pursuant to section 143.121.2(4), RSMo. Any amount of NOL taken against federal taxable income but disallowed for Missouri income tax purposes under section 143.121.2(4), RSMo, may be carried forward and taken against any income on the Missouri corporate income tax return for a period of not more than twenty (20) years following the year of initial loss.

(3) Recomputation of the Federal Income Tax Deduction for Separate Missouri Return Filers to Reflect Consolidated Return NOL. Taxpayer's federal income tax deduction shall be determined as follows. First, a fraction shall be created, the numerator of which is the taxpayer's original federal taxable income reduced by its *pro rata* share of the consolidated loss and the denominator of which is the original consolidated federal taxable income reduced by total consolidated loss. Next, total federal income tax of the consolidated group after deduction of the net operating loss is multiplied by the fraction, and then multiplied by fifty percent (50%), to arrive at the adjusted federal income tax deduction.

(A) Example: 2014 consolidated loss of $75,000 carried back to 2012.

First, allocate the loss to the loss companies.

Company	Federal Taxable Income (Loss)	To Total Percent	Allocated Consolidated Loss	
A	($50,000)	45.455%	$34,091	
B				
C	($50,000)	45.455%	$34,091	
D				
E	($10,000)	9.090%	$6,818	
	($110,000)	100%	$75,000	

Second, reduce original taxable income by the allocated loss.

Company	2012 Original Federal Taxable Income	2014 Allocated Loss	New Federal Taxable Income	To Total Percent	Adjusted 2012 Federal Income Tax Liability
A	$100,000	($34,091)	$65,909	26.460%	$19,845
B	$50,000		$50,000	20.073%	$15,055
C	$25,000	($34,091)			
D	$100,000		$100,000	40.146%	$30,110
E	$40,000	($6,818)	$33,182	13.321%	$9,990
	$315,000	($75,000)	$249,091	100%	$75,000

Third, multiply the resulting adjusted federal income tax liability of the taxpayer by fifty percent (50%).

(B) Actual separate return loss will be used to compute separate return federal taxable income.

(4) Leaving a Consolidated Group. A former member of a consolidated group who filed a separate Missouri return must recompute its federal income tax deduction to reflect any decrease in consolidated federal income tax liability attributable to an NOL carry back by the group and to reflect any change in its relative share of federal income tax liability attributable to the net operating loss carry back by the group.

(5) Taxpayers who elect a proper method of computing the federal income tax deduction for a particular year shall continue to use that method to compute the effect of NOL on the federal income tax deduction for that year, regardless of the method used in the year of the loss.

(6) When the filing status or combination for the Missouri return for any taxable year is different from the federal filing status or combination for that taxable year, the taxpayer must follow the federal *Internal Revenue Code* (IRC) as it would apply to the facts and circumstances for the Missouri return. Under no circumstances may the same loss or deduction be used more than once for Missouri purposes. A taxpayer claiming an NOL deduction shall provide a schedule identifying the source of each loss or deduction. If a corporate member of an affiliated group incurs an NOL arising from a loss year for which such member files a separate Missouri return or no Missouri return, then that NOL cannot be carried to a consolidated Missouri income tax return for a different tax year (the carryover tax year), except insofar as that particular NOL is carried forward or backward and actually deducted on the affiliated group's consolidated federal income tax return for that carryover tax year, as reflected in the affiliated group's federal taxable income for that carryover tax year.

(7) If a corporation derives only part of its income from sources within Missouri, its Missouri taxable income shall only reflect an apportioned amount of the NOL deduction, consistent with section 143.455.19, RSMo.

(8) The loss year referred to in section 143.431.4, RSMo, may include the loss year of another taxpayer if the NOL occurred in a loss year of another taxpayer. For example, in the situation of a corporate merger where the taxpayer whose loss year gave rise to the NOL did not survive the merger, the net operating loss addition modification must still be computed by reference to the addition and subtraction modifications for the loss year of the corporation that did not survive the merger. For purposes of section 143.431.4, RSMo, if more than one (1) net operating loss addition modification must be computed for a given tax year, the net operating loss addition modifications are computed in the same order that the net operating losses are used as net operating loss deductions for federal income tax purposes.

(9) Notwithstanding any provision of this rule to the contrary, nothing in this rule shall be interpreted or construed as incorporating by reference any rule, regulation, standard, or guideline of a federal agency.

AUTHORITY: section 143.961, RSMo 2016, and section 143.431, RSMo Supp. 2023. Original rule filed Oct. 22, 1986, effective March 26, 1987. Amended: Filed Feb. 23, 1989, effective Aug. 11, 1989. Amended: Filed Jan. 10, 2002, effective July 30, 2002. Amended: Filed Jan. 24, 2024, effective Sept. 30, 2024.*

**Original authority: 143.431, RSMo 1972, amended 2004, 2007, 2018, and 143.961, RSMo 1972.*

12 CSR 10-2.170 Wood Energy Credit
(Rescinded September 6, 1992)

AUTHORITY: section 135.311 and 136.120, RSMo 1986. Original rule filed Nov. 12, 1986, effective March 12, 1987. Rescinded: Filed April 1, 1992, effective Sept. 6, 1992.

12 CSR 10-2.175 Agricultural Unemployed Person
(Rescinded October 30, 2002)

AUTHORITY: section 135.285, RSMo 1994. Emergency rule filed Nov. 18, 1986, effective Nov. 28, 1986, expired March 28, 1987. Original rule filed Nov. 18, 1986, effective March 12, 1987. Rescinded: Filed April 4, 2002, effective Oct. 30, 2002.

12 CSR 10-2.180 Public Law 86-272 Immunity

PURPOSE: This rule explains the department's position with respect to the type and amount of activity which is immune or not immune from taxation by reason of P.L. 86-272. This constitutes the changes made by the Multistate Tax Commission at the 1993 annual meeting.

(1) Nature of Property Being Sold. Only the sale of tangible personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting, licensing or other disposition of tangible personal property, intangibles or any other type of property is not immune from taxation by reason of P.L. 86-272. The definition of tangible personal property for this purpose is that to be found under each state's respective laws.

(2) Solicitation of Orders.

(A) For the instate activity to be immune, it must be limited solely to solicitation (except for *de minimis* activities conducted by independent contractors described in section (3)). Solicitation means — 1) speech or conduct that explicitly or implicitly invites an order; and 2) activities that neither explicitly or implicitly invite an order, but are entirely ancillary to requests for an order.

(B) Ancillary activities are those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders. Activities that a seller would engage in apart from soliciting orders shall not be considered as ancillary to the solicitation of orders. The mere assignment of activities to sales personnel does not, merely by this assignment, make the activities ancillary to solicitation of orders. Additionally, activities that seek to promote sales are not ancillary, because P.L. 86-272 does not protect activity that facilitates sales, it only protects ancillary activities that facilitate the request for an order. The conduct of activities not falling within the foregoing definition of solicitation will cause the company to lose the exemption from a net income tax afforded by P.L. 86-272, unless the disqualifying activities, taken together, are *de minimis*.

(C) *De minimis* activities are those that, when taken together, establish only a trivial additional connection with the taxing state. An activity regularly conducted within a taxing state pursuant to a company policy or on a continuous basis shall normally not be considered trivial. Whether or not an activity consists of a trivial or non-trivial additional connection with the state is to be measured on both a qualitative and quantitative basis. If this activity either qualitatively or quantitatively creates a non-trivial connection with the taxing state, then the activity exceeds the protection of P.L. 86-272. Establishing that the disqualifying activities only account for a relatively small part of the business conducted within the taxing state is not determinative of whether a *de minimis* level of activity exits. The relative economic importance of the disqualifying instate activities, as compared to the protected activities, does not determine whether the conduct of the disqualifying activities within the taxing state is inconsistent with the limited protection afforded by P.L. 86-272.

(D) Examples of activities presently treated by the signatory states (unless otherwise stated as an exception or addition) as either non-immune or immune are as follows:

(E) Non-Immune Activities. The following instate activities conducted (assuming they are not of a *de minimis* level) will cause otherwise immune sales to lose their immunity:

1. Making repairs or providing maintenance;
2. Collecting current or delinquent accounts;
3. Investigating credit worthiness;
4. Installing or supervising installation;
5. Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation;
6. Providing any kind of technical assistance or services, including, but not limited to, engineering assistance or services, when one of the purposes thereof is other than the facilitation of the solicitation of orders;
7. Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of the mediation is to ingratiate the sales personnel with the customer;
8. Approving or accepting orders;
9. Repossessing property;
10. Securing deposits on sales;
11. Picking up or replacing damaged or returned property;
12. Hiring, training or supervising personnel, other than personnel involved only in solicitation;
13. Providing shipping information and coordinating deliveries;
14. Maintaining a sample or display room in excess of two (2) weeks (fourteen (14) days) at any one (1) location during the tax year;
15. Carrying samples for sale, exchange or distribution in any manner for consideration or other value;
16. Owning, leasing, or maintaining any of the following facilities or property instate:
    A. Repair shop;
    B. Parts department;
    C. Purchasing office;
    D. Employment or recruiting office;
    E. Warehouse;
    F. Meeting place for directors, officers or employees;

G. Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

H. Telephone answering service that is formally attributed to the company or to the agent(s) of the company in their agency status;

I. Mobile stores, that is, vehicles with drivers who are sales personnel making sales from the vehicles; and

J. Real property or fixtures to real property of any kind;

17. Consigning tangible personal property to any person, including an independent contractor;

18. Maintaining, by any employee, an office or place of business (in-home or otherwise) that is paid for directly or indirectly by the company and that is formally attributed to the company or to the agent(s) of the company in their agency status, even if the office is for the exclusive use of soliciting orders. (For example, a telephone listing for the company or for the agents of the company in their capacity as agents or other indications through advertising or business literature that the company or its agents can be contacted at a specific place shall normally be determined as the company maintaining within the state an office or place of business attributable to the company or to its agents in their agency status.);

19. Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel; and

20. Conducting any activity not listed in subsection (2)(F) of this rule which is not entirely ancillary to requests for orders, even if the activity helps to increase purchases; and

(F) Immune Activities. The following instate activities will not cause the loss of immunity for otherwise immune sales:

1. Soliciting orders for sales by any type of advertising;

2. Carrying samples only for display or for distribution without charge or other consideration;

3. Owning or furnishing autos to sales personnel;

4. Passing inquiries and complaints on to the home office;

5. Missionary sales activities;

6. Checking of customers' inventories without a charge therefor (for reorder, but not for other purposes such as quality control);

7. Maintaining sample or display room for two (2) weeks (fourteen (14) days) or less at any one (1) location during the tax year;

8. Soliciting of orders for sales by an instate resident employee of the company; provided the employee maintains no instate sales office or place of business (in-home or otherwise) that is attributable to the company's agent(s) in their agency capacity;

9. Recruiting, training or evaluating sales personnel, including occasional use of homes, hotels or similar places for meetings with sales personnel;

10. Maintaining, by any sales employee, an in-home office that is not paid for directly or indirectly by the company and which is not attributable to the company or to the company's agent(s) in their agency capacity; and

11. Mediating direct customer complaints when the purpose of this is solely for ingratiating the sales personnel with the customer and facilitating requests for orders.

(3) Independent Contractors. P.L. 86-272 provides immunity to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its agents or other representatives. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity:

(A) Soliciting sales;

(B) Making sales; and

(C) Maintaining an office.

(4) Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under sections (2) and (3) of this statement.

(5) Maintenance of a stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the immunity.

AUTHORITY: section 143.961, RSMo 1994. Original rule filed April 6, 1987, effective July 23, 1987. Amended: Filed Jan. 4, 1994, effective July 30, 1994.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.190 Partnership and S Corporation Annual Return Filing Requirements, Composite Returns, and Nonresident Partner/Shareholder Income Tax Withholding

PURPOSE: This rule clarifies the circumstances under which a composite individual income tax return for nonresident partners or nonresident S corporation shareholders may be filed and the general contents of the return as well as the withholding requirements for nonresident partners and shareholders and the related withholding exemption. This rule also clarifies the annual partnership and S corporation return filing requirement. Limited liability companies which are treated as partnerships for income tax purposes, and limited liability partnerships, will be considered partnerships.

(1) For purposes of this rule —

(A) The term "partnership" includes a general partnership, a limited partnership, a limited liability partnership, a limited liability limited partnership, and a limited liability company treated as a partnership for federal income tax purposes. However, the term "partnership" does not include a publicly traded partnership treated as a corporation for federal income tax purposes; and

(B) The term "S corporation" includes an S corporation and a limited liability company treated as an S corporation for federal income tax purposes.

(2) Annual partnership and S corporation returns.

(A) A partnership return shall be filed using Form MO-1065 by the fifteenth day of the fourth month following the close of each taxable year and shall be based upon the provisions of the law and the Form MO-1065 instructions effective for the taxable year. This filing requirement applies to every partnership having any income derived from sources in this state in accordance with section 143.581, RSMo.

(B) Consistent with the last sentence of section 143.471.7, RSMo, an S corporation shall file an annual return for its taxable year at the time required by section 143.511, RSMo. An S corporation return shall be filed using Form MO-1120S by the fifteenth day of the fourth month following the close of each taxable year and shall be based upon the provisions of law and the Form MO-1120S instructions effective for the taxable year.

(C) The partnership return or S corporation return shall reflect, among other things, the partnership or S corporation's Missouri allocated income and Missouri apportioned income consistent with 12 CSR 10-2.255. The partnership or S corporation's Missouri

allocated income and Missouri apportioned income shall be the basis on which a nonresident partner or shareholder, consistent with 12 CSR 10-2.255, determines the items of partnership or S corporation income, gain, loss, or deduction entering into nonresident federal adjusted gross income from sources within this state.

(D) On or before the due date (including extensions of time) of its Form MO-1065 or Form MO-1120S, the partnership or S corporation with income from Missouri sources shall furnish to each nonresident partner or shareholder a completed Form MO-NRP or Form MO-NRS, and shall furnish to each partner or shareholder an extract of all information from the Form MO-1065 or Form MO-1120S that is relevant to that partner or shareholder, or else a copy of the Form MO-1065 or Form MO-1120S, but in either event with information about other partners or shareholders, such as their social security numbers or share percentages, removed or redacted.

(3) Composite returns.

(A) In lieu of each nonresident partner or S corporation shareholder filing a separate individual income tax return (provided that their filing requirement results solely from one (1) or more interests in a partnership or S corporation), a partnership or S corporation may file an individual income tax return under the name of the partnership or S corporation on or before the fifteenth day of the fourth month following the close of the partnership or S corporation's taxable year. This shall be the composite return filed on behalf of such nonresident partners or shareholders. This return shall show on an appended schedule the name, address, Social Security number, of each nonresident partner or nonresident S corporation shareholder, and, for each such partner or shareholder, the amount of federal distributive share of partnership or S corporation income and the amount of income from Missouri sources as determined in accordance with subsection (2)(C).

(B) For a composite payment of tax, the tax rate to be applied to the income from Missouri sources of each nonresident partner or S corporation shareholder determined in accordance with subsection (2)(C), in lieu of demonstrating the exact amount of Missouri income tax, is the tax rate imposed on the highest tax bracket under section 143.011, RSMo, in effect for the partnership's or S corporation's tax year with respect to which the composite return is filed.

(C) The sum of the amount determined in subsection (3)(B) will be paid by the partnership or S corporation as a payment against the individual income tax liability of all its nonresident partners or nonresident S corporation shareholders properly included on the composite return.

(D) Timely filing of the composite return by the partnership or S corporation and timely composite payment of the tax will discharge each nonresident partner's or S corporation shareholder's responsibility to Missouri for filing a Missouri individual income tax return for the individual income tax year of a nonresident who is included on the composite return, if the composite return is for a tax year ending within or with that individual income tax year of the nonresident.

(E) Only nonresident individual partners or nonresident individual S corporation shareholders, not otherwise required to file a Missouri individual income tax return, are eligible to be included on a partnership's or S corporation's composite return and included in the composite payment of tax. However, a partnership or S corporation may choose to make a payment of Missouri income tax on behalf of any partner or shareholder, including but not limited to resident partners, resident shareholders, or corporate partners. If a partnership or S corporation attempts to make a composite payment that includes an amount for a taxpayer other than an eligible nonresident partner or shareholder, that amount shall be deemed a payment of Missouri income tax made on behalf of such taxpayer.

(F) To help avoid the imposition of an addition to tax for failure to pay estimated income tax on the nonresident partners or shareholders that will be included on a composite return, a partnership or S corporation that expects to file a composite return and make a composite tax payment must make estimated income tax payments on behalf of such nonresident partners or shareholders in four (4) equal installments, if the Missouri estimated tax of the nonresident(s) to be included on the composite return is reasonably expected to be at least one hundred dollars ($100). The first installment is paid when the declaration is filed; the second and third installments on June 15 and September 15, respectively, of the taxable year; and the fourth installment on January 15 of the succeeding taxable year. If the taxable year of the partnership or S corporation begins on any date other than January 1, there shall be substituted, for the months specified in this subsection, the months which correspond thereto in a manner consistent with section 143.541.5, RSMo.

(4) Withholding Requirements for a Partnership or S Corporation.

(A) Partnerships and S corporations are required to withhold Missouri income tax from any nonresident individual partner(s) or nonresident S corporation shareholder(s) to which the partnership or S corporation pays or credits amounts on account of their distributive share of the partnership income for the taxable year, or as dividends or as their share of the S corporation's undistributed taxable income for the taxable year.

(B) The partnership or S corporation is not required to withhold if —

1. The nonresident partner or S corporation shareholder not otherwise required to file a return agrees to have the Missouri income tax due paid as part of a composite return;

2. The nonresident partner or S corporation shareholder, not otherwise required to file a return has Missouri assignable federal adjusted gross income from the partnership or S corporation of less than twelve hundred dollars ($1,200);

3. The partnership or S corporation is liquidated or terminated;

4. The income from which the nonresident partner's distributive share of partnership income, or the nonresident shareholder's dividend and share of undistributed taxable income, was derived was generated by a transaction related to the partnership's or S corporation's termination or liquidation;

5. No cash or other property was distributed in both the current and prior taxable year; or

6. The partnership or S corporation files a Form MO-3NR Partnership or S Corporation Withholding Exemption or Revocation Agreement, that was signed by the nonresident partner or S corporation shareholder who has agreed to —

A. File a return in accordance with the provisions of section 143.481, RSMo, and to make timely payment of all taxes imposed on the partner or S corporation shareholder by this state with respect to income of the partnership or S corporation;

B. Be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the partner or S corporation shareholder by this state with respect to the

income of the partnership or S corporation;

C. Form MO-3NR will be considered timely filed for a taxable year, and for all subsequent taxable years, if it is filed at or before the time the annual return of the partnership or S corporation for such taxable year is required to be filed pursuant to section 143.511, RSMo. A partnership or S corporation that does not timely file such an agreement for a taxable year shall not be precluded from timely filing such an agreement for subsequent taxable years;

D. Note: Exceptions to this withholding requirement are not exceptions from Missouri income tax or the Missouri employer withholding tax requirement. For example, income generated by termination or liquidation, although not subject to this withholding requirement, may still be subject to Missouri income tax;

E. The partnership or S corporation may determine the tax to be withheld in one (1) of two (2) ways —

(I) If the partner or shareholder submits a Form MO W-4, Missouri Withholding Allowance Certificate, the tax to be withheld on behalf of that partner or shareholder shall be determined based on the employer withholding tables published by the Department of Revenue for the year for which the withholding is to be performed. The S corporation or partnership shall use the employer withholding tables as though the dividends and undistributed income allocable to Missouri that is paid or credited to the nonresident S corporation shareholder, or the distributive share of partnership income allocable to Missouri that is paid or credited to the nonresident partner, were wages paid to the shareholder or partner; or

(II) If no Form MO W-4 is submitted, the highest rate used to determine a Missouri income tax liability for an individual under section 143.011, RSMo, for the year for which the withholding is to be performed, will be applied to the dividends and undistributed income allocable to Missouri that is paid or credited to the nonresident S corporation shareholder, or the distributive share of partnership income allocable to Missouri that is paid or credited to the nonresident partner;

F. If withholding is remitted to the Department of Revenue on behalf of a nonresident partner or S corporation shareholder who has no tax liability, the partnership or S corporation may file a claim for refund on behalf of such partner or shareholder with the Department of Revenue to recover the amount remitted;

G. Withholding should be remitted on Form MO-1NR, Income Tax Withheld for Nonresident Individual Partners or S Corporation Shareholders. The Form MO-1NR, all applicable Forms MO-2NR, and payment must be filed and paid by the due date or extended due date for filing the partnership or S corporation income tax return. The Form MO-1NR and the Form MO-2NR filings shall be considered a part of the annual S corporation or partnership Missouri income tax return. An extension of time for filing the partnership or S corporation return automatically extends the time for filing the Form MO-1NR and all applicable Forms MO-2NR and the time for making the withholding payment. Form MO-1NR and a copy of the Form MO-2NR must be filed with the Department of Revenue either before or at the same time the partnership or S corporation provides a copy of the Form MO-2NR to the nonresident partner or S corporation shareholder. Failure to do so may result in the department disallowing the withholding claimed by the nonresident partner of S corporation shareholder; and

H. A Form MO-2NR, Statement of Income Tax Payments for Nonresident Individual Partners or S Corporation Shareholders, must be completed and filed by the partnership or S corporation for each nonresident partner or shareholder for whom withholding was performed. A copy of the Form MO-2NR must be furnished by the partnership or S corporation to each nonresident partner or shareholder for whom withholding was performed.

(5) Notwithstanding any provision of this rule to the contrary, nothing in this rule shall be interpreted or construed as incorporating by reference any rule, regulation, standard, or guideline of a federal agency.

AUTHORITY: sections 143.411 and 143.961, RSMo 2016, and section 143.471, RSMo Supp. 2023. Original rule filed March 15, 1989, effective Sept. 11, 1989. Emergency amendment filed Sept. 14, 1994, effective Sept. 24, 1994, expired Jan. 21, 1995. Emergency amendment filed Dec. 20, 1994, effective Jan. 22, 1995, expired May 21, 1995. Amended: Filed Sept. 14, 1994, effective April 30, 1995. Amended: Filed March 1, 1996, effective Aug. 30, 1996. Amended: Filed Dec. 31, 1997, effective June 30, 1998. Amended: Filed Jan. 24, 2024, effective Sept. 30, 2024.*

**Original authority: 143.411, RSMo 1972, amended 1993, 1997; 143.471, RSMo 1972, amended 1983, 1989, 1993, 1997, 1999, 2006, 2018; and 143.961, RSMo 1972.*

12 CSR 10-2.195 Special Needs Adoption Tax Credit
(Rescinded May 30, 2006)

AUTHORITY: section 135.339, RSMo 1994. Original rule filed Aug. 2, 1988, effective Dec. 11, 1988. Rescinded: Filed Nov. 1, 2005, effective May 30, 2006.

12 CSR 10-2.200 Trucking Companies
(Rescinded February 29, 2024)

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Jan. 18, 1989, effective May 11, 1989. Rescinded: Filed July 11, 2023, effective Feb. 29, 2024.

12 CSR 10-2.205 Railroads
(Rescinded February 29, 2024)

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Jan. 18, 1989, effective May 11, 1989. Rescinded: Filed July 11, 2023, effective Feb. 29, 2024.

12 CSR 10-2.210 Airlines
(Rescinded February 29, 2024)

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Jan. 18, 1989, effective May 11, 1989. Rescinded: Filed July 11, 2023, effective Feb. 29, 2024.

12 CSR 10-2.220 Taxation of Nonresident Members of Professional Athletic Teams

PURPOSE: This rule clarifies the taxation of income of nonresident members of professional athletic teams under existing Missouri statutes.

(1) Teams and Nonresident Members Defined.

(A) The term professional athletic team includes, but is

not limited to, any professional baseball, basketball, football, soccer and hockey team.

(B) Nonresident members of professional athletic teams shall include players on the disabled list (if they are in uniform on the day of the game at the site of the game) and any others travelling with and performing services on behalf of a professional athletic team.

(2) Personal Service Income of Nonresident Members of Professional Athletic Teams Defined.

(A) All nonresident members of professional athletic teams shall be taxed on that portion of their personal service income allocable to Missouri.

(B) Personal service income shall include exhibition and regular playing season salaries and wages, guaranteed payments, strike benefits, deferred payments, severance pay, bonuses paid for playing in championship, playoff or bowl-type games and any other type of compensation paid to the nonresident member of a professional athletic team in that capacity.

(3) Method of Allocation of Personal Service Income Earned by Nonresident Members of Professional Athletic Teams.

(A) The personal service income earned by nonresident members of professional athletic teams allocable to Missouri shall be determined by a fraction, the denominator of which shall be the total number of duty days in the tax year of the athlete (including the sum of days spent at training camps, all postseason games and travel days) and the numerator of which shall be the number of duty days in the tax year which the nonresident member of the professional athletic team spent in Missouri.

(B) Duty days shall be defined to include the days a nonresident member of a professional athletic team serves in that capacity after the commencement of team activities and begins with the first day s/he reports to the professional athletic team.

(C) The allocation fraction in subsection (3)(A) shall be multiplied by the amount of personal service income to arrive at the amount of personal service income allocable to Missouri.

(4) Other Income Defined. All other income earned in Missouri by nonresident members of professional athletic teams in any other capacity shall be included in Missouri adjusted gross income as provided in Chapter 143, RSMo.

(5) Reporting Requirements.

(A) An income tax return shall be filed and the tax paid to the director of revenue as prescribed in sections 143.481–143.511, RSMo.

(B) Nonresident members of professional athletic teams may also be required to make declaration of estimated tax payments on a quarterly basis as set forth in sections 143.521–143.541, RSMo.

AUTHORITY: section 143.961, RSMo 1994. Original rule filed Oct. 30, 1989, effective Jan. 26, 1990.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.225 Withholding of Tax by Nonresident Professional Athletic Teams

PURPOSE: This rule establishes guidelines for the employer withholding of income tax as specified in sections 143.191–143.265 and 285.230, RSMo.

(1) All nonresident professional athletic teams shall be considered transient employers as defined in section 285.230, RSMo and shall be required to file a financial assurance instrument pursuant to section 285.230, RSMo.

(2) Teams and Members Defined.

(A) The term professional athletic team includes, but is not limited to, any professional baseball, basketball, football, soccer and hockey team.

(B) Members of professional athletic teams shall include players, managers, coaches, trainers, travelling secretaries, players on the disabled list (if they are in uniform on the day of the game at the site of the game) and any others travelling with and performing services on behalf of a professional athletic team.

(3) Personal Service Income of Members of Professional Athletic Teams Defined.

(A) All nonresident members of professional athletic teams shall be taxed on that portion of their personal service income allocable to Missouri.

(B) Personal service income shall include exhibition and regular playing season salaries and wages, guaranteed payments, strike benefits, deferred payments, severance pay, bonuses paid for playing in championship, playoff or bowl-type games and any other type of compensation paid to the nonresident member of a professional athletic team in that capacity.

(4) Method of Allocation of Personal Service Income Earned by Members of Professional Athletic Teams.

(A) The personal service income earned by members of professional athletic teams allocable to Missouri shall be determined by a fraction, the denominator of which shall be the total number of duty days in the tax year of the athlete (including the sum of days spent at training camps, all postseason games and travel days) and the numerator of which shall be the number of duty days in the tax year which the member of the professional athletic team spent in Missouri.

(B) Duty days shall be defined to include the days a member of a professional athletic team serves in that capacity after the commencement of team activities and begins with the first day s/he reports to the professional athletic team.

(C) The allocation fraction in subsection (4)(A) shall be multiplied by the amount of personal service income to arrive at the amount of personal service income allocable to Missouri.

(5) Withholding and Reporting Obligations.

(A) Any out-of-state professional athletic team which qualifies as a transient employer as specified in section 285.230, RSMo shall be required to withhold Missouri income taxes from wages and salaries paid to its team members as set forth in sections 143.191–143.265, RSMo.

(B) Every out-of-state professional athletic team required to deduct and withhold tax shall file an employer's withholding tax return and pay the taxes withheld to the director of revenue as set forth in sections 143.191–143.265, RSMo.

AUTHORITY: sections 143.961 and 285.230, RSMo 1994. Original rule filed Oct. 30, 1989, effective Jan. 26, 1990. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective*

Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.

**Original authority: 143.961, RSMo 1972 and 285.230, RSMo 1988, amended 1994.*

12 CSR 10-2.226 Withholding of Tax by Nonresident Professional Entertainers

PURPOSE: This rule establishes guidelines for withholding of income tax as specified in sections 143.191–143.265 and 285.230, RSMo.

(1) Nonresident Professional Entertainers Defined.

(A) Nonresident professional entertainer means a corporation registered outside this state, or a person who is not a resident of Missouri as defined by section 143.101, RSMo, who, for compensation paid to an individual or other entity, performs any vocal, instrumental, musical, comedy, dramatic, dance, or other performance in Missouri before a live audience. Nonresident professional entertainer also includes any person traveling with the entertainer and performing services on behalf of the nonresident entertainer. For purposes of this definition, a "performance" does not include a presentation for educational purposes for which no admission fee, cover charge, purchase minimum, or other fee for admission is charged.

(2) Personal Service Income of Nonresident Professional Entertainers Defined.

(A) All nonresident professional entertainers shall be subject to withholding on that portion of their personal service income allocable to Missouri.

(B) Personal service income shall include the total compensation received during the calendar year for entertainment performed in Missouri.

(3) Any nonresident entertainer outside of Missouri that does not comply with section 143.183.2., RSMo, shall be considered transient employers as defined in section 285.230, RSMo, and shall be required to file a financial assurance instrument pursuant to section 285.230, RSMo, and 12 CSR 10-2.017.

(4) Withholding and Reporting Obligations.

(A) Any individual or entity who pays annual compensation in excess of three hundred dollars ($300) to a nonresident professional entertainer(s) is required to withhold Missouri income taxes, as a prepayment of tax, an amount equal to two percent (2%) of the total compensation paid to the nonresident entertainer for entertainment performed in Missouri, as set forth in sections 143.183 and 285.230, RSMo. This requirement does not apply if the person making the payment is exempt from taxation under 26 U.S.C. Section 501(c)(3), as amended, and that pays an amount to the nonresident entertainer for the entertainer's appearance but receives no benefit from the entertainer's appearance other than the entertainer's performance.

(B) Every individual or entity required to deduct and withhold tax from a nonresident entertainer, shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file Form MO-1ENT, Income Tax Payments for Nonresident Entertainers, with copies of Form MO-2ENT, Statement of Income Tax Payments for Nonresident Entertainers attached and pay the taxes withheld to the Director of Revenue as set forth in sections 143.183 and 285.230, RSMo.

(5) The Department of Revenue forms mentioned in this rule can be found at www.dor.mo.gov or at the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO 65105.

AUTHORITY: section 143.183, RSMo Supp. 2023, and section 285.230, RSMo 2016. Emergency rule filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency rule filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Original rule filed Aug. 18, 1994, effective Feb. 26, 1995. Amended: Filed Dec. 30, 1998, effective July 30, 1999. Amended: Filed Aug. 7, 2023, effective March 30, 2024.*

**Original authority: 143.183, RSMo 1994, amended 1998, 2003, 2006, 2009, 2011, 2014, 2018, and 285.230, RSMo 1988, amended 1994, 1997, 1998, 2008, 2014.*

12 CSR 10-2.230 Construction Contractors
(Rescinded April 30, 2022)

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Dec. 17, 1990, effective April 29, 1991. Rescinded: Filed Oct. 12, 2021, effective April 30, 2022.

12 CSR 10-2.235 Government Pension Exemption
(Rescinded May 30, 2004)

AUTHORITY: section 143.961, RSMo 1994. Original rule filed Sept. 11, 1992, effective April 8, 1993. Rescinded: Filed Nov. 7, 2003, effective May 30, 2004.

12 CSR 10-2.240 Determination of Timeliness

PURPOSE: This rule interprets the income tax law as it applies to the determination of timeliness.

(1) In general, it is the taxpayer's responsibility to see that a return, payment, or other document required to be filed with or mailed to the Department of Revenue is actually delivered to the department. Unless otherwise provided by law or regulation, the date of a payment or the filing or any return or other document occurs on the date when the payment, return, or other document is actually delivered to the Department of Revenue.

(2) If the postmark on the envelope or wrapper of any return, payment, or document required to be filed before a prescribed date is made by the United States Postal Service, the date of the United States postmark stamped on the envelope or wrapper is treated as the date of delivery. If the envelope or wrapper has both a postal meter date and a postmark date applied by the United States Postal Service, the department will use the postmark date to determine the date of delivery.

(3) If any return, document, or payment is sent by United States registered mail, the date of registration of the return, document, or payment is treated as the postmark date.

(4) If any return, document, or payment is sent by United States certified mail and the sender's receipt is postmarked by the postal employee to whom the return, document, or payment is presented, the date of the United States postmark on the receipt is treated as the postmark date. For purposes of section 143.851, RSMo, certified mail may be used instead of registered mail.

(5) As used in section 136.360, RSMo, the word "notice" does not include tax returns, requests for tax clearances, or any request under section 143.241 or 144.150, RSMo.

(6) The postmark of a private delivery service (PDS), as defined in sections (7) and (8) below, shall be treated in the same manner as a postmark by the United States Postal Service, pursuant to section 143.851, RSMo, and this rule, for purposes of meeting the 'timely mailing as timely filing/paying' rule. PDSs cannot deliver items to PO boxes. The United States Postal Service must be used when mailing any return, document, or payment to a Missouri Department of Revenue PO box address. The postmark of the PDS must be readable by the human eye without mechanical assistance.

(7) A private delivery service is a delivery service that meets the following criteria:

(A) The service is provided by a trade or business;

(B) The service is available to the general public;

(C) The service is at least as timely and reliable on a regular basis as the United States first-class mail;

(D) The service must mark the date on which an item was given to the PDS for delivery (the received date);

(E) The service has established security procedures that prevent unauthorized access to the contents of an item by any person (e.g., employees, contractors/agents, and third parties);

(F) The name of the PDS and the type of delivery service being used must always be clearly identified on each item delivered by the PDS to the Department of Revenue; and

(G) The service complies with all applicable requirements of the Private Express Statutes within Title 18 and Title 39 of the United States Code. Notwithstanding any part of this subsection to the contrary, this subsection is not intended to, and shall not be read to, incorporate any federal regulation by reference.

(8) Notwithstanding the foregoing section, a PDS shall include, but is not necessarily limited to, the specific services identified in each paragraph below:

(A) Services provided by DHL Express:

1. DHL Express 9:00;
2. DHL Express 10:30;
3. DHL Express 12:00;
4. DHL Express Worldwide;
5. DHL Express Envelope;
6. DHL Import Express 10:30;
7. DHL Import Express 12:00; and
8. DHL Import Express Worldwide;

(B) Services provided by FedEx:

1. FedEx First Overnight;
2. FedEx Priority Overnight;
3. FedEx Standard Overnight;
4. FedEx 2 Day;
5. FedEx International Next Flight Out;
6. FedEx International Priority;
7. FedEx International First; and
8. FedEx International Economy;

(C) Services provided by UPS:

1. UPS Next Day Air Early A.M.;
2. UPS Next Day Air;
3. UPS Next Day Air Saver;
4. UPS 2nd Day Air;
5. UPS 2nd Day Air A.M.;
6. UPS Worldwide Express Plus; and
7. UPS Worldwide Express.

(9) Examples.

(A) Example: Joe Jones, a Missouri taxpayer, has a document that must be filed with the Department of Revenue on or before August 1, 2023. For that document to be considered timely, he may do one (1) of the following:

1. Deposit the document with the United States Postal Service early enough that the United States postmark stamped on the envelope will be August 1, 2023, or earlier;

2. Take the document to the United States Postal Office and have it registered by a postal employee on or before August 1, 2023; or

3. Present the document in a certified envelope with return receipt requested to a United States postal employee and ask the postal employee to postmark the item on or before August 1, 2023.

(B) Example: Dora Truman's individual income tax return for tax year 2023 is due on April 15, 2024. Dora Truman attempts to send an email to the Department of Revenue on March 29, 2024, attaching her individual income tax return in PDF file format to that email. As far as Dora Truman is aware, the individual income tax return was successfully emailed to the Department of Revenue. However, due to a technical error occurring during the transmission of the email, the PDF file containing Dora Truman's return was never actually delivered to the Department of Revenue. She does not learn about this until she receives a notice from the Department of Revenue on June 1, 2025, on which date she attempts to send her tax year 2023 return by email again, which is then successfully received by the department. Because the date of filing the return occurs when it is actually delivered to the department, Dora Truman did not file her original tax year 2023 income tax return until June 1, 2025.

(C) Example: On April 19, 2024, a tax preparer, Jane Smith, initiates an electronic submission of her client's tax year 2023 Missouri income tax return to the Department of Revenue in conjunction with the Internal Revenue Service's electronic filing system. The electronic transmission of this 2023 income tax return is actually delivered to the department on April 20, 2024. The taxpayer's return deadline is April 15, 2024, and no federal or state return filing extensions were sought or granted. Because the date of filing the return occurs when it is actually delivered to the department, the 2023 income tax return of Jane Smith's client was filed late, on April 20, 2024.

AUTHORITY: sections 136.120, 143.851, and 143.961, RSMo 2016. Original rule filed March 1, 1993, effective Oct. 10, 1993. Amended: Filed Sept. 29, 1999, effective March 30, 2000. Amended: Filed Dec. 28, 2023, effective July 30, 2024.*

**Original authority: 136.120, RSMo 1945; 143.851, RSMo 1972; and 143.961, RSMo 1972.*

12 CSR 10-2.250 Reciprocal Agreements with Other States for Tax Refund Offsets

PURPOSE: This rule allows the department to enter into reciprocal agreements to offset income tax refunds for state debts and establishes the requirements for such agreements.

(1) In general, the department may enter into reciprocal agreements with other states to set off any income tax refund due any individual taxpayer of Missouri for debts of any other state that agrees to do the same for Missouri.

(2) Definition of Terms.

(A) Certified debt – A debt, as that term is defined in section 143.782(2), RSMo, certified by one (1) state to another state to be eligible for a refund offset under the laws of the state referring the debt.

(B) Debtor – See section 143.782(3), RSMo.

(C) Reciprocal agreement – An agreement between Missouri and another state for each state to offset tax refunds due to a taxpayer of the state against debts owed by the taxpayer to the other state.

(D) Refund – See section 143.782(5), RSMo.

(3) Basic Application.

(A) All reciprocal agreements will provide –

1. Each state will offset individual income tax refunds due taxpayers of the state for certified debts of the other state;

2. The state referring a debt (referring state) will certify that the debt is eligible for offset under the laws of the referring state;

3. The offsetting state will give notice of the offset to the taxpayer as required by the law of the offsetting state;

4. Each state will bear its own costs and neither state will charge the other state;

5. If a taxpayer is entitled to a return of any portion of a tax refund that has been offset, the referring state will return the amount due to the taxpayer;

6. Debts owed to the offsetting state will be offset before debts owed to the referring state;

7. Each state will comply with all applicable state and federal confidentiality laws, regulations, and policies, including section 32.057, RSMo;

8. Either party may immediately terminate the agreement if the other party breaches the confidentiality provisions of the agreement;

9. The method of exchange of information and the method of offsetting the tax refund;

10. Neither state will certify a debt of less than twenty-five dollars ($25) for a tax refund offset; and

11. The offsetting state will provide notice to a non-obligated spouse of the non-obligated spouse's right to challenge the offset when a tax refund offsets against a joint or combined return. The notice will comply with the offsetting state's requirements for due process.

(B) A reciprocal agreement may contain any other terms that do not conflict with any required terms.

AUTHORITY: section 143.784.5, RSMo 2000. Original rule filed June 10, 2010, effective Dec. 30, 2010.*

**Original authority: 143.784, RSMo 1982, amended 1984, 1993, 1994.*

12 CSR 10-2.255 Allocation and Apportionment for Nonresident Shareholders of S Corporations and Nonresident Partners of Partnerships (Beginning on or After January 1, 2020)

PURPOSE: This rule interprets and applies sections 143.421 and 143.471, RSMo, for purposes of determining the adjusted gross income from a shareholder's pro rata share of items of S corporation income, gain, loss, or deduction and the adjusted gross income of a nonresident partner from the partnership's items of income, gain, loss, or deduction.

(1) Definitions.

(A) Missouri allocated income. That portion of an entity's nonapportionable income, as that term is used in section 143.455, RSMo, that is allocated to Missouri under any of the provisions of section 143.455, RSMo or any other applicable provision of Missouri law.

(B) Missouri apportioned income. The income figure arrived at by multiplying an entity's net income, less nonapportionable income, as that term is used in section 143.455, RSMo, by the receipts factor provided in section 143.455.10., RSMo.

(2) S Corporation Income Derived from Sources Within this State. For all tax years beginning on or after January 1, 2020, items of S corporation income, gain, loss, or deduction entering into a nonresident shareholder's federal adjusted gross income are from sources within this state to the extent that –

(A) The S corporation would include that item in its Missouri Apportioned Income by applying the provisions of section 143.455, RSMo, and the regulations issued in connection with section 143.455, RSMo, (including any applicable regulations applying to unique industries); or

(B) The S corporation would include that item in its Missouri Allocated Income by applying the provisions of section 143.455, RSMo, and the regulations issued in connection with section 143.455, RSMo, (including any applicable regulations applying to unique industries).

(3) Partnership Income Derived from Sources within this State. For all tax years beginning on or after January 1, 2020, items of partnership income, gain, loss, or deduction entering into a nonresident partner's federal adjusted gross income are from sources within this state to the extent that –

(A) The partnership would include that item in its Missouri Apportioned Income by applying the provisions of section 143.455, RSMo, and the regulations issued in connection with section 143.455, RSMo, (including any applicable regulations applying to unique industries); or

(B) The partnership would include that item in its Missouri Allocated Income by applying the provisions of section 143.455, RSMo, and the regulations issued in connection with section 143.455, RSMo, (including any applicable regulations applying to unique industries).

(4) For purposes of applying this regulation, any references in section 143.455, RSMo to the term "corporation" shall be deemed to refer instead to the type of entity to which this regulation is applied.

AUTHORITY: sections 143.421 and 143.961, RSMo 2016, and section 143.471.4, RSMo Supp. 2020. Original rule filed Sept. 8, 2020, effective March 30, 2021.

**Original authority: 143.421, RSMo 1972; 143.471, RSMo 1972, amended 1983, 1989, 1993, 1997, 1999, 2006, 2018; and 143.961, RSMo 1972.*

12 CSR 10-2.260 Apportionment Method for Broadcasters (Beginning on or After January 1, 2020)

PURPOSE: This rule applies section 143.455.13.(1), RSMo to implement an alternative corporation income tax apportionment method for broadcasters.

(1) For any taxpayer that is a broadcaster as defined in subsection (2)(A) of this rule and files its original income tax return on or after January 1, 2020, shall use the apportionment method set forth in section (5) of this rule to compute its

Missouri taxable income from sources in this state.

(2) Definitions.

(A) "Broadcaster" is a taxpayer that is a television broadcast network, a cable program network, or a television distribution company. The term "broadcaster" does not include a platform distribution company or a television broadcast station.

(B) "Broadcast customer" is a person, corporation, partnership, limited liability company, or other entity, such as an advertiser or a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by the broadcaster.

(C) "Business customer" is a customer that is a business operating in any form, including an individual who operates a business through the form of a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. government, to any foreign, state, or local government, or to any agent or instrumentality of such government shall be treated as sales to a business customer and shall be apportioned consistent with the rules that apply to such sales.

(D) "Commercial domicile" is the principal place from which the trade or business of the business entity is directed or managed.

(E) "Corporation" is an entity defined in section 143.441.1.(1), RSMo.

(F) "Film programming" is one (1) or more performance, event, or production, or segments of performances, events, or productions, intended to be distributed for visual and/or auditory perception, including, but not limited to, news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(G) "Income tax return" is the Missouri Corporation Income Tax Return for the taxable year.

(H) "Individual customer" is any customer who is not a business customer as defined in subsection (2)(C) of this rule.

(I) "Original return" is the initial income tax return filed for the taxable year, and does not mean an amended income tax return filed for a taxable year for which a corporation has previously filed any income tax return.

(J) "Platform distribution company" is a cable service provider, a direct broadcast satellite system, an internet content distributor, or any other distributor that directly charges viewers for access to any film programming.

(K) "Taxable year" is the same period the corporation uses for reporting its federal income tax liability under the *Internal Revenue Code of 1986*, as amended.

(3) Sourcing of Receipts from Broadcast Advertising Services. Notwithstanding anything herein to the contrary, receipts from a broadcaster's sale of advertising services to a broadcast customer are sourced to Missouri if the commercial domicile of the broadcast customer is in Missouri. For purposes of this provision, "advertising services" means an agreement to include the broadcast customer's advertising content in the broadcaster's film programming.

(4) Sourcing of Receipts from Licenses of Broadcasting Intangibles. Where a broadcaster grants a license to a broadcast customer for the right to use film programming, the licensing fees paid by the licensee for such right are sourced to Missouri to the extent that the broadcast customer is located in Missouri. In the case of business customers, the broadcast customer's location shall be determined using the broadcast customer's commercial domicile. In the case of individual customers, the broadcast customer's location shall be determined using the address of the broadcast customer listed in the broadcaster's records.

(5) Alternative Apportionment Method for Broadcasters. A taxpayer who is a broadcaster shall apportion its apportionable income to this state by multiplying the net income by a fraction, the numerator of which is the sum of the taxpayer's receipts from broadcast advertising services sourced to Missouri under section (3) of this rule plus the taxpayer's receipts from licenses of broadcast intangibles sourced to Missouri under section (4) of this rule and the denominator of which is the sum of the taxpayer's total receipts from broadcast advertising services from all sources plus the sum of the taxpayer's total receipts from licenses of broadcast intangibles from all sources.

AUTHORITY: section 143.961, RSMo 2016, and section 143.455.13, RSMo Supp. 2020. Original rule filed Sept. 8, 2020, effective March 30, 2021.

**Original authority: 143.455, RSMo 2018 and 143.961, RSMo 1972.*

12 CSR 10-2.436 SALT Parity Act Implementation

PURPOSE: This rule explains how a partnership or an S corporation may elect to become an affected business entity under section 143.436, RSMo, the timing of affected business entity tax return filing, how to designate an affected business entity representative for a tax year, the estimated tax obligations and withholding obligations of an affected business entity, and an aspect of the tax credit under the SALT Parity Act.

(1) For tax years ending on or after December 31, 2022, a partnership or S corporation electing to become an affected business entity for a tax year shall make such election on its affected business entity tax return (Form MO-PTE). A separate election must be made for each tax year.

(2) An election to become an affected business entity for a tax year shall not be effective if the partnership or S corporation has not successfully designated a person as an affected business entity representative for that tax year at or before the time the partnership or S corporation attempts to make such election. For an election to be effective, the affected business entity tax return (Form MO-PTE) on which the election is made must include the signatures of either –

(A) Each member of the electing entity who is a member at the time the affected business entity tax return is filed;

(B) An officer, manager, or member of the electing entity who is authorized to make the election and who attests to having such authorization under penalty of perjury; or

(C) The designated affected business entity representative of the partnership or S corporation, including but not limited to an affected business entity representative who is re-designated as such on the same Form MO-PTE in the manner described in subsection (5)(D) of this rule.

(3) The deadline for making an election to become an affected business entity for a tax year is the filing deadline for the affected business entity tax return (Form MO-PTE). No election can be made after the deadline, including any approved extension.

(4) If an election to become an affected business entity has been made for a tax year, the election cannot be revoked for

that tax year.

(5) At or before the time that a partnership or S corporation files its affected business entity tax return (Form MO-PTE) on which the election is made, the partnership or S corporation shall designate an affected business entity representative for that tax year. Only one (1) natural person may serve as an affected business entity representative for a tax year.

(A) To designate a person as an affected business entity representative, the partnership or S corporation must file with the department a Power of Attorney (Form 2827) or Pass-Through Entity Power of Attorney (Form 2827 PTE) designating that person as an appointed representative and giving that person the title of "Affected Business Entity Representative." The designation must be signed by someone with authority to make such a designation on behalf of the partnership or S corporation.

(B) As necessary qualifications to be designated as an affected business entity representative for a tax year, a person must have a working email address, telephone number, and physical address at which to receive mail, all of which must be provided to the department.

(C) If a Power of Attorney (Form 2827) or Pass-Through Entity Power of Attorney (Form 2827 PTE) is filed as required above, and is executed by someone with authority to do so on behalf of the partnership or S corporation, but the filing lacks one (1) or more necessary items of information or the person who would otherwise serve as affected business entity representative lacks one (1) of the qualifications required above, that person shall nevertheless be considered an authorized representative of the partnership or S corporation for purposes of receiving and discussing the partnership or S corporation's confidential tax information otherwise protected by section 32.057, RSMo. By way of example, the department may communicate with that person to share what items or qualifications were lacking in the attempt to make that person an affected business entity representative.

(D) If a person has already been designated as an affected business entity representative for an affected business entity's prior tax year, in lieu of the other requirements of this section, that person may be re-designated as an affected business entity representative for a later tax year by the filing of that tax year's affected business entity tax return (Form MO-PTE) and the checking of a box on that return indicating the affected business entity's intent to re-designate that representative. The affected business entity representative for the prior tax year may check this box, re-designating himself or herself as an affected business entity representative, only if the affected business entity representative has been given authority, by the partnership or S corporation, to do so for the tax year for which the box is checked.

(6) An affected business entity representative may be removed from the role of affected business entity representative for a tax year if the partnership or S corporation designates a new affected business entity representative for that tax year. The removal of an affected business entity representative does not change the binding effect of any prior actions taken by that affected business entity representative.

(7) An affected business entity is not subject to an estimated income tax declaration filing requirement, or an estimated income tax payment requirement, with respect to the tax under section 143.436, RSMo. An affected business entity may choose to make an early payment of its anticipated tax liability for a tax year, even if the tax year is not yet complete.

(8) The election to become an affected business entity does not relieve a partnership or S corporation of its withholding obligations under section 143.411.5, RSMo, or section 143.471.6, RSMo, respectively.

(9) The affected business entity's tax under section 143.436, RSMo, is due by the fifteenth day of the fourth month following the end of the partnership or S corporation's tax year. By this same date, the affected business entity shall file an affected business entity tax return (Form MO-PTE) unless a filing extension is approved by the department. If an affected business entity is approved for a filing extension of the affected business entity tax return (Form MO-PTE), the affected business entity is likewise granted an equal extension of time for the payment of the tax due under section 143.436, RSMo. Pursuant to section 143.731.2, RSMo, interest on this tax will continue to accrue regardless of any extension of time for payment.

(10) If a partnership or S corporation has received a federal extension for filing its annual partnership or S corporation federal return, that partnership or S corporation is hereby granted an equal extension of time for filing its affected business entity tax return (Form MO-PTE) for the same tax year, except that this extension will be no longer than six (6) months. The partnership or S corporation must attach a copy of the approved federal extension to its affected business entity tax return (Form MO-PTE).

(11) The tax credits granted to a member of an affected business entity by sections 143.436.8 and 143.436.10, RSMo, shall be computed based on the member's direct and indirect pro rata share of the tax actually paid pursuant to section 143.436, RSMo, by any affected business entity of which such member is directly or indirectly a member. If an affected business entity reduces its tax liability under section 143.436, RSMo, by use of tax credits, other than a credit for payment or overpayment of this tax, the affected business entity's tax actually paid will generally be reduced.

(12) Any member of an affected business entity may elect not to have tax imposed on the affected business entity under section 143.436, RSMo, with respect to the affected business entity's separately and nonseparately computed items, otherwise subject to tax under section 143.436, RSMo, to the extent such items are allocable to that member. This election is referred to as an "opt-out election," and a member who has timely made this election is referred to as an "opt-out member."

(A) If a member wishes to make an opt-out election for a tax year, the opt-out election shall be filed with the department by the earlier of the original (unextended) due date of the Form MO-PTE for that tax year, or the actual filing date of the Form MO-PTE for that tax year. The opt-out member shall also furnish the opt-out election to the partnership or S corporation. The opt-out election must specify the partnership or S corporation to which the opt-out election applies.

(B) Once an opt-out election is filed, it applies to the tax year for which it was first timely filed and for all subsequent tax years. However, an opt-out member may revoke that member's opt-out election. To be effective for a tax year, the revocation must be filed with the department by the filing due date of an opt-out election for that tax year. The member shall also furnish the opt-out election revocation to the partnership or S corporation. The revocation of an opt-out election applies

to the tax year for which the revocation was first timely filed, and for all subsequent tax years, until a new opt-out election is filed.

(C) For any tax year to which the opt-out election applies, with respect to the partnership or S corporation to which the opt-out election applies, the opt-out member is ineligible for the tax credits that would otherwise be granted by sections 143.436.8 and 143.436.10, RSMo. In determining the pro rata shares of tax paid under section 143.436, RSMo, for purposes of computing the tax credits allowed by sections 143.436.8 and 143.436.10, RSMo, the pro rata share percentage that would otherwise be attributed to an opt-out member shall be redistributed proportionally among the members who are not opt-out members. For example, if an S corporation has opt-out members with a share percentage of thirty percent (30%), and a non-opt-out member of an S corporation has a share percentage of ten percent (10%), then that non-opt-out member's new credit percentage is ten percent (10%) divided by seventy percent (70%), that is, fourteen percent (14%). This subsection shall not be construed to affect an opt-out member's authorization to carry forward and redeem outstanding tax credits that were initially allowed for a tax year to which the opt-out election did not apply.

(D) For any tax year to which the opt-out election applies, with respect to the partnership or S corporation to which the opt-out election applies, such partnership or S corporation shall, when computing the tax under section 143.436, RSMo, remove all opt-out members' allocable items such as income, deductions, or any other relevant items. Addition and subtraction modifications must be determined as though the income, deductions, and other relevant items allocable to the opt-out members did not exist.

AUTHORITY: sections 32.057.2, 136.120, and 143.961, RSMo 2016, and section 143.436, RSMo Supp. 2024. Emergency rule filed Dec. 27, 2022, effective Jan. 11, 2023, expired July 9, 2023. Original rule filed Dec. 27, 2022, effective June 30, 2023. Amended: Filed March 31, 2025, effective Sept. 30, 2025.*

**Original authority: 32.057, RSMo 1979, amended 1980, 1983, 1993, 1994, 1996, 2003, 2004, 2008, 2014; 136.120, RSMo 1945; 143.436, RSMo 2022, amended 2024; and 143.961, RSMo 1972.*

12 CSR 10-2.705 Filing Corporation Tax Returns

PURPOSE: This rule sets certain instructions relating to the time and place for filing corporate tax returns and the requirement of submitting copies of federal consolidated income tax returns are assigned a rule number in order to comply with the uniform procedures adopted by the secretary of state under section 536.023, RSMo. No changes in the substantive effect of the instructions have been made.

(1) Place for Filing Returns and Payment of Taxes. The place for filing the Missouri corporation income tax return and the payment of Missouri corporation income taxes, however transmitted (e.g., by mail), shall be the Missouri Department of Revenue's office at 301 West High Street, Jefferson City, MO 65101-1517.

(2) Consolidated Federal Income Tax Returns Required — When. A corporation which participates in the filing of a consolidated federal income tax return, but not a Missouri consolidated income tax return, shall attach to its separate Missouri Corporation Income Tax Return Form MO-1120, *U.S. Corporation Income Tax Return* Form 1120 for the corresponding tax year, one (1) complete copy of the actual consolidated federal income tax return filed with the Internal Revenue Service for the corresponding tax year, if any, together with all pertinent schedules so filed, if any. A subsidiary member filing a separate Missouri return may satisfy this requirement by instead attaching to its Missouri return the first five (5) pages of the consolidated federal income tax return filed with the Internal Revenue Service for the corresponding tax year, if any, as well as an income statement or a summary of profit companies within the affiliated group for the tax year.

AUTHORITY: sections 143.511, 143.571, and 143.961, RSMo 2016. This rule was contained in the general instructions of the corporation income tax booklet filed Feb. 10, 1975, effective Feb. 20, 1975. Emergency amendment filed Jan. 20, 1995, effective Jan. 30, 1995, expired May 29, 1995. Amended: Filed Jan. 20, 1995, effective July 30, 1995. Amended: Filed Nov. 9, 2023, effective May 30, 2024.*

**Original authority: 143.511, RSMo 1972, amended 1994; 143.571, RSMo 1972; and 143.961, RSMo 1972.*

12 CSR 10-2.710 Net Operating Losses on Individual Income Tax Returns

PURPOSE: This rule explains the proper treatment of net operating losses for purposes of Missouri individual income tax, as well as the handling of negative federal adjusted gross income by individuals.

(1) An individual taxpayer cannot have a negative federal adjusted gross income for purposes of computing Missouri adjusted gross income or Missouri nonresident adjusted gross income. An individual who, for federal income tax purposes, has a negative federal adjusted gross income for a given tax year must compute Missouri adjusted gross income or Missouri nonresident adjusted gross income for that tax year as though such individual's federal adjusted gross income was zero dollars ($0).

(A) Example: For federal income tax purposes, Taxpayer A's federal adjusted gross income is negative fifty thousand dollars (-$50,000). Taxpayer A has Missouri addition modifications of sixty thousand dollars ($60,000), and is entitled to a Missouri standard deduction of thirteen thousand dollars ($13,000). Taxpayer A is a Missouri resident, and has no other deductions, credits, or modifications. In completing the Form MO-1040, Taxpayer A must enter zero dollars ($0) on the line requesting the taxpayer's federal adjusted gross income. Taxpayer A adds the Missouri addition modifications of sixty thousand dollars ($60,000), resulting in a Missouri adjusted gross income of sixty thousand dollars ($60,000). Taxpayer A then deducts the Missouri standard deduction of thirteen thousand dollars ($13,000), resulting in a Missouri taxable income of forty-seven thousand dollars ($47,000).

(2) A resident individual taxpayer must include, as an addition modification in computing Missouri income tax liability, the following net operating loss deduction amounts, to the extent used in determining federal taxable income for the tax year and allowed by Internal Revenue Code section 172:

(A) A net operating loss deduction carried backward for more than two (2) years;

(B) A net operating loss deduction carried forward for more than twenty (20) years; and

(C) A net operating loss deduction claimed for the tax year in which the loss occurred. Internal Revenue Code section 172 generally does not allow a net operating loss deduction to be claimed for the same tax year in which the loss occurred.

(3) Any amount of net operating loss deduction used in determining federal taxable income but disallowed by section 143.121.2(4), RSMo, for Missouri income tax purposes may be carried forward and taken against any income on the Missouri income tax return for no more than twenty (20) years after the year of the initial loss.

(4) A nonresident individual taxpayer shall use, in determining Missouri nonresident adjusted gross income, the portion of the modification amount prescribed by section 143.121.2(4), RSMo, which relates to income derived from sources in Missouri.

(5) The addition modification in section 143.121.2(4), RSMo, and as explained in section (2) of this rule, does not apply to a net operating loss deduction allowed, pursuant to Internal Revenue Code section 172(b)(1)(B), for the carryback of a farming loss.

AUTHORITY: section 143.961, RSMo 2016. Original rule filed Nov. 29, 1995, effective May 30, 1996. Amended: Filed Dec. 20, 2023, effective July 30, 2024.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.720 Reporting Requirements for Individual Medical Accounts

(Rescinded February 29, 2024)

AUTHORITY: section 143.961, RSMo 1994. Original rule filed Jan. 3, 1996, effective July 30, 1996. Rescinded: Filed July 11, 2023, effective Feb. 29, 2024.

12 CSR 10-2.725 Foster Parent Tax Deduction

PURPOSE: This rule interprets and implements the foster parent tax deduction provided in section 143.1170, RSMo.

(1) The maximum deduction allowed by section 143.1170, RSMo, is five thousand dollars ($5,000) per tax return, regardless of filing status, except that individuals with a filing status of married filing separately are allowed a maximum of only two thousand five hundred dollars ($2,500) per individual taxpayer.

(A) Example: For the entire year of 2023 (365 days), John and Jane Smith both provided care to a child as foster parents as defined under section 210.566, RSMo. John and Jane Smith file a Missouri income tax return using the filing status of married filing combined. John has expenses incurred directly in providing care as a foster parent in the amount of $6,000, and Jane has incurred such expenses in the amount of $5,500. On their combined Missouri income tax return for 2023, John and Jane may only take a deduction under section 143.1170, RSMo, of $5,000.

(B) Example: Same as the above, except that John and Jane Smith use the filing status of married filing separately. On his 2023 Missouri income tax return, John may take a deduction under section 143.1170, RSMo, of only $2,500, and Jane may take a deduction under section 143.1170, RSMo, of only $2,500.

(C) Example: Same as the above, with John and Jane Smith using the filing status of married filing separately, except that in 2023 John has expenses incurred directly in providing care as a foster parent in the amount of $4,000 and Jane has only $1,500 in such expenses. On his 2023 Missouri income tax return, John may only take a deduction under section 143.1170, RSMo, of $2,500. On her 2023 Missouri income tax return, Jane may only take a deduction under section 143.1170, RSMo, of $1,500.

(2) The maximum deduction limit to be allowed on a tax return is calculated as follows. The cumulative number of full days during which foster care was provided shall be totaled, and this total shall be divided by one hundred eighty-three (183) days. If the result equals or exceeds one (1), the maximum deduction can be allowed. If the result is less than one (1), round the result to the nearest two decimal places and multiply it by five thousand dollars ($5,000) (or two thousand five hundred dollars ($2,500) if married filing separately) to arrive at the maximum deduction that can be allowed on the return.

(A) Example: During the year 2023, Jane Smith, whose filing status is single, provides care as a foster parent, as defined under section 210.566, RSMo, to a child for 20 days in August, 20 days in September, and 20 days in December. Jane Smith totals these days to arrive at the sum of 60 days during which she provided foster care. Jane Smith then divides these 60 days by 183 days, to arrive at a result rounded to 0.33. This result is then multiplied by $5,000 to arrive at $1,650, the maximum deduction under section 143.1170, RSMo, that can be allowed on her tax return. Jane Smith directly incurred $700 in providing care as a foster parent during 2023. Therefore, Jane Smith may deduct that $700 on her 2023 tax return under section 143.1170, RSMo.

(B) Example: Same as the above, except that Jane Smith directly incurred $8,000 in providing care as a foster parent during 2023. Because the maximum deduction that can be allowed on her return is $1,650, she may only deduct $1,650 on her 2023 tax return for these expenses under section 143.1170, RSMo.

(3) A taxpayer desiring to claim the foster care deduction shall file an affidavit with the taxpayer's income tax return affirming that the taxpayer is a foster parent and is entitled to the deduction in the amount claimed on the return. This affidavit may be in a form provided by the Department of Revenue. In addition, if a taxpayer receives a letter from the Department of Social Services stating the number of days during the year in which the taxpayer has provided care as a foster parent, the taxpayer shall attach a copy of that letter to the income tax return for the corresponding year in which this deduction is claimed.

(4) Expenses incurred directly by the taxpayer in providing care as a foster parent include but are not limited to the following examples, to the extent the below expenses were incurred directly by the taxpayer:

(A) Food purchased directly for the foster child; and

(B) Clothing purchased directly for the foster child.

(5) The following are examples of expenses that are not incurred directly by the taxpayer in providing care as a foster parent:

(A) The increase in household utility expenses (e.g., electricity expense) attributable to the provision of foster care;

(B) The purchase of a television or computer used by multiple members of the household in addition to the foster child;

(C) General transportation or food expense for the household; and

(D) Expenses paid for directly through a public assistance program or charitable program.

AUTHORITY: section 143.1170.5, RSMo Supp. 2022. Original rule filed Jan. 31, 2023, effective Aug. 30, 2023.*

**Original authority: 143.1170, RSMo 2021.*

12 CSR 10-2.730 Expenses Related to Production of Tax Exempt Interest Income

PURPOSE: This rule clarifies, for individual income taxpayers and corporate income taxpayers, the subtraction reduction related to the production of exempt income pursuant to sections 143.431.2 and 143.121.3(1), RSMo.

(1) For purposes of this rule, "exempt income" means interest received on deposits held at a Federal Reserve bank or interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent exempt from Missouri income taxes under the laws of the United States. "Related expenses" are defined as any expenses allocable to the production of exempt income.

(2) Any expenses incurred in the production of exempt income shall reduce the exempt income that would otherwise be subtracted pursuant to section 143.121.3(1), RSMo. This reduction shall only apply to the extent that such expenses, including amortizable bond premiums, are included in a taxpayer's Missouri itemized deduction or are deducted in determining an individual's federal adjusted gross income or a corporation's federal taxable income. Section 143.121.3(1), RSMo, should be read in light of 26 U.S.C. section 265 (*Internal Revenue Code*), which generally disallows the deduction for federal income tax purposes of expenses incurred to purchase or carry tax-exempt obligations.

(3) In arriving at the amount of related expenses, the taxpayer may use actual expenses or, if actual related expenses are not reasonably determinable, a reasonable estimate. When arriving at a reasonable estimate, in general, the taxpayer should use the same or similar method to that which the taxpayer used to compute related expenses for federal income tax purposes, provided that the method reasonably approximates related expenses.

(4) If a taxpayer fails to compute reasonable related expenses, the director will make an adjustment based on the best information made available. If sufficient information is not made available and if the taxpayer's records do not provide sufficient information, the director will use the following formula to compute related expenses:

$$\frac{\text{Exempt income}}{\text{Total income}} \times \text{Expense items} = \text{Reduction to exempt income}$$

The principal expense item in this formula is interest expense, however, the director may include other expense items because of their direct relationship to the production of exempt income. "Total income" in this formula refers to the figure reported on the "total income" line on the individual's federal Form 1040 or the corporation's federal Form 1120. The taxpayer may propose, or the director may use, an alternative method provided that it better reflects the amount of related expenses.

(5) The reduction to exempt income shall be made only if related expenses total at least five hundred dollars ($500).

(6) Notwithstanding any provision of this rule to the contrary, nothing in this rule shall be interpreted or construed as incorporating by reference any rule, regulation, standard, or guideline of a federal agency.

AUTHORITY: sections 136.120 and 143.961, RSMo 2016. Original rule filed July 19, 1996, effective March 30, 1997. Amended: Filed Feb. 6, 2024, effective Sept. 30, 2024.*

**Original authority: 136.120, RSMo 1945, and 143.961, RSMo 1972.*

12 CSR 10-2.740 Adoption Tax Credit

PURPOSE: Section 135.327, RSMo, provides a tax credit for nonrecurring adoption expenses incurred in the adoption of a child. This rule, among other things, interprets section 135.327, RSMo, and other sections related to this credit; specifies how the credit shall be applied for or assigned, sold, or transferred; sets forth some aspects of the handling of Pre-2024 Credits and Post-2024 Credits; and establishes the order under which a reduction in the credit shall occur pursuant to section 135.335, RSMo.

(1) As used in this rule, the following terms shall have the following meanings:

(A) "Adoption Tax Credit Limit" means ten thousand dollars ($10,000) or, for each tax year beginning on or after January 1, 2024, ten thousand dollars ($10,000) adjusted annually for the increase in cost-of-living, if any, as of the preceding July over the level of July of the immediately preceding year of the Consumer Price Index for All Urban Consumers;

(B) "Pre-2024 Credit" means an Adoption Tax Credit issued for a tax year beginning on or before December 31, 2023;

(C) "Post-2024 Credit" means an Adoption Tax Credit issued for a tax year beginning on or after January 1, 2024.

(2) An individual residing in this state who proceeds in good faith to adopt a child may be eligible for an Adoption Tax Credit. A business entity providing funds to an employee to enable that employee to proceed in good faith with the adoption of a child may be eligible for an Adoption Tax Credit. The tax credit is limited to the lesser of the Adoption Tax Credit Limit or the actual amount of nonrecurring adoption expenses incurred in the adoption of the child.

(A) Example — Taxpayer Moving to Another State: A taxpayer residing in Missouri proceeds in good faith to adopt a child, and the child is placed in the taxpayer's home in 2023. The taxpayer incurred $8,000 of nonrecurring adoption expenses in 2023, and the taxpayer has Missouri income tax of $6,000 for the 2023 tax year. The taxpayer may apply for an Adoption Tax Credit in the amount of $4,000 for the 2023 tax year. In 2025, the taxpayer is not a resident of Missouri because the taxpayer moves to and becomes a resident of Oklahoma. The adoption is also finalized in 2025. The taxpayer has Missouri income tax of $3,000 for the 2025 tax year. The taxpayer is ineligible to apply for an Adoption Tax Credit for the 2025 tax year.

(3) The lesser of one-half (1/2) of the actual amount of

nonrecurring adoption expenses, or one-half (1/2) of the Adoption Tax Credit Limit for the tax year in which the child is placed in the adoptive parent's home, may be used to reduce the income tax on the adoptive parent's individual income tax return, or to reduce the state tax liability of the business entity, for the tax year in which the child is placed in the adoptive parent's home. The remaining one-half (1/2) of the tax credit, up to one-half (1/2) of the Adoption Tax Credit Limit for the tax year in which the adoption is finalized, may be used to reduce the income tax of the adoptive parent, or reduce the state tax liability of the business entity, for the tax year the adoption is finalized. The combined total of the portion of the tax credit for the tax year in which the child is placed in the adoptive parent's home and the portion of the tax credit for the tax year in which the adoption is finalized must not exceed the Adoption Tax Credit Limit for the tax year in which the adoption is finalized.

(A) Example — Same Year for Adoption Placement and Finalization: A child is placed in the home and the adoption is finalized in 2024. The taxpayer incurred $15,000 in nonrecurring adoption expenses. Assume for purposes of this example that the Adoption Tax Credit Limit for 2024 is $10,050. The taxpayer has applied for, and the department has approved, an Adoption Tax Credit for $10,050. The taxpayer has income tax of $6,000 for the 2024 tax year. The taxpayer may use $6,000 against income tax for the 2024 tax year and may request a refund for the remaining $4,050.

(B) Example — Different Adjacent Years for Adoption Placement and Finalization: A child is placed in the home in 2023. The adoption is finalized in 2024. The individual incurred $15,000 in nonrecurring adoption expenses in 2023, but none in 2024. Assume for purposes of this example that the Adoption Tax Credit Limit for 2024 is $10,050. The individual has income tax of $4,000 for 2023. Because this portion of the credit is limited to 50% of the Adoption Tax Credit Limit for the year that the child is placed in the home, the individual can apply for $5,000 in 2023. This is a Pre-2024 Credit, so the individual can redeem $4,000 of this portion of the credit against the 2023 income tax and may carry forward the remaining $1,000 of the credit for up to four (4) subsequent tax years. The individual may apply for a $5,025 credit for 2024.

(C) Example — Different Non-Adjacent Years for Adoption Placement and Finalization: A child is placed in the home in 2023. The adoption is finalized in 2025. Assume for purposes of this example that the Adoption Tax Credit Limit for 2025 is $10,100. The individual incurred $15,000 in nonrecurring adoption expenses in 2022 and 2023. The individual has income tax of $6,000 for 2023 and should apply for $5,000 of the Adoption Tax Credit for that year (50% of the Adoption Tax Credit Limit for that year). Because the adoption was not finalized until 2025, the individual has no credit available for 2024. For 2025, the individual may apply for $5,050 of the Adoption Tax Credit.

(D) Example — Carryforward from First Year: A child is placed in the home in 2023. The adoption is finalized in 2025. Assume for purposes of this example that the Adoption Tax Credit Limit for 2025 is $10,100. The individual incurred $15,000 in nonrecurring adoption expenses in 2022 and 2023. The individual has income tax of $3,000 for each of the tax years 2023 and for 2024. The individual may apply for $5,000 of the Adoption Tax Credit for tax year 2023. If the application is approved, the individual may use $3,000 of the $5,000 available credit against income tax for 2023 and, because this is a Pre-2024 Credit, may carry forward and use $2,000 of that credit against 2024 income tax. The individual may then apply for $5,050 of the Adoption Tax Credit for tax year 2025.

(E) Example — Less Than Maximum Nonrecurring Adoption Expenses Incurred: A child is placed in the home in 2023. The adoption is finalized in 2025. Assume for purposes of this example that the Adoption Tax Credit Limit for 2025 is $10,100. The individual incurred a total of $8,000 in nonrecurring adoption expenses in 2022 and 2023. The individual has income tax of $3,000 for each of the tax years 2023 and for 2024. The individual should apply for $4,000 of the Adoption Tax Credit ($8,000 nonrecurring adoption expenses x 50%) for tax year 2023. If the application is approved, the individual may use $3,000 of the $4,000 available credit for 2023 and, because this is a Pre-2024 Credit, may carry forward and use $1,000 of the credit against 2024 income tax. The individual should then apply for the remaining $4,000 of the Adoption Tax Credit for tax year 2025.

(F) Example — Foster Care Placement Leading to Adoption: A child is placed in the home under a foster care arrangement in 2023. In 2024, the taxpayer begins to proceed in good faith with the adoption of the child. In 2025, the adoption is finalized. In 2024, the individual incurred $8,000 in nonrecurring adoption expenses. In this circumstance, the taxpayer may apply for $4,000 of the Adoption Tax Credit for tax year 2024, which is treated as the year in which the child is placed in the home for purposes of adoption and this credit. The taxpayer may apply for the remaining $4,000 of the Adoption Tax Credit for the tax year 2025.

(4) The Pre-2024 Credit used by an adoptive parent may not exceed the income tax for the tax year, and the Pre-2024 Credit used by a business entity may not exceed the business entity's state tax liability on the return for which the credit is claimed for the tax year. The portion of a Pre-2024 Credit which may otherwise be used for the tax year in which the child is placed in the home, but which exceeds the tax due for that tax year, shall not be refunded but may be carried forward and used against the taxpayer's tax due for the subsequent four (4) tax years from the tax year the child is placed in the home. The portion of a Pre-2024 Credit which may otherwise be used for the tax year in which the adoption is finalized, but which exceeds the tax due, shall not be refunded but may be carried forward and used against the taxpayer's tax due for the subsequent four (4) tax years from the tax year the adoption is finalized. If a taxpayer has carried Pre-2024 Credits forward to a tax year for which the taxpayer also has Post-2024 Credits, the taxpayer may designate on the tax return whether the Pre-2024 Credits or Post-2024 Credits shall first be applied to the tax liability for that tax year. If no designation is made, the department will apply Pre-2024 Credits to a tax liability before applying Post-2024 Credits to that liability.

(A) Example — Pre-2024 Credit and Post-2024 Credit Redeemed in Same Year: A child is placed in the home in 2023. The adoption is finalized in 2024. Assume for purposes of this example that the Adoption Tax Credit Limit for 2024 is $10,050. The individual incurred $15,000 in nonrecurring adoption expenses in 2022 and 2023. The individual has income tax of $3,000 for tax year 2023 and income tax of $1,000 for 2024. The individual may apply for $5,000 of the Adoption Tax Credit for tax year 2023. If the application is approved, the individual may use $3,000 of the $5,000 available credit for 2023. Because this is a Pre-2024 Credit, the individual has $2,000 remaining to carry forward. The individual applies for and is approved for a credit of $5,025 for tax year 2024. The individual claims all of the credits with the individual's tax year 2024 return but does not designate on the tax return whether the Pre-2024 Credit or the Post-2024 Credit shall first be applied against the tax year

2025 liability. Therefore, the department first applies the Pre-2024 Credit to the $1,000 liability, leaving the taxpayer with $1,000 of a Pre-2024 Credit to carry forward. The department then issues an income tax refund for the Post-2024 Credit in the amount of $5,025.

(5) Only one (1) credit of up to the Adoption Tax Credit Limit is available for each child that is adopted. For a fiscal year beginning on or after July 1, 2024, in the event that an individual and a business entity both apply to claim a credit for the same child under section 135.327, RSMo, the earlier-filed application will take precedence over the later-filed application. If there are simultaneous application filings or if the relevant fiscal year begins before July 1, 2024, then, in the event that an individual and a business entity both apply to claim a credit for the same child under section 135.327, RSMo, the individual's application to claim the credit will take precedence over the business entity's application to claim the credit. In no event may the combined total of credit allowed to an individual and a business exceed the Adoption Tax Credit Limit amount for the same child, and in no event may a business entity and an individual use the same nonrecurring adoption expenses to determine the tax credit amount for which they are eligible. The preceding sentence applies regardless of whether the nonrecurring adoption expenses were paid using funds provided by a business entity to an individual employee.

(A) Example – Fiscal Year Begins Before July 1, 2024: In 2023, Jane Smith was an employee of ABC Corp. As part of an employee benefit program, ABC Corp. provided Jane Smith with $10,000 in funds for nonrecurring adoption expenses, which Jane Smith then spent on those nonrecurring adoption expenses. The employment agreement between ABC Corp. and Jane Smith specified that only ABC Corp., and not Jane Smith, would be allowed to include those nonrecurring adoption expenses on an application for this tax credit. The child adopted by Jane Smith was placed in her home and the adoption was finalized in 2023. In January of 2024, Jane Smith ended her employment with ABC Corp. In February of 2024, ABC Corp. filed its application for the Adoption Tax Credit for the $10,000 in funds it provided to her. In March of 2024, Jane Smith filed her application for the $10,000 in nonrecurring adoption expenses she paid using the funds provided by ABC Corp. The cumulative tax credit maximum was not reached for that fiscal year, which was a fiscal year beginning before July 1, 2024. After the end of the application period, the department will approve Jane Smith's application for the $10,000 credit and will deny ABC Corp.'s application, because only one $10,000 credit is allowed for each child adopted. This does not eliminate any private cause of action ABC Corp. may have against Jane Smith in connection with her employment agreement.

(6) To apply for the Adoption Tax Credit, the taxpayer must attach a completed form MO-ATC to the return for the tax year in which the child is placed in the adoptive parent's home or for the tax year in which the adoption is finalized, or both. This application must be filed between July 1 and April 15 of the fiscal year, regardless of any change to the income tax return deadline for Saturdays, Sundays, or holidays. A denied application may be refiled between July 1 and April 15 of the following fiscal year, but only if the completed form MO-ATC is attached to an original or amended return for either the tax year the child is placed in the adoptive parent's home or the tax year the adoption is finalized, as applicable.

(A) Example – Late-Filed Form MO-ATC: An individual incurred a total of $10,000 in nonrecurring adoption expenses related to the adoption of a child. The individual incurred income tax of $3,000 in 2023 and filed a 2023 Missouri income tax return and form MO-ATC on April 16, 2024, after the filing period for the Adoption Tax Credit. The application for credit will be denied since the application was filed after the filing period. The form MO-ATC may be refiled in the next fiscal year attached to an amended Missouri income tax return for tax year 2023.

(7) After it has been approved and issued by the department, the owner of an Adoption Tax Credit may assign, transfer, or sell the credit. To claim the credit, the buyer must provide to the department a statement signed by the seller that includes the names and addresses of the buyer and seller, the date the credit was sold, the amount of tax credit sold, the price paid, and must also provide a completed and signed Form MO-TF and a copy of the Form MO-ATC completed by the adoptive parent(s) or the adoptive parent(s)' employer. A sale of the credit shall not be effective if the amount paid in exchange for the credit is less than 75% of the amount of the credit sold. For Pre-2024 Credits, the tax years to which a tax credit may be carried forward by the assignee, transferee, or buyer of the credit shall not exceed the tax years to which the assignor, transferor, or seller could have carried forward the tax credit. For Post-2024 Credits, no carryforward is allowed.

(A) Example – Non-Cash Exchange for Adoption Tax Credit: A car dealer accepts a Pre-2024 Credit as payment for a car. The fair market value of the car must be at least 75% of the amount of the Adoption Tax Credit transferred to the car dealer. The car dealer may use the Pre-2024 Credit to offset the car dealer's income tax liability, subject to the applicable restrictions and filing requirements. No portion of this credit is refundable, but the credit can be carried over to a later tax year for the remaining life of the credit.

(8) The reduction of the amount of the credit by the state's cost of providing care, treatment, maintenance, and services under section 135.335, RSMo, shall occur as prescribed in this section. The amount of the credit redeemed on any tax return will be reduced, beginning with the most recently filed original or amended tax return redeeming the credit for the most recently ended tax year and continuing in reverse chronological order until the tax year of adoption. If, in connection with the same return, a Post-2024 Credit is used both to reduce income tax liability and is refunded for the same tax year, the portion of that credit used to reduce income tax liability shall be reduced before the portion of that credit which was refunded. If, after the credit has first been reduced as described in the previous two (2) sentences, an amount of Pre-2024 Credits remains eligible to be carried forward, further reduction will be made in the order in which redemptions of such carryforwards are filed with the department. The state's cost of providing care, treatment, maintenance, and services may be updated from time to time to reflect additional costs incurred by the state over time, and the reduction of the credit in the order prescribed by this section, beginning with the order described in the second sentence of this section, may be separately performed each time the state's cost of providing care, treatment, maintenance, and services is updated. The reduction required by section 135.335, RSMo, in the order specified in this rule, shall apply to any credit amounts issued for the same child's adoption process, even if the credit amounts were issued to multiple taxpayers, and even if the tax credit has been assigned, transferred, or sold.

(A) Example – Order of Reduction of Pre-2024 Credit Amount:

In 2024, Jane Smith and her employer, XYZ Corp., apply for and are approved for an Adoption Tax Credit with respect to the same child in the amount of $1,000 each for tax year 2023. The child was placed in the home, and the adoption was finalized, in 2023. XYZ Corp. uses $400 of its credit against its income tax liability for tax year 2023 on a return filed March 15, 2024, and has $600 remaining eligible to be carried forward. Jane Smith uses $300 of her credit against her individual income tax liability for tax year 2023 on a return filed April 10, 2024. Jane Smith sells $500 of her credit to ABC Corp. and keeps the remaining $200 eligible for her to carry forward. ABC Corp. uses $400 of the purchased credit on its tax year 2023 corporate income tax return filed late, on May 1, 2024, and intends to carry forward the remaining $100 of the credit to tax year 2024. However, at the end of 2024, the adopted child of Jane Smith is placed, with no intent to return to the adoptive home, in foster care, and the state's costs of providing care for the child are $1,800. The reduction of the credit applies in the following order. First, ABC Corp.'s $400 redemption of the credit on its May 1, 2024, tax return is reduced to $0. ABC Corp. has a resulting tax underpayment for its tax year 2023. Second, Jane Smith's $300 redemption of the credit on her April 10, 2024, tax return is reduced to $0. Jane Smith has a resulting tax underpayment for her tax year 2023. Third, XYZ Corp.'s $400 redemption of the credit on its March 15, 2024, tax return is reduced to $0. XYZ Corp. has a resulting tax underpayment for its tax year 2023. Subsequently, ABC Corp. files its 2024 tax return on April 2, 2025, attempting to redeem its remaining $600 credit, and XYZ Corp. files its 2024 tax return on April 3, 2025, attempting to redeem its remaining $100 credit. The department reduces these credits to $0. Afterwards, on April 9, 2025, Jane Smith files her 2024 tax return, redeem her remaining $200 credit carryforward, which the department initially allows as the $1,800 required reduction has been satisfied. However, based upon further information provided to the department, on June 1, 2025, the state's costs of providing care for the child have been increased by $500. The department therefore engages in another round of reductions, reducing to $0 Jane Smith's $200 credit redeemed on her tax year 2024 return. Jane Smith has a resulting underpayment for her tax year 2024.

(B) Example — Order of Reduction of Post-2024 Credit Amount: In 2025, Jane Smith and her employer, XYZ Corp., apply for and are approved for an Adoption Tax Credit with respect to the same child in the amount of $1,000 each for tax year 2024. The child was placed in the home, and the adoption was finalized, in 2024. XYZ Corp. uses the $1,000 credit against its $600 income tax liability for tax year 2024 on a return filed March 15, 2025, and requests a refund of the remaining $400 credit. Jane Smith had no income tax for tax year 2024, so she files a return for tax year 2024 on April 10, 2025, requesting a refund of her entire $1,000 Adoption Tax Credit. On May 1, 2025, the department issues the $400 and $1,000 refunds to XYZ Corp. and Jane Smith, respectively. However, at the end of 2025, the adopted child of Jane Smith is placed, with no intent to return to the adoptive home, in foster care, and the state's costs of providing care for the child are $1,600. The department first reduces Jane Smith's credit to $0, and then issues her a notice of deficiency seeking repayment of the $1,000 refund. The department next reduces to $0 XYZ Corp.'s $600 credit used against tax on the tax year 2024 return. This results in an underpayment for XYZ Corp.'s 2024 tax year.

(9) No credit shall be allowed for that portion of the nonrecurring adoption expenses paid from any funds received under any federal, state, or local government program. No credit shall be allowed for that portion of the nonrecurring adoption expenses for which a credit is allowable and taken under any provision of federal, state, or local law similar to the Adoption Tax Credit Act. If there is a deduction allowable and taken under any other provision of federal, state, or local law which is similar to the credit allowable under section 135.327, RSMo, the credit allowable for nonrecurring adoption expense shall be reduced by the amount of the decrease in the tax liability resulting from taking such deduction.

(A) Example — Payment of Nonrecurring Adoption Expenses by Local Government Program Funds Reduces Adoption Tax Credit Eligible Amount: As an employee benefit, ABC Corp. provides $5,000 in funds to be used for nonrecurring adoption expenses to its employee to enable that employee to proceed in good faith with the adoption of a child. However, after the $5,000 employee benefit was provided to the employee, the employee received funds for the employee's full amount of nonrecurring adoption expenses from a local government program. The employee paid all nonrecurring adoption expenses from the funds received under this local government program. ABC Corp. should not apply for an Adoption Tax Credit, as the amount of the credit allowable has been reduced to zero because the nonrecurring adoption expenses were paid from funds received under a local program.

(B) Example — Funds from Religious Institutions or Foreign Governments: Jane Smith, a Missouri resident, decides to adopt a child from a foreign country. The adopted child is placed in her home and the adoption is finalized in the same year. For that year, Jane Smith pays $1,500 in nonrecurring adoption expenses, and she receives $200 in funds for nonrecurring adoption expenses from a religious institution, $800 in funds for nonrecurring adoption expenses from the government of the foreign country, and a $700 federal adoption tax credit based on her nonrecurring adoption expenses. The money received from a religious institution and from the government of a foreign country are not payments from a federal, state, or local government program, so Jane should only apply for an Adoption Tax Credit of $800 ($1,500 in nonrecurring adoption expenses - $700 federal adoption tax credit).

(10) Prior to the approval of any application to claim the credit, pursuant to section 135.815, RSMo, the department shall verify that the applicant does not owe any delinquent income, sales, or use taxes, or interest, additions, or penalties on such taxes, and verify through the Department of Commerce and Insurance that the applicant does not owe any delinquent insurance taxes. In the event that there is any such delinquency, the amount of the credit approved shall be applied to all such delinquencies, and the remainder shall be issued to the applicant. For a fiscal year beginning before July 1, 2024, the amount of the credit approved and applied to a delinquency pursuant to section 135.815, RSMo, counts against the maximum fiscal year cumulative limit on all credits which may be claimed set forth in section 135.327.4, RSMo. In addition, any portion of a Post-2024 Credit that would otherwise be refunded in connection with a Missouri income tax return is subject to applicable setoff and related provisions of sections 143.781 to 143.790, RSMo.

(A) Example — Adoption Tax Credit Amount Automatically Applied to Tax Delinquencies: Jane Smith pays $7,000 in nonrecurring adoption expenses, $5,000 of which is funded by her employer, ABC Corp., through its adoption assistance program. The adopted child is placed in Jane Smith's home and the adoption is finalized in the same year. At the same time as she files her Missouri individual income tax return, Jane Smith applies for an Adoption Tax Credit of $2,000 and, at the same

time that it files its Missouri corporate income tax return, ABC Corp. applies for an Adoption Tax Credit of $5,000. ABC Corp. has an income tax and use tax delinquency from prior periods totaling $4,000. The $5,000 Adoption Tax Credit issued by the department to ABC Corp. is reduced by $4,000 to $1,000. Jane Smith has no prior tax delinquencies, and her application for the $2,000 credit is fully approved.

(11) For the fiscal year ending on June 30, 2024 —

(A) The cumulative amount of tax credits that may be approved in any one (1) fiscal year shall not exceed a six- (6-) million-dollar maximum;

(B) After the April 15 application deadline, the department will determine the amount of credits applied for where the child adopted in connection with the application is both a special needs child and a resident or ward of this state at the time the adoption is initiated ("Priority Applications");

(C) If the total amount of credits applied for in Priority Applications exceeds the six- (6-) million-dollar cumulative maximum, properly filed Priority Applications will be approved on a pro rata basis and no applications other than Priority Applications will be approved;

(D) If the total amount of credits applied for in Priority Applications equals or is below the six- (6-) million-dollar cumulative maximum, all properly filed Priority Applications will be approved and the properly filed applications which are not Priority Applications will be approved on a pro rata basis up to the remainder of the six- (6-) million-dollar maximum; and

(E) If the total amount of credits applied for on both Priority Applications and applications which are not Priority Applications is below the six- (6-) million-dollar maximum for the fiscal year, all properly filed applications will be approved.

(12) In the event of a full or partial credit denial due to the fiscal year cumulative tax credit maximum or pro rata determination referred to in section (11) above, the taxpayer will not be held liable for any penalty or addition to tax for the resulting underpayment on the basis of negligence, lack of good cause, or similar basis, provided the balance is paid or a payment plan signed by the taxpayer, has been received and approved by the department within sixty (60) days from the notice of denial.

AUTHORITY: sections 135.339, 136.120, and 143.961, RSMo 2016. Material in this rule originally filed as 12 CSR 10-400.200. Original rule filed Jan. 25, 2024, effective Sept. 30, 2024.*

**Original authority: 135.339, RSMo 1987, amended 1993, 1995, 2014; 136.120, RSMo 1945; and 143.961, RSMo 1972.*