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

PURPOSE: Income Tax Release 73.11 is rewritten and renumbered 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 release have been made. This rule represents the response of the Department of Revenue to questions involving the Missouri income tax treatment of Missouri resident individual cash basis taxpayers for calendar year 1973 and following years.

(1) The following answers have been given by the income tax bureau in response to questions involving the 1973 Missouri income taxation of calendar year, cash basis Missouri resident individuals:

(A) Mr. A is a retired employee of a state agency. The Missouri statute authorizing his governmental pension also provides that "any annuity, benefits. . . under this act are exempt from any tax by the State of Missouri." Mr. A's 1973 federal adjusted gross income (FAGI) includes his $2000 state retirement. Can he lower by $2000 his 1973 Missouri return? The answer to this question is yes. He has a negative modification to FAGI in determining Missouri adjusted gross income (MAGI). This only applies to a retired government employee whose benefits are expressly exempted by a specific section of the *Revised Statutes of Missouri*. Mr. A's explanation attached to page 2 of his Missouri Form 40 should include the amount received, the name of the employer and either an exemption notice from the employer or a reference to the specific Missouri statutory section;

(B) In 1973, B received a refund of his/her 1972 Missouri income tax. S/he included it in his/her 1973 FAGI because it was a tax that s/he previously deducted as a federal itemized deduction. Is the refund a negative modification to FAGI in determining MAGI? The answer to this question is no. No Missouri statute provides a negative modification or other special treatment for a Missouri income tax refund in determining MAGI (section 143.121, RSMo);

(C) C deducted medical expenses as an itemized deduction on his/her 1972 federal return. In 1973, s/he received an insurance reimbursement. On his/her 1973 federal income tax return, s/he reported the recovery of the previously deducted expense as income. S/he was not eligible to deduct medical expenses on his/her 1972 Missouri income tax return. Is the medical expense reimbursement a negative modification to FAGI in determining MAGI? The answer to this question is no. No Missouri statute provides a negative modification or other special treatment for a medical insurance reimbursement in determining MAGI (section 143.121, RSMo);

(D) In 1973, D paid the $200 balance on his/her 1972 federal income tax. Is it deductible on his/her 1973 Missouri return? The answer to this question is yes. The 1973 returns (Forms 40 and 40A) contain a line to claim this federal income tax payment for an old law year (Income Tax Release 73-1, March 1, 1973);

(E) In 1973, E paid 1972 federal self-employment tax of $200. Is it deductible on the 1973 Missouri return? The answer to this question is no. Self-employment taxes for 1973 and later years (but not for 1972 and earlier years) are added to federal itemized deductions in determining Missouri itemized deductions. As discussed in subsection (1)(D) of this rule, a 1973 payment of federal income (but not self-employment) tax results in a 1973 deduction (sections 143.141(3)(c) and 143.171.2., RSMo);

(F) In 1973, F paid the $200 balance on his/her 1972 federal return which reported both his/her federal income tax and his/her federal self-employment tax. Is it deductible on his/her 1973 Missouri return? In order to answer this question, it is necessary to allocate the 1972 and 1973 payments between income tax and self-employment tax. A taxpayer must allocate the 1973 payments consistent with his/her earlier 1972 allocation. The 1972 Missouri income tax return Form 28-10 indicated the 1972 federal payments allocated to income tax at lines 11, A and B on page 1 and indicated self-employment tax at line 4 on page 2. The allocation of the 1973 balance is determined by the 1972 return allocation.

1. Assume that F's 1972 federal return showed an income tax of $1250 and a self-employment tax of $350. The $1600 total was paid by $1400 estimated and withholding tax in 1972, leaving a $200 balance to be paid in 1973. Assume further that F on his/her 1972 Missouri return claimed a deduction for $1250 federal income tax on page 1 and $150 self-employment tax on page 2. The result is that his/her entire $200 balance paid in 1973 is self-employment tax and no part of it is deductible on his/her 1973 return;

(G) What special problems do I have as the beneficiary of an estate or trust? The answer is that there are usually no problems. Your FAGI, your Missouri starting point already includes your share, if any, of the income and deductions of the estate or trust. Thus, your Missouri treatment is the same as your federal. The only major exception is if the executor or trustee tells you that you have a fiduciary adjustment to add or subtract in determining your MAGI. If so, indicate your fiduciary adjustment on page 2 of your Missouri Form 40 with the explanation "fiduciary adjustment—(name of estate or trust)." Do this only if you are advised of a fiduciary adjustment by the executor or trustee. This will occur if the estate or trust has unusual items, such as federal or other non-Missouri governmental bond interest. Another exception is if your federal return includes a throwback distribution (section 143.121.4. and 3(d), RSMo);

(H) What special problems do I have as the partner of a partnership? The answer is that there are usually no problems. Your FAGI, your Missouri starting point, already includes your share, if any, of the income and deductions of the partnership. Thus, your Missouri treatment is the same as the federal. The only exception is if the partnership tells you that you have a partnership adjustment to add or subtract in determining your MAGI. If so, indicate your partnership adjustment on page 2 of your Missouri Form 40 with the explanation "partnership adjustment— (name of partnership)." Do this only if you are advised of a partnership adjustment by the partnership. This will occur if the partnership has unusual items, such as federal or other non-Missouri governmental bond interest (section 143.121.5., RSMo); and

(I) What special problems do I have as the shareholder of a subchapter S corporation (electing small business corporation) filing federal form 1120S? The answer is that there are no problems. Your FAGI, your Missouri starting point, already includes your share, if any, of the income and deductions of the subchapter S corporation. Thus, your Missouri treatment is always the same as your federal.

AUTHORITY: section 143.961, RSMo 1986. This rule was previously filed as Income Tax Release 73-11, Jan. 29, 1974, effective Feb. 8, 1974.*

**Original authority 1972.*

***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 Gain (Loss) Allocation Between Spouses

PURPOSE: This rule sets forth the method to be used by married persons filing joint federal income tax returns in allocating capital gains and losses between the spouses for Missouri income tax purposes.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by law.

(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 gains or losses from sale or exchange of capital assets, but only if the husband and the wife file a joint federal income tax return for the year. The rules presume the applicability of the Missouri Income Tax Law of 1973 (Senate Bill 549).

(2) Losses: General Rule. If the losses from the sale or exchange of capital assets exceed the net gains from the sales, so that line 14, Schedule D, Form 1040 is a loss, then, subject to the limitation provided for in *Internal Revenue Code* (IRC) Section 1211, allocate the excess to the spouse responsible for the excess. 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. Allocate excess short-term capital losses before allocating excess long-term capital losses.

(A) Example No. 1: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term Gain (Loss)	0	0	
Long-Term Gain (Loss)	($2000)	($3000)	($5000)
FAGI			*$14,000

*Section 1211 Limitation of ($1000).

Missouri Answer: The amount of the excess is (5000) but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to (1000). Since both spouses are responsible for the excess, then allocate the (1000) on a *pro rata* basis, that is—husband (2/5 x 1000) and wife (3/5 x 1000).

MAGI is therefore—

	Husband	Wife	Total
Wages	$10,000	$5000	
Less Section 1211 Deduction	($400)	($600)	
MAGI	$9600	$4400	$14,000

(B) Example No. 2: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term Gain (Loss)	($200)	($300)	($500)
Long-Term Gain (Loss)	($8000)	($3000)	($5000)
FAGI			*$14,000

*Section 1211 Limitation of ($1000).

Missouri Answer: The Section 1211 limitation of (1000) should be allocated as follows: a) Allocate excess short-term losses of (500) first and, since both spouses are responsible for the excess, it should be allocated on a *pro rata* basis, that is—husband (2/5 x 500) and wife (3/5 x 500); b) Allocate the remaining (500) of the limitation from excess long-term losses and, since the husband is responsible for the excess, the remaining (500) should be allocated entirely to him. Note that husband must use $2 of net long-term loss to offset $1 of ordinary income.

MAGI is therefore—

	Husband	Wife	Total
Wages	$10,000	$5000	
Less Section 1211 Deduction	($700) i.e. S.T. ($200)	($300) i.e. S.T. ($300)	
x	+ L.T. ($500)	+ 0	
MAGI	$9300	$4700	$14,000

(C) Example No. 3: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term Gain (Loss)	($1000)	($1000)	(0)
Long-Term Gain (Loss)	($8000)	($3000)	($5000)
FAGI			*$14,000

*Section 1211 Limitations of ($1000).

Missouri Answer: Since there are no net short-term losses, all of the IRC Section 1211 limitation of (1000) should be allocated from excess long-term losses. Since the husband is responsible for the excess, the entire amount of the limitation is allocated to him.

MAGI is therefore:

	Husband	Wife	Total
Wages	$10,000	$5000	
Less Section 1211 Deduction	($1000)	0	
MAGI	$9000	$5000	$14,000

(3) Gains: General Rule. If net gains from the sale or exchange of capital assets exceed net losses from the sales, so that line 14, Schedule D, Form 1040 is a gain, then allocate the excess short-term capital gain to the spouse(s) responsible for the gains, and allocate the excess long-term capital gain to the spouse(s) responsible for the gain and allocate the IRC Section 1202 deduction in the

same manner and to the same spouse(s) to whom excess long-term gains are allocated. If both spouses are responsible for the excess short-term (long-term) gain, then allocate the excess of short-term (long-term) gain on a *pro rata* basis.

(A) Example No. 4: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term Gain (Loss)	0	0	
Long-Term Gain (Loss)	($3000)	($8000)	($5000)
FAGI			*$17,500

*$5000 net long-term gain less IRC Section 1202 deduction of $2500.

Missouri Answer: Since the excess gains are all net long-term gains and since the wife is responsible for the excess, then allocate the entire amount of the excess to the wife and also allocate the entire IRC Section 1202 deduction to the wife.

MAGI is therefore—

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus Excess Gains	0	$5000 (L.T.)	
Less Section 1202 Deduction	0	$2500	
MAGI	$10,000	$7500	$17,500

(B) Example No. 5: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term Gain (Loss)	($8000)	($3000)	($5000)
Long-Term Gain (Loss)	($3000)	($8000)	($5000)
FAGI			*$22,500

*IRC Section 1202 deduction of $2,500.

Missouri Answer: Since the husband is responsible for the entire amount of excess short-term gains, the excess is allocated to the husband. Since the wife is responsible for the entire amount of excess long-term gains, the excess, as well as the IRC Section 1202 deduction, should be allocated to her.

Missouri AGI is therefore:

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus Excess Gains	$5000 (S.T.)	$5000 (L.T.)	
Less Section 1202 Deduction	0	$2500	
MAGI	$15,000	$7500	$22,500

(C) Example No. 6: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term Gain (Loss)	($4000)	($1000)	($5000)
Long-Term Gain (Loss)	($2000)	($3000)	($5000)
FAGI			*$22,500

*IRC section 1202 deduction of $2500.

Missouri Answer: Excess short-term capital gains are allocated to the spouses on a *pro rata* basis, that is—husband (4/5 x 5000) and wife (1/5 x 5000). Excess long-term capital gains are allocated to the spouses on a *pro rata* basis, that is—husband (2/5 x 5000) and wife (3/5 x 5000). The IRC Section 1202 deduction of $2500 is also allocated on a 2/5—3/5 basis. Note that the Section 1202 deduction may be computed on this basis, or it may be separately computed by deducting 50% of each spouse's *pro rata* share of excess long-term capital gains.

MAGI is therefore—

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus Excess Gains	$4000 (S.T.)	$1000 (S.T.)	
	$2000 (L.T.)	$3000 (L.T.)	
Less Section 1202 Deduction	$1000	$1500	
MAGI	$15,000	$7500	$22,500

(4) The following three (3) examples are designed to show that, for allocation purposes, the primary focus is on the gain (loss) shown on line 14, Schedule D, Form 1040:

(A) Example No. 7: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term Gain (Loss)	($3000)	($8000)	($5000)
Long-Term Gain (Loss)	($6000)	($4000)	($10,000)
FAGI			*$17,500

*Excess of net long-term capital gain over net short-term capital loss is $5000, less IRC Section 1202 deduction $2500.

Missouri Answer: Since net long-term capital gains exceeds net short-term capital loss, the 5000 figure reported on line 14, Schedule D, Form 1040 is an excess long-term gain. Since both spouses are responsible for the excess, then the excess long-term capital gain, as well as the IRC Section 1202 deduction, are allocated to the spouses on a *pro rata* basis, that is—husband (6/10 x 5000) and wife (4/10 x 5000). The IRC Section 1202 deduction of 2500 is also allocated on 6/10—4/10 basis.

MAGI is therefore—

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus Excess Gains	$300 (L.T.)	$2000 (L.T.)	

	Husband	Wife	Total
Less Section 1202 Deduction	$1500	$1000	
MAGI	$11,500	$6000	$17,500

(B) Example No. 8: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	15,000
Short-Term			
Gain (Loss)	($14,000)	($9000)	($5000)
Long-Term			
Gain (Loss)	($12,000)	($2000)	($10,000)
FAGI			*$17,500

*Excess of net long-term capital gain over net short-term capital loss is $5000, less IRC Section 1202 deduction of $2500.

Missouri Answer: Since net long-term capital gain exceeds net short-term capital loss, the $5000 figure reported on line 14, Schedule D, Form 1040 is an excess long-term gain. Since the husband is responsible for the excess, then allocate the entire amount of the excess to the husband and also allocate the entire IRC Section 1202 deduction to the husband.

MAGI is therefore:

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus			
Excess			
Gains	$5000 (L.T.)	0	
Less			
Section			
1202			
Deduction		$2500	0
MAGI	$12,500	$5000	$17,500

(C) Example No. 9: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term			
Gain (Loss)	($20,000)	($9000)	$11,000
Long-Term			
Gain (Loss)	($28,000)	$22,000	($6000)
FAGI			*$20,000

*Excess of net short-term gain over net long-term capital loss is $5000.

Missouri Answer: Since net short-term capital gains exceed net long-term capital loss, the $5000 figure reported on line 14, Schedule D, Form 1040 is an excess short-term gain. Since the husband is responsible for the entire amount of excess short-term gain, the excess is allocated to the husband.

MAGI is therefore—

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus			
Excess			
Gains	$5000 (S.T.)	0	
Less			
Section			
1202			
Deduction	0	0	
MAGI	$15,000	$5000	$20,000

AUTHORITY: section 143.961, RSMo 1986. This rule was previously filed as Income Tax Release 73-11, Jan. 29, 1974, effective Feb. 8, 1974.*

**Original authority 1972.*

12 CSR 10-2.015 Employers' Withholding of Tax

PURPOSE: This rule provides a guide to employers in properly fulfilling their responsibilities of withholding Missouri taxes from the wages of employees.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) General Information. The Missouri general assembly in 1972 enacted Senate Bill 549, a new Missouri income tax law. This law adopts many provisions and terms of the *Internal Revenue Code.* Its withholding provisions are applicable to wages paid after December 31, 1972. The "Missouri Employer's Tax Guide" and this rule are designed to assist employers in withholding Missouri income tax from wages paid from sources in Missouri. An employer may generally follow the provisions of the Internal Revenue Service (IRS) publication titled "Employer's Tax Guide" Circular E relating to withholding income tax. An employer already assigned a Missouri withholding tax identification number will not need to obtain a new one. If a business is discontinued, transferred or sold, the employer must file an Employer's Withholding Final Report, Form MO-941F, to close the employer's withholding account. If the business of another employer is acquired, do not use the number assigned to that business; a new number must be obtained.

(2) Employers. An employer is any person, firm, corporation, association, fiduciary of any kind or other type of organization for whom an individual performs service as an employee, unless the person or organization for whom the individual performs service does not have control of the payment of compensation for the service, (section 143.191, RSMo). The term employer means the person, including all government agencies, who controls the payment of the compensation. An employer required to withhold Missouri income tax is personally liable for the tax. Any amount of tax actually deducted and withheld by an employer is a special fund in trust for the director of revenue (section 143.241, RSMo). An employee does not have a right of action against the employer in respect to any money deducted and withheld from his/her wages if it is paid over to the director of revenue in good faith compliance with the Missouri Income Tax Law.

(3) Registration of Employers. Every employer must register with the Missouri Department of Revenue by completing the Missouri Tax Registration Application, Form DOR-2643. A permanent registration number will be assigned. A new application 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 identification number as a result of a change in ownership type, must file an Employer's Withholding Final Report, Form MO-941F, to close the old account. These numbers are not transferable and should be referred to in all reports and correspondence concerning withholding.

(4) 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 percent (1/2%) deduction of income taxes withheld if the returns are filed timely. The filing frequency for a complex employer is determined by the total amount withheld by all reporting units.

(5) Seasonal. If your business is only open for several months out of the year, you may register as a seasonal employer.

(6) Employees. The term employee for Missouri withholding purposes has the same meaning as it has for federal withholding (see "Employer's Tax Guide," Circular E, published by the IRS). This definition is the same for Missouri residents and nonresidents.

(7) Wages. The term wages for Missouri withholding purposes has the same meaning as it has for federal withholding (see "Employer's Tax Guide," Circular E, published by the IRS). Wages include all pay given to an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses and commissions, regardless of how measured or paid.

(8) Interstate Transportation Employees.

(A) Rail, Motor and Private Motor Carriers. 49 U.S.C. section 11504, limits state taxation on wages of employees of rail, motor and private motor carriers. Missouri withholding is required on rail, motor and private motor carrier employees whose state of residence is Missouri. Employees of rail carriers and motor carriers who perform regularly assigned duties in more than one (1) state are subject to state income tax only in their state of residency.

(B) Air and Water Carriers. 49 U.S.C. sections 1512 and 11504, limit taxation on wages of employees of air and water carriers to the employee's state of residence, and to the state in which the employee earns more than fifty percent (50%) of the wages paid by the air or water carrier if different from the state of residence.

(9) Nonresident Employees Subject to Withholding. 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 services are performed partly within and partly without the state, 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).

(10) Resident of Missouri Employed in Another State. A Missouri resident paying income tax to another state because of employment in that state may file a Withholding Affidavit For Missouri Residents, Form MO W-4C. If the employee does not complete Form MO W-4C, the employer may withhold Missouri taxes on all services performed, regardless of where performed. All income received for services performed in another state not having a state income tax is subject to Missouri withholding. If services are performed partly within and partly without 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 without 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, is single and claims one allowance. The employee performs 40% of his/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).

(11) Missouri Employer with Nonresident Employees. If a nonresident employee performs all services outside Missouri, his/her wages are not subject to Missouri withholding. A nonresident employee performing services in more than one (1) state is subject to withholding as outlined in section (9).

(12) Supplemental Wage Payments. If supplemental wages are paid, such as bonuses, commissions, overtime pay, back pay, including retroactive wage increases or reimbursements for nondeductible moving expenses in the same payment with regular wages, withhold Missouri income tax 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 has been 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 of three percent (3%) of the supplemental wages, using zero withholding allowances; 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 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 withholding exemption exceeds his/her wages), use Method Two described in paragraph (12)(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.

(13) Tips Treated as Supplemental Wages. Employers must withhold Missouri income tax based upon total tips reported by the

employee. Withhold income tax on tips using the same options indicated for withholding on supplemental wage payments.

(14) 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/her vacation pay.

(15) Lump-Sum and Periodic Distribution. Missouri follows the federal guidelines for lump-sum and periodic distributions. If a lump-sum distribution, withhold at the rate of six percent (6%). If a periodic distribution, follow the computer formula or tax tables.

(16) Determining Proper Amount to Withhold. To determine income tax withholding, take the following factors into account:

(A) Wages paid during the payroll period, including tips and vacation pay;

(B) Marital status—There are separate withholding tables for single and married employees; and

(C) Withholding allowances as indicated on the MO W-4.

(17) Exemption for Nontaxable Individuals. Exemption from withholding for an individual is valid only if the employee submits to the employer a completed Form MO W-4 (Employee's Withholding Allowance Certificate), 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 s/he wishes to continue to be exempt.

(18) Employee Withholding Allowance Certificate. Each employee is required to file a completed Form MO W-4 to determine the number of exemptions to which the employee is entitled. 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, s/he may want to reduce the number of allowances on any MO W-4 that does not pertain to his/her principal employer. Failure to reduce the MO W-4 allowances could cause an employee to have too little tax withheld and make the employee subject to underpayment penalties. If an employee expects to have income other than his/her wages, s/he may request to have additional amounts withheld in addition to the amounts indicated by the allowances claimed on the employee's MO W-4. The additional amount should be included on line 6 of the MO W-4. 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) days of completion of each form. The department will in turn forward the Form MO W-4 to the Division of Child Support Enforcement.

(19) Withholding Tables. Withholding tables prepared by the Missouri Department of Revenue take into account allowable deductions; therefore withholding is based on gross wages before any deductions, such as Federal Insurance Contribution Act (FICA), state unemployment insurance, pension funds, or insurance, etc. 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 withholding allowances are shown at the top of each of the remaining columns and correspond to the number of allowances claimed by an employee on the Form MO W-4.

(20) Percentage Formula Withholding. 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. Any other method must be submitted to and approved by the director of revenue. The formula is mathematically stated as gross income minus standard deduction, minus personal and dependent exemptions, minus federal income tax withheld equals taxable income. Taxable income multiplied by the rate equals Missouri withholding. The formula is illustrated in the "Missouri Employer's Tax Guide."

(21) Filing Frequency Requirements. Missouri withholding returns must be filed by the due date as long as an account is maintained with the Missouri Department of Revenue, even if there was no payroll for the reporting period. Returns must be filed each reporting period, even though there may not have been any tax withheld. There are four (4) filing frequencies: quarter-monthly, monthly, quarterly and annually (section 143.221 and 143.225, RSMo). A newly registered employer is initially assigned a filing frequency on the basis of his/her estimation of future withholdings. If the assigned filing frequency differs from the filing requirements established by statute, it is the employer's responsibility to immediately notify the Department of Revenue. The time for filing shall be as follows:

(A) 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 file on a quarter-monthly basis;

(B) 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;

(C) Quarterly. Employers not required to file and pay taxes withheld on a monthly basis who withheld at least twenty dollars ($20) per quarter during at least one (1) quarter of the preceding four (4) quarters shall file on a quarterly basis; and

(D) Annually. Employers required to withhold less than twenty dollars ($20) during any of the preceding four (4) quarters shall file on an annual basis.

(22) 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 on the Missouri Form MO-941. See regulation 12 CSR 10-2.016 for information on filing a Form MO-941P to remit required payments on Quarter-Monthly accounts.

(A) A separate reporting form must be filed for each reporting period. A personalized booklet of reporting forms detailing the employer's name, address, employer identification number, filing frequency and due date is provided to each active account. The voucher booklet supplied to an employer required to pay on a quarter-monthly basis also includes payment vouchers Form MO-941P, for the four (4) quarter-monthly periods. If an employer misplaces, damages or does not receive the necessary reporting forms, replacement forms should be requested, allowing sufficient time to file a timely return. If a blank form is used, the employer's name, address and identification number must appear as filed on previous returns and the period for which the remittance is made must be indicated. Failure to receive reporting forms does not relieve the employer of responsibility to report and remit tax withheld.If an employer temporarily ceases to pay wages a return must be filed for each period indicating that no tax was withheld. Failure to do so will result in the issuance of non-filer notices.

(B) On or before February 28, or with the final return filed at an earlier date, each employer must file a Form MO W-3 (Transmittal of Wage and Tax Statements) and copies of all withholding tax statements, Form W-2/1099R, copy 1, for the year. Do not include the fourth quarter or twelfth month return with the Form W-2(s)/1099R(s) and Form MO W-3. The last annual remittance must be sent separately with Form MO-941. Large numbers of forms may be forwarded to the Department of Revenue in packages of convenient size. Each package must be identified with the name and account number of the employer and the packages must be consecutively numbered. Any employee's copies of the Withholding Statement (Form W-2/1099R) which cannot be delivered to the employee after reasonable effort is exerted, must be kept by the employer for at least four (4) years. The Department of Revenue will accept computer produced magnetic tape records instead of the paper Form W-2/1099R. The employer must meet tape data specifications which are established by the Department of Revenue. The department follows specifications outlined in Social Security Administration Publication 42-007. Employers must also include the Supplemental record (Code S or Code 1 S).

(C) If an employer goes out-of-business or ceases to pay wages, a Final Report MO-941F must be filed. This form, which is included in the voucher booklet, is provided to all active accounts.

(23) 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 address indicated on the form. The dates on which the returns and payments are due are as follows:

1. Quarter-Monthly (see 12 CSR 10-2.016). 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. Payments must be mailed within three (3) banking days after the end of the quarter-monthly period or received by the Department of Revenue or its designated depository within four (4) banking days after the end of the quarter-monthly period. A monthly return (MO-941) reconciling the quarter-monthly payments and detailing any underpayment of tax is due by the fifteenth day of the following month except for the third month of a quarter in which case the MO-941 is due the last day of the succeeding month;

2. Monthly. 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. 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. 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, the return and payment will be considered timely if made on the next business day (section 143.851, RSMo).

(24) Correcting Mistakes in Reporting or Withholding.

(A) Overpayment. If withholding tax has been over reported, the employer must file an Employer's Withholding Tax Overpayment Amended Report, Form MO-941X along with supporting documentation; such as a copy of your payroll ledger, records or W-2s. A claim for credit or refund of an overpayment of withheld tax must 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 period expires later. If no return was filed by the taxpayer, a claim for credit or refund must be filed within two (2) years from the time the tax was paid. No claim for credit or refund will be allowed after the expiration of the period of limitation prescribed in section 143.801, RSMo.

(B) Underpayment. If withholding tax has been under-reported, the employer must file an Employer's Withholding Tax Underpayment Amended Return, Form MO-941U to report the additional withholding.

(25) Erroneous Withholding. If Missouri tax has been withheld from an employee's paycheck and the employee is not subject to Missouri tax, it is the employer's responsibility to complete an Employer's Withholding Tax Overpayment Amended Report, Form MO-941X along with supporting documentation; such as a copy of your payroll ledger, records or W-2s.

(26) 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 percent (1/2%) of the amount collected in excess of ten thousand dollars ($10,000). The employer is not entitled to any compensation if any payment is not made on or before the due date. Compensation for complex employers is covered in section (4).

(27) Failure to Pay Taxes Withheld—Special Deposits. Any employer who fails to remit income tax withheld, or to file tax returns as required, may be required to deposit the taxes in a special trust account for Missouri (see section 32.052, RSMo). Penalties are provided for failure to make payment. If the director of revenue finds that the collection of taxes required to be deducted and withheld by an employer may be jeopardized by delay, s/he may require the employer to remit the tax or make a return at any time. A lien outstanding with regard to any tax administered by the director shall be a sufficient basis for this action (see section 143.221.4, RSMo). In addition, 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 tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to section 143.241.2, RSMo.

(28) Statements for Employees. Two (2) designated copies of the "W-2 Wage and Tax Statement" 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. Wages include sickness or injury payments made by an employer under wage continuation plans and all remuneration whether paid in cash or otherwise. The W-2 form supplied by the IRS must be used for this purpose unless the employer uses a substitute form approved by the Department of Revenue. If it becomes necessary to correct Form W-2 after it has

been issued to an employee, two (2) corrected statements must be issued to the employee and a copy mailed to the Department of Revenue. The new copies 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." If employment terminates during the year two (2) copies of Form W-2, copy 2 and C, must be provided to the employee within thirty (30) days of the last payment of wages. 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 services are 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 must be provided to the employee covering only the later period of employment within the calendar year. All withholding statements must be furnished to employees not later than January 31 of the following calendar year for which the W-2 applies.

(29) Records to Be Kept by Employers.

(A) The following records must be retained for all employees:

1. Name, address, Social Security number and period of employment;

2. Amounts and dates of all wage payments subject to the Missouri withholding tax;

3. Employees' state income tax withholding allowance certificate;

4. Employer's state income tax withholding registration number;

5. Record of quarter-monthly, monthly, quarterly and annual returns filed including dates and amounts of payments;

6. Records that would assist the Missouri Department of Revenue in auditing the employer's records; and

7. All records should be kept 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.

(B) In addition to the records listed in paragraphs (29)(A)1.–7., all records of the allocation of working days in the state of Missouri must be retained for all nonresident employees.

(30) Penalties, Interest and Additions to Tax.

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

(B) 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.

(C) A deficiency is subject to an addition to tax of five percent (5%) if the delinquency is due to negligence or disregard of rules, or fifty percent (50%) if the deficiency is due to fraud pursuant to section 143.751.1 and .2, RSMo.

(D) Failure to timely pay tax requires a five percent (5%) addition to tax pursuant to section 143.751.3, RSMo.

(E) A quarter-monthly penalty of five percent (5%) in lieu of all other penalties, interest or additions to tax will be imposed on a quarter-monthly period underpayment pursuant to section 143.225.6, RSMo.

(F) A person who willfully fails to collect, account for or pay withholding taxes is subject to a penalty equal to the amount not paid to the state, pursuant to section 143.751.4, RSMo. In addition, 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 tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to section 143.241.1, RSMo.

(G) Penalties for criminal offenses are also provided throughout sections 143.911–143.951, RSMo.

(H) A Certificate of Tax Lien may be filed for record with the recorder's office. The lien shall arise on the date an assessment becomes final and shall attach to all real and personal property owned by or acquired by the taxpayer. A Certificate of Tax Lien also may be filed with the clerk of the circuit court and shall have the force and effect of a default judgment pursuant to section 143.902, RSMo.

(I) Failure to file a timely Wage and Tax Statement, W-2, is subject to a penalty of two dollars ($2) per statement not to exceed one thousand dollars ($1,000) unless the failure is due to reasonable cause and not willful neglect pursuant to section 143.741.2, RSMo.

AUTHORITY: section 143.961, RSMo 1994. 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.*

**Original authority: 143.961, RSMo 1972.*

12 CSR 10-2.016 Quarter-Monthly Period Reporting and Remitting Withholding Tax

PURPOSE: Under the State Income Tax Law (section 143.011, RSMo), this rule establishes the requirement of reporting and remitting withholding taxes on a quarter-monthly period to protect state revenue and improve the cash flow of revenue for the state.

(1) If an employer is required under sections 143.191–143.265, RSMo to deduct and withhold the aggregate amount of nine thousand dollars ($9,000) or more in each of at least two (2) months during the prior twelve (12) months, the employer must file a return (MO-941P) and remit payment to the director of revenue on a quarter-monthly basis. Amounts remitted on a quarter-monthly basis shall be treated as payments on the employer's monthly return (MO-941). A monthly return (MO-941) reconciling the quarter-monthly payments is required by the fifteenth day of the following month, except for the return for the third month of the quarter which is due the last day of the following month. The employer shall mail a quarter-monthly payment voucher (MO-941P) and payment to the address provided on Form MO-941P within three (3) banking days following the end of the quarter-monthly period or deliver the form and payment to the director of revenue in Jefferson City, Missouri or his/her designated depository within four (4) banking days after the end of the quarter-monthly period. The compensation authorized in section 143.261, RSMo may be taken by the employer against the payment required to be made only if the payment is made by the employer on a timely basis as provided in section 143.851, RSMo. Banking days shall

not include Saturday, Sunday or legal holidays.

(2) A quarter-monthly filer has the option to—

(A) Pay one hundred percent (100%) of the estimated quarter-monthly amount, as determined by the department, within three (3) banking days after end of each quarter-monthly period (four (4) times a month); or

(B) Pay at least ninety percent (90%) of the actual tax due by the due date of that particular quarter-monthly period. If there is no payroll during a quarter-monthly period, no quarter-monthly payment voucher is necessary.

1. Example: An employer has a semi-monthly payroll cycle which falls on January 15 and on January 31. The actual Missouri income tax withholding for the January 15 payroll is $12,000. The employer must remit at least 90% of the $12,000 ($10,800) with the second quarter-monthly payment voucher that is due no later than January 18. The actual Missouri income tax withholding for the January 31 payroll is $15,000. The employer must remit at least 90% of the $15,000 ($13,500) with the fourth quarter-monthly payment voucher that is due no later than February 3. Since the employer did not have a payroll during the first or third quarter-monthly periods, a quarter-monthly payment voucher does not need to be submitted for those two periods.

2. Example: An employer has only one monthly payroll period and it falls on January 20 payroll. The actual Missouri income tax withholding for the January 20 payroll is $30,000. The employer must remit at least 90% of the $30,000 ($27,000) with the third quarter-monthly payment voucher that is due no later than January 25. Since the employer did not have a payroll during the first, second or fourth quarter-monthly periods, a quarter-monthly payment voucher does not need to be submitted for those three periods. Any required additional tax due must be paid on or before the due date of the return.

(3) Quarter-monthly period means—

(A) The first seven (7) days of a calendar month;

(B) The eighth to fifteenth day of a calendar month;

(C) The sixteenth to twenty-second day of a calendar month; and

(D) The twenty-third day through the last day of a calendar month.

(4) A quarter-monthly penalty of five percent (5%) in lieu of all other penalties, interest or additions to tax imposed by the statutes will be charged on the amount of the underpayment for each quarter-monthly period. The quarter-monthly penalty of five percent (5%) of underpayment for each quarter-monthly period will not be imposed if one (1) of the following exceptions is met:

(A) One hundred percent (100%) of the estimated quarter-monthly amount, as determined by the department, is paid within three (3) banking days after the end of each quarter-monthly period (four (4) times a month); or

(B) At least ninety percent (90%) of the actual tax due is paid by the due date of that particular quarter-monthly period. If there is not a payroll during a quarter-monthly period, no quarter-monthly payment voucher is necessary.

(5) If any employer reports withholding on a complex unit reporting basis, then the nine thousand dollar ($9000) aggregate amount as defined in section (1) is the total of all amounts required to be deducted and withheld by section 143.191, RSMo for all individual units of an employer.

(6) Overpayments. If withholding tax has been over reported in any one (1) period, an Employer's Withholding Tax Overpayment Amended Report (Form 941X) must be filed with the Department of Revenue, along with supporting documentation; such as a copy of your payroll ledger, records or W-2's. An overpayment notice will be issued by the director for any excess remittance over the actual amount due for a period. An employer cannot take credit for an overpayment until s/he has received notification from the director of revenue.

(7) Underpayments. If withholding tax has been underported in any one (1) period, the employer must file an Employers' Withholding Tax Underpayment Amended Return, Form MO-941U to report the additional withholding. However, no penalty for underpayment of any amount required to be paid will be imposed on any employer for failure to comply with the quarter-monthly filing requirements for the first two (2) months the employer is obligated to make quarter-monthly payments.

(8) Any employer who has been placed on a quarter-monthly filing frequency who consistently is not required to deduct and withhold nine thousand dollars ($9,000) or more for a monthly period may request permission from the director to file and pay on a less frequent basis. An employer must file and pay on a quarter-monthly basis for a minimum of twelve (12) months before requesting a change in filing frequency.

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.*

**Original authority 1972.*

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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by law.

(1) Out-of-State Transient Employer Defined.

(A) Transient employer means an employer as defined in sections 143.191, 287.030 and 288.032, RSMo making payment of wages taxable under the Missouri income tax law, the Workers' Compensation Law and the Missouri employment security law who is not domiciled in Missouri and who temporarily transacts any business within Missouri. The transaction of business is considered temporary at any time it cannot be reasonably expected to continue for a period of at least twenty-four (24) consecutive months.

(B) Transient employers shall not include any employer who is not subject to Missouri income tax because of the provisions of 15 U.S.C. 381.

(C) 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 as defined in the Uniform Commercial Code Section 400.5-103, RSMo.

(2) 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 or an irrevocable letter of credit issued by any state or federal financial institution, 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 form provided by the Department of Revenue. An example of this form is printed with this rule. The form shall bear the seal of the insurance company, the effective date and be accompanied by a power of attorney letter if signed by the attorney-in-fact. It also shall 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 notarized cash bond form provided by the Department of Revenue. An example of this form is printed with this rule.

(C) An irrevocable letter of credit issued by any state or federal financial institution may be submitted to the Department of Revenue on a form provided by the department. An example of this form is printed with this rule.

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. A standard letter of credit form embodying this format shall be provided by the Department of Revenue. All letters of credit shall be accompanied by 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 reasons 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 cancelled 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 his/her 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 in any situation where the employer would be required to increase its financial assurance instrument as provided for in section 285.230, RSMo. This additional instrument may be satisfied by increasing the letter of credit or submitting an additional financial assurance instrument.

(3) 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 ($5000) 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. Each employee is married, claiming one (1) personal exemption and no dependent exemptions. Mr. Kansas Contractor is required to post the minimum five thousand dollar ($5000) 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 twenty-three hundred dollars ($2300). Mrs. Illinois Drywaller is required to post a financial assurance instrument in the amount of six thousand nine hundred dollars ($6900). The six thousand nine hundred dollars ($6900) is the approximate amount of withholding for these employees for one (1) calendar quarter.

(4) 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 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 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 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.

(5) 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 cancelled; 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.

(6) Exemptions From the Out-of-State Transient Employer Financial Assurance Instrument Requirement. Employers meeting all the following criteria are not required to file a transient employer withholding tax financial assurance instrument:

(A) The principal place of business of the employer must be in a county of another state which borders Missouri;

(B) The employer must have been under contract to perform work in Missouri for at least sixty (60) days each year for the past two (2) calendar years immediately preceding the employer's initial application for exemption from the transient employer bonding requirements; and

(C) The employer must have in his/her possession a tax clearance issued by the Department of Revenue stating that the transient employer has complied with the tax laws of this state and with the provisions of the Workers' Compensation and employment security laws during the period set out in subsection (6)(B) of this rule. On or before January 31 of each year, except January 31 following the year during which the employer meets these criteria, the employer shall submit a request to the Department of Revenue for a renewed tax clearance.

(7) 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-insured plan or through a private company (carrier). A transient employer shall provide the Department of Revenue with a copy of its Workers' Compensation insurance policy. The insurance policy shall be forwarded to the Division of Workers' Compensation of the Missouri Department of Labor and Industrial Relations for verification of the insurance policy.

AUTHORITY: section 143.961, RSMo 1986 and Senate Bill 4477 of the 87th General Assembly to be codified as section 285.230, RSMo in 1994. 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.*

**Original authority: 143.961, RSMo 1972 and 285.230, RSMo 1988, amended 1994.*

MISSOURI DEPARTMENT OF REVENUE
CENTRAL PROCESSING BUREAU
CENTRAL REGISTRATION SECTION
P.O. BOX 3300, JEFFERSON CITY, MISSOURI 65105-3300

TRANSIENT EMPLOYER CASH BOND

FORM **2982** (REV. 7-88)

REQUIREMENTS FOR COMPLETING FORM:
1. Form must be properly completed.
2. Signed by applicant.
3. Must be notarized.
4. **NO** personal or company checks will be accepted.

KNOW ALL MEN BY THESE PRESENTS:

OWNER'S NAME

BUSINESS NAME

COUNTY | STATE

We, as principal, hereby file with the Missouri Department of Revenue this Transient Employer Cash Bond and the attached Cashier's Check or Money Order in the amount of ____________________

($ ______________).

We understand that we are required to comply with all provisions of the Missouri Employer Withholding Tax Law, the Workers' Compensation Law; the Missouri Employment Security Law and all amendments thereto.

We understand that whenever we cease to engage in activity within the state it shall be our duty to notify the Director of Revenue in writing at least ten (10) days prior to the time discontinuance takes effect. We understand that we will be released from the bonding requirement conditioned upon the faithful compliance with all of the provisions of chapters 143, 287 and 288, RSMo., pertaining to the Missouri Employer Withholding Tax Law, the Workers' Compensation Law, the Employment Security Law and all amendments thereto.

If we become delinquent and owe the State of Missouri any tax or other payments, penalties or interest under the provisions of the Missouri Withholding Tax Law; the Workers' Compensation Law; the Missouri Employment Security Law and all amendments thereto, the Director of Revenue may forfeit this bond and apply it to any unpaid delinquencies or claims. Should this occur, we understand that we may be required to file any additional bond set forth by Section 285.230 RSMo., Supp. 1988.

WITNESS OUR HANDS AT , MISSOURI

ON THIS DAY OF , 19

SIGNATURE OF OWNER, PARTNER OR CORPORATE OFFICER

NOTARY

NOTARY PUBLIC EMBOSSER SEAL

STATE

COUNTY (OR CITY OF ST. LOUIS)

SUBSCRIBED AND SWORN BEFORE ME, THIS DAY OF 19

USE RUBBER STAMP IN CLEAR AREA BELOW.

NOTARY PUBLIC SIGNATURE

MY COMMISSION EXPIRES

NOTARY PUBLIC NAME (TYPED OR PRINTED)

MO 860-2078 (7-88)

MISSOURI DEPARTMENT OF REVENUE
CENTRAL PROCESSING BUREAU
P.O. BOX 3300
JEFFERSON CITY, MISSOURI 65105-3300

TRANSIENT EMPLOYER SURETY BOND

FORM **2981** (REV. 8-88)

REQUIREMENTS FOR COMPLETING FORM

1. Issued by licensed insurance co.
2. Signed by Attorney-In Fact
3. Signed by applicant
4. Must bear insurance company seal
5. Must have effective date
6. Must be accompanied by a valid Power of Attorney letter

BOND NUMBER

KNOW ALL MEN BY THESE PRESENTS:

That I/We ______________________, ______________________
OWNER'S NAME BUSINESS NAME

of ______________________ County, State of ______________________

as principal, and ______________________

a corporation duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds required or authorized by the laws of the State of Missouri, as surety, are held and firmly bound unto the STATE OF MISSOURI In the penal sum of ______________________

DOLLARS ($ ______________), lawful money of the United States, to be paid to the State of Missouri, or to the Director of Revenue of the State of Missouri, for which sums of money, well and truly to be paid, we bind ourselves, our heirs, successors, assigns, executors, and administrators, jointly and severally, firmly by these presents.

THE CONDITIONS OF THE FOREGOING OBLIGATION IS SUCH THAT,

WHEREAS, the said principal has applied for, or has obtained a Missouri Employer Withholding Identification Number to deduct and withhold taxable wages and will be subject to the Missouri Withholding Tax Law; the Workers' Compensation Law, the Employment Security Law; and all amendments lawfully adopted in relation thereto.

NOW THEREFORE, if said principal shall well and truly comply with all the provisions of said laws and any amendments thereto, and in particular pay all taxes, claims, interest and penalties promptly when due, then this obligation shall be null and void; otherwise to remain in full force and effect.

If said principal is delinquent the Missouri Department of Revenue will notify said surety. Surety than has thirty (30) days in which to make payment or contact Missouri Department of Revenue stating reasons payment has not been made.

The said principal authorizes the release of confidential tax information to said surety as long as this obligation remains in force and effect; releasing personnel from the Department of Revenue and Department of Labor and Industrial Relations from any and all liability for any disclosures to said surety of confidential tax information resulting from release of subject information under Section 32.057, 287.380, 288.250 and supplement thereto.

This obligation shall remain in force and effect until the transient employer ceases to engage in activity within the state or until the Director of Revenue releases said principal from the bonding requirement as set forth by Section 285.230 RSMo., Supp. 1988. The surety may cancel the bond and be released of further liability hereunder by delivering sixty (60) days written notice to the Director of Revenue. Such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of sixty (60) day period.

IN WITNESS WHEREOF, we have duly executed the foregoing obligation this ______________________

day of ______________________ A.D. 19 ____ . To be effective on the ______________________

day of ______________________ A.D. 19 ____ .

SURETY	ATTEST: (SEAL)
NAME AND TITLE	
SURETY'S STREET ADDRESS OR P.O. BOX	
CITY, STATE, ZIP CODE	
SIGNATURE OF OWNER, PARTNER OR CORPORATE OFFICER OF BUSINESS	

MO 860-2076 (8-88)

ACKNOWLEDGEMENT BY PRINCIPAL - FORM 2981

PAGE 2

INDIVIDUAL

NOTARY PUBLIC EMBOSSER SEAL	STATE OF MISSOURI	COUNTY (OR CITY OF ST. LOUIS)	ON THIS DAY OF 19	BEFORE ME
	NAME OF NOTARY (PRINT OR TYPE)		A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED	
	NAME OF INDIVIDUAL (PRINT OR TYPE)		KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN	
	TYPE OF DOCUMENT	AND ACKNOWLEDGES TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN STATED		
	NOTARY PUBLIC SIGNATURE			
	MY COMMISSION EXPIRES	USE RUBBER STAMP HERE ▶		

PARTNERSHIP

NOTARY PUBLIC EMBOSSER SEAL	STATE OF MISSOURI	COUNTY (OR CITY OF ST. LOUIS)	ON THIS DAY OF 19	BEFORE ME
	NAME OF NOTARY (PRINT OR TYPE)		A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED	
	NAME OF INDIVIDUAL (PRINT OR TYPE)		KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN	
	TYPE OF DOCUMENT	AND ACKNOWLEDGES TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN STATED		
	NOTARY PUBLIC SIGNATURE			
	MY COMMISSION EXPIRES	USE RUBBER STAMP HERE ▶		

CORPORATION

NOTARY PUBLIC EMBOSSER SEAL	STATE OF MISSOURI	COUNTY (OR CITY OF ST. LOUIS)	ON THIS DAY OF 19	BEFORE ME
	NAME OF NOTARY (PRINT OR TYPE)		A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED	
	NAME OF INDIVIDUAL (PRINT OR TYPE)		KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN	
	TYPE OF DOCUMENT	AND ACKNOWLEDGES TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN STATED		
	NOTARY PUBLIC SIGNATURE			
	MY COMMISSION EXPIRES	USE RUBBER STAMP HERE ▶		

MO 860-2076 (8-88)

MISSOURI DEPARTMENT OF REVENUE
CENTRAL PROCESSING BUREAU
CENTRAL REGISTRATION SECTION
P.O. BOX 3300, JEFFERSON CITY, MO 65105-3300

TRANSIENT EMPLOYER IRREVOCABLE LETTER OF CREDIT

FORM **2980** (REV. 7-88)

REQUIREMENTS FOR COMPLETING FORM

1. Issued by any state or Federal financial institution
2. Signed by bank official
3. Signed by applicant
4. Must be notarized
5. Authorization for Release of Confidential Information must be completed (See reverse side of this form)

AMOUNT (U.S. CURRENCY)	LETTER OF CREDIT NUMBER	DATE OF ISSUANCE
$		

AT THE REQUEST OF (OWNER'S NAME)	
DOING BUSINESS AS	
OF (COUNTY)	STATE OF

We hereby issue our irrevocable letter of credit, in favor of the state of Missouri in the sum of ____________ dollars ($ ____________) available by your demand for payment.

Demands under this irrevocable letter of credit must be accompanied by a statement of delinquent taxes or claims, penalties and interest due under the provisions of the Missouri Employer Withholding Tax Law; the Workers' Compensation Law; the Missouri Employment Security Law and all amendments thereto; and marked "drawn against irrevocable letter of credit number ____________".

This obligation shall be deemed automatically renewed on an annual basis for a period of not less than one (1) year from the date of this letter. This credit will expire in full and finally 2 years from the date of issuance. The issuing banking institution may cancel the letter of credit and be released of future liability hereunder by delivering sixty (60) days prior written notice to the Department of Revenue at the address shown above. Cancellation shall not affect any liability incurred and accrued hereunder prior to the termination of the sixty (60) day period.

Upon receipt of said notification the Missouri Department of Revenue may make one demand for payment, for the unused balance of this irrevocable letter of credit, mentioning thereon our letter of credit number ____________ accompanied by its signed statement that the agreement is still outstanding and that the proceeds of the payment will be retained and used in lieu of the letter of credit with any unused portion to be returned to the taxpayer.

We hereby engage with you that demands made in conformity with the terms of this credit will be duly honored on presentation.

In witness whereof, we have duly executed the foregoing this ____________ day of ____________ 19 ____ .

ISSUING BANK INSTITUTION	ADDRESS	CITY, STATE, ZIP CODE
BANK ROUTING TRANSIT NUMBER	BY: SIGNATURE AND TITLE OF BANK OFFICIAL	

NOTARY PUBLIC

NOTARY PUBLIC EMBOSSER SEAL				
	STATE OF MISSOURI	COUNTY (OR CITY OF ST. LOUIS)	ON THIS DAY OF 19	BEFORE ME
	NAME OF NOTARY (PRINT OR TYPE)		A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED	
	NAME OF INDIVIDUAL (PRINT OR TYPE)		KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN	
	TYPE OF DOCUMENT	AND ACKNOWLEDGE TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN STATED		
	NOTARY PUBLIC SIGNATURE			
	MY COMMISSION EXPIRES	**USE RUBBER STAMP HERE**		

MO 860-2077 (7-88)

MISSOURI DEPARTMENT OF REVENUE
AUTHORIZATION FOR RELEASE OF CONFIDENTIAL INFORMATION

FORM
2980
(REV. 7-88)

I hereby authorize release of confidential information to ______________________ (BANKING INSTITUTION) for the purpose of making demand for payment on letter of credit number ______________ as long as the obligation remains in force and effect. Release of this information to the named banking institution does not give the banking institution authority to request information other than information concerning the delinquent periods or claims for which a demand for payment is being made. I also release personnel from the Department of Revenue and Department of Labor and Industrial Relations from any and all liability for any disclosure to this banking institution of confidential information resulting from release of subject information under Section 032.057, 287,380, 288.250 and supplemental thereto.

In witness whereof I, (WE), have duly executed the foregoing this ______________ day of ______________________________ 19 ____ .

OWNER	TITLE
OWNER/OFFICER SIGNATURE	

NOTARY PUBLIC

NOTARY PUBLIC EMBOSSER SEAL	STATE OF MISSOURI		COUNTY (OR CITY OF ST. LOUIS)
	SUBSCRIBED AND SWORN BEFORE ME, THIS DAY OF 19		**USE RUBBER STAMP IN CLEAR AREA BELOW.**
	NOTARY PUBLIC SIGNATURE	MY COMMISSION EXPIRES	
	NOTARY PUBLIC NAME (TYPED OR PRINTED)		

MO 860-2077 (7-88)

12 CSR 10-2.020 Difference in Basis on December 31, 1972

PURPOSE: This rule serves as a guideline in the determination of the amount of individual, corporate or other taxpayer's allowable modification upon the sale or other disposition of property having a higher adjusted basis for Missouri income tax purposes than for federal income tax purposes on December 31, 1972.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) If a taxpayer's federal adjusted gross income (FAGI) includes any gain from a sale or other disposition of property having a higher adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax purposes on December 31, 1972, a modification must be made to adjust for this difference in basis. This modification applies only if and to the extent that the gain is included in the FAGI of the taxpayer.

(2) Computing the Modification for Difference in Basis. This modification is made by subtracting from FAGI the portion of the gain included in the adjusted gross income which is not in excess of the amount by which Missouri basis exceeds federal basis at December 31, 1972. If the gain is a long-term capital gain for federal tax purposes, only fifty percent (50%) of that portion of the gain is to be deducted.

(3) Gain on Sale of Residence. A gain on the sale of a residence of a Missouri taxpayer illustrates the modification provided in this section. Under Internal Revenue Code (IRC) section 1034, a taxpayer's gain on the sale of his/her principal residence is not recognized, in whole or in part, under certain circumstances. The nonrecognized gain reduces the basis of the subsequent residence for federal tax purposes. For taxable years prior to the application of sections 143.011—143.996, RSMo, no adjustment to Missouri basis was applicable, as any gain on the sale of a residence was fully recognized at the time of sale for Missouri tax purposes. When the taxpayer's residence had a higher basis for Missouri tax purposes than for federal tax purposes on December 31, 1972, the gain, to the extent included in FAGI, will be a modification under section 143.121-3(b), RSMo.

(4) As an example, assume that the taxpayer purchased his/her present residence for $50,000. The adjusted basis for federal tax purposes on December 31, 1972 was $40,000 ($50,000 less a $10,000 gain not recognized under IRC section 1034 on the sale of his/her old residence and subsequent purchase of his/her present residence). The adjusted basis for Missouri tax purposes on December 31, 1972 was $50,000. S/he sells his/her residence in 1973 for $66,000 and does not purchase another home. The gain on the sale is fully recognized for federal tax purposes and is taxed as a long-term capital gain in 1973. There are no other capital gains or losses to report in that year. The taxpayer also has $30,000 of other FAGI in 1973 and there are no other Missouri modifications. Missouri adjusted gross income (MAGI) would be computed as follows:

Missouri adjusted basis	$50,000
Federal adjusted basis	$40,000
Difference in basis	$10,000 *(A)*
Sales price	$66,000
Federal adjusted basis	$40,000
Net long-term capital gain	$26,000 *(B)*
50% deduction (IRC Section 1202)	$13,000
Net long-term capital gain after IRC Section 1202 deduction	$13,000
Other income	$30,000
FAGI	$43,000 *(C)*
Modification under section 143.121-3(b), RSMo (1/2 of lesser of *(A)* or *(B)* but not more than *(C)*)	($ 5,000)
MAGI	$38,000

(5) This example illustrates the principle of the last sentence of section (1) of this rule. An individual sells a nondepreciable capital asset which s/he held over six (6) months for $100,000. The adjusted basis of this property for federal tax purposes was $50,000 on December 31, 1972 and for Missouri tax purposes was $70,000. In the same year, the taxpayer also has $67,000 of short-term capital losses and $40,000 of other FAGI. There are no other Missouri modifications. His/her MAGI would be computed as follows:

Missouri adjusted basis	$ 70,000
Federal adjusted basis	$ 50,000
Difference in basis	$ 20,000 *(A)*
Sales price	$100,000
Federal adjusted basis	$ 50,000
Long-term capital gain	$ 50,000
Short-term capital losses	($ 67,000)
Net short-term capital loss	($ 17,000) *(B)*
Deduction for net capital loss limited to (IRC Section 1211)	($ 1,000)
Other income	$ 40,000
FAGI	$ 39,000 *(C)*
Modification under section 143.121-3(b), RSMo (1/2 of lesser *(A)* or *(B)* but not more than *(C)*)	$ 0
MAGI	$ 39,000

(6) As a further example, assume that a corporation sells a depreciable asset for $100,000 in 1973. The adjusted basis of this property for federal tax purposes was $80,000 on December 31, 1972 and for Missouri tax purposes was $108,000. Due to the federal depreciation recapture rules, all of the gain is reportable as ordinary income in 1973 and there are no other gains or losses to report for that year. Other federal taxable income for 1973 is $50,000 and there are no other Missouri modifications. Missouri taxable income would be computed as follows:

Missouri adjusted basis	$108,000
Federal adjusted basis	$ 80,000
Difference in basis	$ 28,000 *(A)*
Sales price	$100,000
Federal adjusted basis	$ 80,000
Ordinary gain	$ 20,000 *(B)*
Other income	$ 50,000
Federal taxable income	$ 70,000 *(C)*
Modification under section 143.121-3(b), RSMo (lesser of *(A)* or *(B)* but not more than *(C)*)	($ 20,000)
Missouri taxable income	$ 50,000

(7) Property Acquired After December 31, 1972. Where a taxpayer realized a gain on the sale of property which was acquired after December 31, 1972 in a manner that the basis of that property is determined solely by reference to its cost to the taxpayer, no modification is allowed. The property necessarily has the same basis for both Missouri and federal tax purposes.

(8) Where a taxpayer owns property which has a higher Missouri basis than federal basis on December 31, 1972 and the property is subsequently exchanged for other property, the basis of which is determined by reference to the basis of the property disposed of, the difference in basis on December 31, 1972 shall be carried forward to, and be associated with, the property received in the exchange, for purposes of determining the modification provided in this section.

(9) Where a taxpayer receives property which had a higher Missouri basis than federal basis on December 31, 1972, in a manner that the basis of the property in the hands of the transferor carries over to the transferee (for example, by gift—see IRC Section 1015); the difference in basis on December 31, 1972 shall be carried forward to, and be associated with, the property in the hands of the transferee, for purposes of determining the modification provided in this section.

(10) Separate Computation Required. Where two (2) or more assets are sold at a gain during the same taxable year, and the adjusted basis of each for Missouri tax purposes on December 31, 1972 was higher than its federal adjusted basis, the amount of the modification provided by this section shall be computed separately for each asset sold.

(11) Modification Not Allowed in Certain Cases. No modification is to be made where property was disposed of at a loss during the taxable year even though there was a difference between the Missouri and federal basis on December 31, 1972. No modification, adjustment or allowance under this section or any other section is to be made with respect to any federal capital loss carry-over.

(12) Installment Sales. In the case of an installment sale of an asset which on December 31, 1972 had a Missouri basis higher that its federal basis, the amount of the modification for any taxable year will be that proportion of the total amount of the modification as the amount received in that year bears to the total selling price from the sale.

(A) Example: Assume the same facts as in section (4) of this rule, except that the residence was sold on the installment basis, the taxpayer receiving $11,000 per year for six (6) years beginning in 1973. The Missouri modification for each of the six (6) years would be computed as follows:

$$\$5{,}000 \times \frac{\$11{,}000}{\$66{,}000} = \$833$$

(13) Tax Return and Recordkeeping Requirements. Any modification permitted under this rule shall be fully explained and computations set forth in a statement attached to each Missouri tax return in which the modification is made. Taxpayer shall retain records as may be necessary to establish a difference in adjusted basis on December 31, 1972 and a modification under section 143.121-3(b), RSMo, if and when the property is sold.

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.121-3(b) was originally filed March 15, 1974, effective March 25, 1974.*

**Original authority 1972.*

12 CSR 10-2.025 Adjustment to Avoid Double Taxation

PURPOSE: This rule serves as a guideline in the determination of the amount of a taxpayer's allowable modification with respect to any item of income or gain which was properly included in taxable income and taxed under the Missouri income tax law in effect prior to January 1, 1973.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) General Rule. There shall be subtracted from federal adjusted gross income (FAGI), to the extent included in the adjusted gross income (AGI), any amount necessary to prevent the taxation under sections 143.011—143.996, RSMo of any item of income or gain properly included in the taxable income and taxed under the Missouri income tax law in effect prior to January 1, 1973. This modification applies to the income of a taxpayer even though the right to receive the income may have been acquired by reason of the death of a decedent or from an estate or trust.

(2) Annuity. An annuitant is permitted to deduct from FAGI the amount, if any, by which the total annuity payments previously taxed for Missouri tax purposes exceed the total annuity payments previously taxed for federal tax purposes. The reduction of FAGI representing the excess amount previously taxed by Missouri is limited during the taxable year to the amount of the income included in FAGI. The modification for each annuity must be computed separately.

(A) Example: A calendar year taxpayer paid $20,000 for an annuity and began drawing $2,000 a year from that annuity in 1968 when s/he was seventy (70) years old. Assuming his/her life expectancy at that time was 12.1 years, his/her expected return would be $24,200 and s/he would be taxed on 17.356% of his/her annuity for federal tax purposes. For Missouri tax purposes for all taxable years prior to January 1, 1973, s/he would be taxed on three percent (3%) of the amount paid for the annuity contract ($600). The modification required under section 143.121-3(c), RSMo would be computed as follows:

Year	Federal Taxable Amount	Missouri Modification	Net Amount Included in Missouri AGI
1968	$347.12		$600.00
1969	$347.12		$600.00
1970	$347.12		$600.00
1971	$347.12		$600.00
1972	$347.12		$600.00
1973	$347.12	$347.12	0
1974	$347.12	$347.12	0
1975	$347.12	$347.12	0
1976	$347.12	$223.04	$124.08
1977 and later	$347.12	0	$347.12

(3) Modification for Income From Keogh (Self-Employed) Retirement Plan. A Keogh Act Retirement Plan qualified under *Internal Revenue Code* (IRC) Section 401 provides for a tax deduction for a self-employed individual for contributions to a qualified pension or profit-sharing plan. An owner-employee can contribute for him/herself each year a portion of his/her earned income for that year. For the years 1963—1967, only one-half (1/2) of a contribution on behalf of an owner-employee was deductible for federal tax purposes. Income earned on the contributions is not taxed until withdrawn from the retirement fund, at which time it is taxed as ordinary income. Under the Missouri income tax law in effect prior to January 1, 1973, contributions to a qualified retirement plan by a self-employed individual on his/her own behalf were not allowed as a deduction. A self-employed taxpayer receiving payments from a Keogh retirement plan is permitted to deduct from FAGI, to the extent included in the AGI, an amount equal to the difference between the sum of the contributions which were deductible for federal tax purposes and the sum of the contributions which were deductible for Missouri tax purposes.

(A) Example: A taxpayer contributed $2,500 to a Keogh plan every year from 1963—1977 and receives the first of ten (10) equal annual payments of $7,000 in 1978. The modification required under section 143.121-3(c), RSMo would be computed as follows:

Summary of Contributions

Years	Contri-butions	Federal Allowable Deductions	Missouri Allowable Deductions
1963—1967	$12,500	$ 6,250	0
1968—1972	$12,500	$12,500	0
1973—1977	$12,500	$12,500	$12,500
	$37,500	$31,250	$12,500

The difference between allowable federal deductions ($31,250) and allowable Missouri deductions ($12,500) is $18,750. This is the maximum amount which can be deducted as modifications for Missouri tax purposes.

Summary of Payments Received

	Total Received	Portion Taxable	Missouri Modi-fication	Net Amount Included in Missouri AGI
1978	$ 7,000	$ 6,375	$ 6,375	0
1979	$ 7,000	$ 6,375	$ 6,375	0
1980	$ 7,000	$ 6,375	$ 6,000	$ 375
1981	$ 7,000	$ 6,375	0	$ 6,375
1982—1987	$42,000	$38,250	0	$38,250
	$70,000	$63,750	$18,750	$45,000

(4) Modification for Installment Sales. Where property which had a higher adjusted basis for Missouri tax purposes was sold on the installment basis prior to the effective date of sections 143.011—143.996, RSMo and the installment method of reporting the gain was properly used for both federal and Missouri tax purposes, a modification under section 143.121-3(c), RSMo is necessary to prevent the double taxation of that portion of the gain that does not exceed the difference in basis. The amount of the modification shall be limited to that portion of the modification as the amount received in the current year is to the total selling price.

(5) Tax Return Information Required. Any modification permitted under this section shall be fully explained and computations set forth in a statement attached to each Missouri tax return in which the modification is made. The taxpayer shall retain records as may be necessary to establish the amount of the modification.

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.121-3(c) was originally filed March 15, 1974, effective March 25, 1974.*

**Original authority 1972.*

12 CSR 10-2.030 Subsequent Change of Accounting Period

PURPOSE: This rule serves as a guideline in the determination of the amount of an individual taxpayer's allowable personal and dependency exemptions where a short taxable period income tax return is required due to a change in the taxpayer's taxable year for federal income tax purposes.

(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, attaching a copy of one (1) of the items indicating federal permission. Missouri taxable income shall be computed on the basis of the period for which the return is made and in accordance with the rules applicable to the determination of Missouri taxable income generally, except that the amount of allowable personal and dependency exemptions shall be reduced to the amount which bears the same ratio to the full amount for those exemptions as the number of months in the period bears to twelve (12) months.

(2) Example: A resident individual has been filing his/her federal and Missouri income tax returns on the basis of a fiscal year ending September 30. S/he changes to a calendar year basis and files a federal income tax return for the short taxable period October 1 to December 31. S/he is entitled to one (1) personal exemption. His/her 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/her Missouri taxable income (before federal income tax deduction) is as follows:

FAGI	$3,100
Less modification for United States bond interest	$ (40)
Missouri adjusted gross income	$3,060
Federal itemized deduction (no federal standard deduction is allowable for short-period returns; no Missouri modifications applicable)	$(250)
Personal exemption ($1200 × 3/12)	$(300)
Missouri taxable income (before federal income tax deduction)	$2,510

AUTHORITY: section 143.961, RSMo 1986. Regulation 1.271-2 was originally filed March 8, 1974, effective March 18, 1974.*

**Original authority 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 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

PURPOSE: This rule serves as a guideline in the determination of any adjustments that are required for Missouri income tax purposes resulting from a change in the taxpayer's accounting method for the first taxable period to which sections 143.011—143.996, RSMo apply which are necessary to prevent duplication or omission of income or deduction items.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) General Rule. The taxpayer's method of accounting must be the same for Missouri tax purposes as for federal tax purposes (see 12 CSR 10-2.035). If, for the first taxable period to which sections 143.011—143.996, RSMo apply, accounting methods required are different from the methods used in the previous taxable period for Missouri tax purposes, transitional adjustments will be required when necessary to prevent substantial amounts from being duplicated or omitted. The adjustments shall be made over a period not to exceed five (5) years. The adjustments required shall take into account inventories, accounts receivable, accounts payable and any other item(s) determined to be necessary to prevent duplication or omission of income or deduction items. Sections (2)—(17) of this rule discuss certain typical transitional adjustments which should be considered illustrative for corporate taxpayers and are not intended to be a complete listing of all the adjustments that may be required nor all taxpayers that may be affected.

(2) Change From Cash to Accrual Method. If a taxpayer is required to change from a cash to an accrual method of accounting, a transitional adjustment (subject to the provisions of sections (6)—(12) of this rule) would be made for the net amount of the adjustments referred to in section (1) of this rule. For example, a calendar year taxpayer must add the accounts receivable and inventory as of January 1, 1973 and deduct accounts payable as of that date. It also must add items of accrued income and deferred expense and deduct deferred income and accrued expense items as of December 31, 1972.

(3) Change to Reserve for Bad Debts Method. For Missouri tax purposes, for taxable years prior to the application of sections 143.011—143.996, RSMo, taxpayers were allowed a bad debt deduction only for those receivables ascertained to be worthless and charged off during the taxable year. For federal tax purposes, taxpayers properly electing under *Internal Revenue Code* (IRC) Section 166 are allowed a deduction for a reasonable addition to a reserve for bad debts in lieu of any deduction for debts which become worthless within the taxable year. A taxpayer utilizing the reserve for bad debts method for federal tax purposes will be required to use that method for Missouri tax purposes for taxable years under sections 143.011—143.996, RSMo. A transitional adjustment (subject to the provisions of sections (6)—(12) of this rule) would be made for the amount of the balance in the reserve for bad debts deducted for federal tax purposes on the beginning date of the first taxable year to which sections 143.011—143.996, RSMo apply. The adjustment shall only be allowed under section 143.301, RSMo if the reserve for bad debts method was used for federal tax purposes and the specific charge off method was used for Missouri tax purposes prior to the application of sections 143.011—143.996, RSMo.

(4) Change to Installment Method for Dealers. For taxable years prior to the application of sections 143.011—143.996, RSMo, installment reporting for dealers was not permitted for Missouri tax purposes. Dealers qualifying under IRC Section 453 are allowed to use the installment method for federal tax purposes. A dealer using the installment method for federal tax purposes will be required to use that method for Missouri tax purposes for taxable years under sections 143.011—143.996, RSMo. A transitional adjustment (subject to the provisions of sections (6)—(12) of this rule) would be made for the amount of the gross profit arising from the sales made before, but not collected by, the beginning date of the first taxable year to which sections 143.011—143.996, RSMo apply. The adjustment shall only be allowed under section 143.301, RSMo if the dealer used the installment sales reporting method for federal tax purposes and did not use that method for Missouri tax purposes prior to the application of sections 143.011—143.996, RSMo.

(A) Example: A taxpayer is a dealer on a calendar-year basis using the installment method allowed under IRC Section 453 for federal tax purposes. On December 31, 1972 the gross profit on sales made prior to January 1, 1973, but not collected before January 1, 1973, was $8,000. This amount shall be the transitional adjustment (subject to the provisions of sections (6)—(12) of this rule) required to arrive at Missouri taxable income.

(5) Changes in Depreciation Methods, Lives, and the like. If a taxpayer has computed depreciation differently for Missouri and federal tax purposes, no adjustments shall be made under this section. For example, where a taxpayer has used the double declining balance method of depreciation for federal purposes and the straight-line method for Missouri purposes, there will be no adjustment for past depreciation differences and the amount of the depreciation deduction for Missouri tax purposes will be the same as that deducted for federal tax purposes. This principle also applies in the case where the taxpayer has previously used different useful lives or rates for federal and Missouri tax purposes. Where the adjusted basis of depreciable property is different for Federal and Missouri tax purposes on December 31, 1972, no adjustment shall be made for the difference in basis and the depreciation deduction for Missouri tax purposes after that will necessarily be the same as that deducted for federal tax purposes.

(A) Example: If a taxpayer reinvested proceeds from an involuntary conversion in replacement property in 1969 and elected to reduce the basis of the property for federal tax purposes, the adjusted basis for Missouri tax purposes would then be higher. In that case, no adjustment shall be made to the federal depreciation deduction under this rule (see 12 CSR 10-2.020, however, for the modification of gain, if any, from the sale or other disposition of property having a higher adjusted basis for Missouri tax purposes at December 31, 1972).

(6) Reporting Transitional Adjustment in Accounting Methods. The taxpayer shall attach Missouri Form 301 to each Missouri income tax return for which an adjustment under section 143.301, RSMo is claimed.

(7) If the adjustments which increase Missouri taxable income exceed the adjustments which decrease Missouri taxable income, the excess shall be referred to as a net Missouri increase. If the adjustments which decrease Missouri taxable income exceed the adjustments which increase Missouri taxable income, the excess shall be referred to as a net Missouri decrease.

(8) Treatment of a Net Missouri Increase. A net Missouri increase shall be a positive adjustment to arrive at Missouri taxable income, as defined in sections 143.111 and 143.181, RSMo—with respect to individuals; section 143.431, RSMo—with respect to corporations; and section 143.311, RSMo—with respect to estates and trusts, during the period specified in section (10) of this rule. In the case of estates and trusts, the allocation of the net Missouri increase between the estate or trust and its beneficiaries shall be determined under sections 143.311—143.391, RSMo.

(9) Treatment of a Net Missouri Decrease. A net Missouri decrease shall be a negative adjustment to arrive at Missouri taxable income, as defined in sections 143.111 and 143.181, RSMo—with respect to individuals; section 143.431, RSMo—with respect to corporations; and section 143.311, RSMo—with respect to estates and trusts, during the period specified in section (10) of this rule and as further modified in section (11) of this rule. In the case of estates and trusts, the allocation of the net Missouri decrease between the estate or trust and its beneficiaries shall be determined under sections 143.311—143.391, RSMo.

(10) Periods During Which Net Missouri Increase or Decrease is to be Reported. An adjustment for a net Missouri increase or net Missouri decrease shall be reported for Missouri purposes over the first five (5) taxable periods under sections 143.011—143.996, RSMo as provided in this rule. The adjustment in each period referred to in the preceding sentence shall be the greater of $5,000 or one-fifth (1/5) of the net Missouri increase or net Missouri decrease. The accumulated adjustment utilized over the first five (5) taxable periods under sections 143.011—143.996, RSMo shall never exceed the amount determined under section (7) of this rule.

(11) An adjustment for a net Missouri decrease in any taxable period shall not exceed the Missouri taxable income for the period determined without regard to this adjustment. The excess of the adjustment resulting from this limitation shall be referred to as an unused net Missouri decrease. An unused net Missouri decrease may be carried forward and added to the portion, if any, of the net Missouri decrease applicable to the succeeding year as determined under section (10) of this rule. In any year, if the combined amounts are in excess of the Missouri taxable income for that year then the excess, in turn, shall become an unused net Missouri decrease for that year. In no case shall an unused net Missouri decrease be deducted after the end of the fifth taxable period under sections 143.011—143.996, RSMo.

(12) In any year in which the taxpayer utilizes an unused net Missouri decrease, a schedule shall be attached to Missouri Form 301 setting forth a complete explanation of the utilization.

(13) Example 1: A calendar year taxpayer has adjustments arising under section 143.301, RSMo which will increase Missouri taxable income by $6,000 and decrease Missouri taxable income by $4,000. The taxpayer has a net Missouri increase of $2,000, all of which will be utilized in 1973 as a positive adjustment in arriving at Missouri taxable income.

(14) Example 2: A calendar year taxpayer has adjustments arising under section 143.301, RSMo which will increase Missouri taxable income by $28,000 and decrease Missouri taxable income by $8,000. The taxpayer has federal taxable income which includes United States government bond interest as follows:

Year	**Federal Taxable Income**	**U.S. Gov't Bond Interest**	**Missouri Taxable Income Before Section 143.301, RSMo Adjustment**
1973	$ 2,000	$4,000	($2,000)
1974	$10,000	$4,000	$6,000
1975	$ 2,000	$8,000	($6,000)
1976	$ 6,000	$4,000	$2,000
1977	$ 8,000	$4,000	$4,000

Taxpayer has a net Missouri increase of $20,000 which will be utilized as follows:

	1973	1974	1975	1976	1977
Missouri Taxable Income Before Section 143.301, RSMo Adjustment	($2,000)	$ 6,000	($6,000)	$2,000	$4,000
Net Missouri Increase	$5,000	$ 5,000	$5,000	$5,000	0
Missouri Taxable Income	$3,000	$11,000	None	$7,000	$4,000

(15) Example 3: A calendar year taxpayer has adjustments arising under section 143.301, RSMo which will increase Missouri taxable income by $8,000 and decrease Missouri taxable income by $21,000. Taxpayer has a net Missouri decrease of $13,000. Taxpayer has Missouri taxable income, before this adjustment, of $6,000 in 1973, $12,000 in 1974 and $20,000 in 1975. The net Missouri decrease will be utilized as follows:

	1973	1974	1975
Missouri Taxable Income Before Section 143.301, RSMo Adjustment	$6,000	$12,000	$20,000
Net Missouri Decrease	($5,000)	($ 5,000)	($ 3,000)
Missouri Taxable Income	$1,000	$ 7,000	$17,000

(16) Example 4: A calendar year taxpayer has a net Missouri decrease of $4,000. Taxpayer has Missouri taxable income, before this adjustment, of $1,000 in 1973, none in 1974 and $4,000 in 1975. The net Missouri decrease will be utilized as follows:

	1973	**1974**	**1975**
Missouri Taxable Income Before Section 143.301, RSMo Adjustment	$1,000	0	$4,000
Adjustment Under This Section: Net Missouri Decrease	($1,000)*		
Carry Forward of Unused Net Missouri Decrease			($3,000)
Missouri Taxable Income	0	0	$1,000

*Limited to amount of Missouri taxable income before this adjustment, resulting in $3,000 of unused net Missouri decrease carried forward and utilized in 1975.

(17) Example 5: A calendar year taxpayer has a net Missouri decrease of $40,000. Taxpayer has Missouri taxable income, before this

adjustment, of $1,000 in 1973, none in 1974, $8,000 in 1975, $50,000 in 1976 and $5,000 in 1977. The net Missouri decrease will be utilized as follows:

	1973	1974	1975	1976	1977
Missouri Taxable Income Before Section 143.301, RSMo Adjustment	$1,000	0	$8,000	$50,000	$5,000
Adjustment Under This Section: Net Missouri Decrease	($1,000)		($8,000)	($ 8,000)	($5,000)
Carry Forward of Unused Net Missouri Decrease				($15,000)	
Missouri Taxable Income	0	0	0	$27,000	0
Unused Net Missouri Decrease for Year	$7,000	$ 8,000	0	0	0
Cumulative Unused Net Missouri Decrease	$7,000	$15,000	$15,000	0	0*

*$3,000 of the net Missouri decrease expired in 1977 and can never be deducted.

(18) Any net Missouri increase or decrease, as defined in section (7) of this rule, of a partnership, estate or trust shall be treated as a net Missouri increase or decrease of the entity on the last day of the first taxable year that the entity is subject to sections 143.011 and 143.996, RSMo.

AUTHORITY: section 143.301, RSMo 1986. Regulation 1.301 was originally filed April 3, 1974, effective April 13, 1974.*

**Original authority 1972.*

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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(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) Applicability of Regulation. Except as provided in subsection (2)(A) of this rule, this rule shall apply only with respect to taxable years of an affiliated group which began on or after January 1, 1973.

(A) If the common parent has a taxable period which includes parts of each of the years 1972 and 1973, this rule shall apply with respect to the determination of tax and taxable income of the affiliated group for the 1972-73 taxable period, provided that the affiliated group has elected to determine its tax and taxable income for that period pursuant to the provisions of sections 143.011—143.996, RSMo and the election has been filed with the director of revenue on or before the due date (including extensions of time) for the filing of the separate Missouri return of the common parent for its 1972-73 taxable period.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

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

(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) Sections 143.011—143.996, RSMo. The term sections 143.011—143.996, RSMo shall mean the Missouri Income Tax Law which became effective on January 1, 1973 and applies with respect to taxable periods beginning on or after January 1, 1973. To the extent that sections 143.011—143.996, RSMo, by virtue of section 143.009, RSMo, are made applicable to other taxable periods, the term sections 143.011—143.996, RSMo also shall refer to those other taxable periods.

(10) 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.

(11) 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. 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.

(12) Computing Missouri consolidated taxable income from Missouri sources. 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 (21) 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:

(A) The deduction for federal income tax provided in section 143.171, RSMo; and

(B) 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.

(13) Extent Applicable to Missouri. The extent applicable to Missouri, referred to in section (12) of this rule, 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 (12)(A) and (B) of this rule.

(14) 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) The interstate division of income percentage of the affiliated group for the year, determined under section (21) of this rule, is fifty percent (50%) or more;

(C) 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 (27)—(29) of this rule; and

(D) The affiliated group is not disqualified from filing a Missouri consolidated return for the year under section (19) of this rule.

(15) Election to File. 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.

(16) 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.

(17) Transitional Rule. For the special transitional rule with respect to taxable years ending before the filing of the first Missouri consolidated income tax regulation with the Office of the Missouri Secretary of State, see section (44) of this rule.

(18) Continued Filing Requirement. Except as provided in sections (35)—(38) 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 without regard to whether it derived fifty percent (50%) or more of its Missouri consolidated taxable income (all sources) for the current year from sources within Missouri.

(19) 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 (35)—(38) 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.

(20) Filing Consolidated Return is Special Circumstances. Notwithstanding that an affiliated group may be disqualified to file a Missouri consolidated return for the current taxable year under section (19) of this rule, the director of revenue him/herself, subject to the terms and conditions as s/he may prescribe, 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 him/herself, 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 deemed to be granted until the affiliated group receives written permission bearing the signature of the director of revenue him/herself.

(21) 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 subsection:

(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 143.451.4.—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 as is derived from sources within Missouri by application of the interstate division of income methods, set forth in section 143.451.4—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 143.451.4.—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), 143.451.4., 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; or

2. The percentage obtained by the method set forth in subsection (21)(E) of this rule; and

(E) Members to Which Different Interstate Divisions of Income Methods Apply—Special Rule. If an affiliated group is of a type described in subsection (21)(D) of this rule and it elects to use the interstate division of income method referred to in paragraph (21)(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 a separate federal income tax return had been filed by each member 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 (21)(E)2., a member has a separate Missouri taxable loss for the year, that member, for purposes of subsection (21)(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 (21)(E)1. and 2., for the purposes of subsection (21)(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.

(22) 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.

(23) Subsequent Missouri Consolidated Return 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, unless the group is permitted to change its method pursuant to section (24) of this rule.

(24) Change of Interstate Division of Income Method. An affiliated group, upon written application to the director of revenue, may change its interstate division of income method if, by use of the new method, the interstate division of income percentage for the year of change, determined under section (21) of this rule, is fifty percent (50%) or more and the interstate division of income percentage, determined under section (21) of this rule, for each of the two (2) preceding Missouri consolidated return years would have been fifty percent (50%) or more.

(A) The application shall be submitted on or before the due date (including extensions of time) for the filing of the Missouri consolidated return for the year of change. The application shall be directed to the personal attention of the director of revenue him/herself, shall be made in writing and shall set forth in detail all factual data in support of the requirements set forth in section (24). No application for permission shall be deemed to be granted until the affiliated group receives written permission bearing the signature of the director of revenue him/herself.

(25) Computation of Tax Liability. The Missouri 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; and

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

(26) Liability For Tax. The common parent corporation and each subsidiary 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.

(27) Consent to This Rule. The consent of a corporation referred to in subsection (14)(C) of this rule shall be made by the corporation joining in the making of a Missouri consolidated return for the year. Each subsidiary member of an affiliated group, with respect to the first Missouri consolidated return year in which it is a member of the affiliated group, shall execute a Missouri Form 22 (Authorization and Consent of Subsidiary Corporation to be Included in a Missouri Consolidated Income Tax Return). The willful failure of a subsidiary member of an affiliated group to execute a Missouri Form 22 shall be deemed to constitute 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. The affiliated group, however, shall continue to be subject to section (18) 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.

(28) Consent Under Facts and Circumstances. If a subsidiary member of an affiliated group fails to execute a Missouri Form 22, the director of revenue may determine, under the facts and circumstances, that the member has joined in the making of the Missouri consolidated return of the affiliated group.

(29) Failure to Consent Due to Mistake. If any member of an affiliated group 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 Missouri Form 22 and join in the making of the Missouri consolidated return.

(30) Consolidated Return Made by Common Parent. The Missouri consolidated return shall be made by the common parent on Missouri Form 20 and shall be filed by the common parent.

(31) Attachments to Missouri Form 20. In addition to those matters required of all corporations, an affiliated group shall be required to submit the following items:

(A) A Missouri Form 22 must be executed by each subsidiary member of an affiliated group and must be attached to the Missouri Form 20 for the first Missouri consolidated return year;

(B) For the second and succeeding Missouri consolidated return years, a Missouri Form 22 must be filed by each member of an affiliated group which is a new member for the year; and

(C) The affiliated group shall attach to its Missouri Form MS a detailed schedule which the interstate division of income data of each member of the affiliated group is set forth.

(32) Common Parent as Agent for All Other Members. The common parent, for all purposes other than the making of the consent required by subsection (14)(C) 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 State Tax 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.

(33) 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 have the effect of limiting the scope of the agency of the common parent provided in section (32) of this rule and a failure by the director of revenue to comply with the written request shall not have the effect of limiting the liability of the corporation provided in section (26) of this rule.

(34) 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.

(35) 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.

(36) 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 sections 143.011—143.996, RSMo 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 (36) 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.

(37) 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.

(A) Fifty Percent (50%) Rule as Good Cause. For purposes of section (37), good cause shall be deemed to exist if the interstate division of income percentage of the affiliated group, determined under section (21) of this rule, is less than fifty percent (50%) for the Missouri consolidated return year with respect to which permission to discontinue filing is requested and for each of the three (3) preceding years.

(B) Timely Application. Any application for permission to discontinue the filing of a Missouri consolidated return on account of section (37) 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.

(38) 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 continue the filing of Missouri consolidated returns or, in the alternative, s/he 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 section (38).

(39) 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.

(40) 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.

(41) 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 (39) 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 which is satisfactory to the director of revenue.

(42) Additions to Tax For Failure to Pay Estimated Tax on Separate Basis. If the mem-

bers of an affiliated group are treated as separate corporations for the taxable year under section (40) 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 which is satisfactory to the director of revenue.

(43) Applicability of Other Laws. Any matter in the determination of which the provisions of this rule are not applicable shall be determined in accordance with sections 143.011—143.996, RSMo and corresponding rules.

(44) Transitional Rules. The rules set forth in this section only shall apply during the transition period. For the purposes of this section, the term transition period shall mean a period of time beginning with the effective date of sections 143.011—143.996, RSMo and ending on the ninety-first day after the first Missouri consolidated income tax regulation (1.431-3) is filed with the secretary of state of Missouri.

(A) A Missouri consolidated return which has been filed with the director of revenue but did not have attached to it a Missouri Form 22 for each subsidiary member of the affiliated group shall be a valid Missouri consolidated return only if properly executed Missouri Forms 22 are filed for each member during the transition period.

(B) A Missouri consolidated income tax return which has been filed with the director of revenue may be withdrawn by the affiliated group during the transition period and separate Missouri returns shall be filed in lieu of the consolidated return by each member which is subject to Missouri income taxation.

(C) Any qualified affiliated group (other than an affiliated group which has a taxable year containing parts of the years 1972 and 1973) may file a Missouri consolidated return during the transition period and any payments of tax made by the members of the affiliated group on their separate Missouri returns for the year shall be credited against the Missouri consolidated income tax liability of the affiliated group in the same manner as if they constituted payments of declaration of estimated tax with respect to the first Missouri consolidated return year.

AUTHORITY: section 143.431.3(5), RSMo 1986. Regulation 1.431-3 was first filed July 21, 1975, effective July 31, 1975.*

**Original authority 1972.*

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 deduc-

tions 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 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 10-2.055 Failure to File Tax Returns

PURPOSE: This rule sets forth the circumstances under which an additional tax will be imposed against an individual, corporation or other taxpayer for failing to file income tax returns on time.

(1) Applicability and Scope of Rule. This rule is intended as an interpretive guideline in the

application of section 143.741, RSMo and is applicable only with respect to taxable periods beginning after December 31, 1972. This rule applies to the failure to file income tax returns, amended income tax returns and employer withholding returns which are required to be filed. It does not apply to the failure to file a declaration of estimated tax.

(2) Determination of Addition to Tax. Section 143.741.1., RSMo imposes an addition to the tax at the rate of five percent (5%) per month, or fraction of a month, up to a maximum of twenty-five percent (25%) in the aggregate, for the failure by a taxpayer to file any required return by the date prescribed for its filing unless the failure is due to reasonable cause and not due to willful neglect. The date prescribed for filing includes any approved extensions of time for filing.

(3) Determination of Percentage. If the date prescribed for filing a return is the last day of a calendar month, each succeeding calendar month or fraction of a month during which the failure to file the return continues shall constitute a month. For example, if a return due on March 31 is filed any time between April 1 and April 30, the rate would be five percent (5%); if filed any time between May 1 and May 31, the rate would be ten percent (10%); and so on, up to an aggregate of twenty-five percent (25%). If the date prescribed for filing a return is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding to the last day in the succeeding calendar month and each successive period shall constitute a month. If, in the month of February, there is no date corresponding to the date prescribed for filing the return, the period from the date in January through the last day of February shall constitute a month. For example, if a return due on January 30 is filed any time between January 31 and February 28 (29 if a leap year) the rate would be five percent (5%); if filed any time between March 1 and March 30, the rate would be ten percent (10%); if filed between March 31 and April 30, the rate would be fifteen percent (15%); and so on, up to an aggregate of twenty-five percent (25%). The fact that the date prescribed for filing the return or the corresponding date in any succeeding month falls on a Saturday, Sunday or legal holiday is immaterial in determining the number of months for which the addition to tax applies.

(4) Determination of Amount Upon Which the Addition to Tax Will be Applied. The amount upon which the addition to tax under section 143.741.1., RSMo is to be applied shall be determined by subtracting from the amount required to be shown as tax on the return, the amount of the tax which is paid on or before the last date prescribed for payment and the amount of any credit which may be claimed against the tax.

(5) The application of the addition to tax under section 143.741.1., RSMo is illustrated by the following examples:

(A) Assume an individual calendar year taxpayer files his/her 1991 income tax return on July 20, 1992, and the failure to file on or before the prescribed date (April 15, 1992) is not due to reasonable cause. The total tax liability for the year was $1,000 of which $600 had been paid by withholding from wages and $400 was paid when the return was filed. In this case, there will be imposed an addition to tax under section 143.741.1., RSMo of $80, determined as follows:

1. Total tax liability for the year	$1,000
2. Less taxes timely paid	$ 600
3. Net amount due	$ 400
Twenty percent of line 3. (5% per month for 3 months from April 15 through July 15 and 5% for fraction part of the month from July 15 through July 20)	$ 80

(B) Assume the same facts as in subsection (5)(A) of this rule except that the $400 was paid on May 1, 1992. In this case there is imposed an addition to tax under section 143.741.1., RSMo of $80, determined in the same manner as in subsection (5)(A) of this rule. Note that the tax liability for the year is only reduced by the amount of the tax paid on or before the last date prescribed for payment (April 15, 1992);

(C) Assume an employer is required to withhold and remit taxes on a monthly filing frequency. The employer withholds taxes from its employees' wages in January in the amount of $200. The employer remits $50 of the amount withheld on February 15 and the remaining $150 on March 15. The employer does not file monthly returns for January until June 1. The failure to file the return on or before the prescribed date (February 15) is not due to reasonable cause. In this case there will be imposed an addition to tax under section 143.741.1., RSMo of $30, determined as follows:

1. Amount required to be shown on January's return	$200
2. Less amounts timely paid (see section 143.221, RSMo)	$ 50
3. Net amount due	$150
4. Twenty percent of line 3. (5% per month for four months from February 15 through June 1)	$ 30

(D) Assume the same facts as in subsection (5)(C) of this rule except that January's return is filed on February 15. In this case, there is no addition to tax under section 143.741.1., RSMo since the monthly withholding return was filed on or before the last date prescribed for its filing (February 15). However, an addition to tax under section 143.751.3., RSMo would be imposed.

(6) Addition to Tax Not Imposed—Reasonable Cause. A taxpayer who wishes to avoid the addition to tax for failure to file a return by the date prescribed for its filing must submit a written statement showing all facts relied upon in support of the contention that the failure to file was on account of reasonable cause. The statement shall contain a written declaration that it is made under penalties of perjury and may be submitted to the director of revenue with the return. The mere absence of willful neglect is not sufficient reason for avoiding imposition of the addition to tax for failure to file a return. There must be an affirmative showing of reasonable cause for the failure and the burden of proof is upon the taxpayer to establish the reasonable cause. If the taxpayer can show delinquency was due to a reasonable cause and not to willful neglect, the addition to tax will not be imposed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. This rule prescribes no specific standards of reasonable cause for failure to file the return on time, but the following examples will provide guidelines as to what might constitute reasonable cause:

(A) Death or serious illness of the taxpayer or the death or serious illness of an immediate member of the taxpayer's family. In the case of a corporation, estate, trust, and the like, the death or serious illness must have been of an individual having sole authority to execute the return or of a member of that individual's immediate family;

(B) Unavoidable absence of the taxpayer. In the case of a corporation, estate, trust, and the like, the absence must have been of an individual having sole authority to execute the return;

(C) Destruction by fire or other casualty of the taxpayer's place of business or business records; or

(D) The taxpayer's ability to file the return has been materially impaired by civil disturbances.

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.*

**Original authority 1972.*

***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

PURPOSE: This rule clarifies the circumstances under which an additional tax will be imposed for failing to pay tax on time.

(1) Applicability and Scope of Rule. This rule is intended as an interpretive guideline in the application of section 143.751, RSMo and shall apply only with respect to taxable periods beginning after December 31, 1972.

(2) Deficiency. The term deficiency shall mean the amount by which the actual Missouri income tax liability of the taxpayer for the taxable year exceeds the total amount of Missouri income tax payments made by the taxpayer for the taxable year on or before the last date prescribed for the payment of the tax (determined with regard to extensions of time for paying the tax but without regard to extensions of time for filing the tax return).

(3) Addition to Tax for Negligence or Disregard of Rules. If any part of a deficiency is due to negligence or intentional disregard of the rules (but without intent to defraud) there shall be added to the tax an amount equal to five percent (5%) of the entire amount of the deficiency. If the amount of a taxpayer's federal taxable income reported on the 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, and the taxpayer does not report the change or correction in federal taxable income within ninety (90) days after the final determination of the change, correction or renegotiation, there shall be added to the tax an amount equal to five percent (5%) of the entire amount of deficiency for failure to report the change and to pay the additional tax within that ninety (90)-day period. If the taxpayer does report the change, correction or renegotiation and pays the additional tax within the ninety (90)-day period, the director of revenue will not ordinarily impose the five percent (5%) addition to tax unless the IRS or other competent authority imposed a similar addition to tax. This general rule, however, does not preclude the director from imposing an addition to tax in those instances if it is deemed necessary.

(4) Examples: The application of the addition to tax under section 143.751.1., RSMo may be illustrated in the following examples:

(A) Assume that an individual calendar year taxpayer files his/her 1991 income tax return with the Department of Revenue on April 18, 1992 showing a total tax liability of $1,000 with a total amount paid before April 15, 1992 of $600 and a balance due of $400 which taxpayer pays with the return. Further assume that the failure to pay the $400 on or before the last date prescribed for its payment is due to negligence or intentional disregard of rules. In this case, there is an addition to tax of $20 (5% × $400); and

(B) Assume the same facts as in subsection (4)(A) of this rule except that $10 of the $400 deficiency is due to negligence or intentional disregard with the $390 being due to reasonable cause. In this case, there is an addition to tax of $20 (5% × $400). Note that if any part of the deficiency is due to negligence or intentional disregard of the rules, then the addition to tax is imposed on the entire amount of the deficiency.

(5) Avoiding the Addition to Tax Under Section 143.751.1., RSMo. The addition to tax for failure to pay taxes on time will not be imposed if no part of the deficiency is due to negligence or intentional disregard of rules. In the absence of fraud, no part of the deficiency will be considered to be due to negligence or intentional disregard if the amount of the tax paid on or before the due date of the return (determined without regard to extensions of time for filing the return) is at least ninety percent (90%) of the total amount of the tax shown on the Missouri income tax return; and if the balance of the tax due is paid on or before the due date of the return, determined with regard to any extensions of time for filing the return. The taxpayer may avoid the addition to tax for failure to pay income taxes on time by making an affirmative showing that the failure to pay was not due to negligence or intentional disregard of rules in that the taxpayer exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless unable to pay the tax on or before the last date prescribed by law. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of the tax liability, consideration will be given to the amount and the nature of the taxpayer's expenditures in light of the income the taxpayer, at the time of those expenditures, could reasonably expect to receive prior to the date prescribed for the payment of the tax. As an example, a taxpayer incurring lavish or extravagant living expenses in such an amount that the remainder of his/her

assets and anticipated income will be insufficient to pay the tax has not exercised ordinary business care and prudence in providing for the payment of the tax liability. The taxpayer must make an affirmative showing of all the facts relating to his/her failure to pay the tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. The addition to tax under section 143.751.1., RSMo will not be assessed when the director of revenue makes a determination on the basis of the taxpayer's written statement that no part of the deficiency was due to negligence or intentional disregard of rules. The mere absence of negligence or intentional disregard with respect to some part of the deficiency is insufficient and the taxpayer must show that no part of the deficiency was due to negligence or intentional disregard of rules.

(6) Additions to Tax Under Section 143.751.1., RSMo Not Applicable—When. The five percent (5%) addition to tax provided for in section 143.751.1., RSMo will not apply when the provisions of section 143.751.2., RSMo (relating to addition to tax for fraud) or section 143.751.4., RSMo (relating to penalties for willful failure to remit withholding taxes) apply to the same deficiency.

(7) Addition to Tax For Fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the entire amount of the deficiency. For example, assume an individual calendar year taxpayer files his/her 1991 income tax return on April 18, 1992 showing a total tax liability of $1,000 with a total amount paid before April 15, 1992 of $600 and a balance due of $400 which the taxpayer pays with the return. Further assume that the taxpayer had reasonable cause for failure to pay the $400 on or before the last date prescribed for its payment. Further assume that the taxpayer fraudulently claimed charitable contributions on his/her income tax return by understating his/her income tax liability by $6. In this case, an addition to tax of $203 will be imposed under section 143.751.2., RSMo computed as follows: 50% × $406 = $203. Note that if any part of a deficiency is due to fraud, then the addition to tax of fifty percent (50%) applies with respect to the entire amount of the deficiency.

(8) Taxpayer Fraudulent Intent—Penalty. Any person who, with fraudulent intent, shall fail to pay any tax or to make, render, sign or certify any return or to supply any information within the time required by law shall be liable for a penalty of not more than $1,000 in addition to any tax, addition to tax, other penalty or interest which is required to be imposed, assessed and collected by the director of revenue.

(9) Failure of Employer to Remit Taxes Withheld From Employees—Addition to Tax. If an employer, without intent to evade or defeat the tax or its payment, fails to make a return and pay to the director of revenue any taxes withheld by him/her from the wages of his/her employees on or before the date prescribed for payment, s/he shall be liable for those taxes and shall pay the same together with interest and an addition to tax of five percent (5%). This addition to tax is imposed without regard to whether or not extenuating circumstances disclose a reasonable cause or lack of willful neglect for the nonpayment. For example, assume an employer withholds taxes from its employees' wages in the month of January of $800. Also assume that the taxpayer pays the taxes (less the employer compensation under section 143.261, RSMo) on February 17 and that the employer has reasonable cause for failure to pay the taxes on or before the last date prescribed for its payment (February 15). In this case, an addition to tax of $40 will be imposed under section 143.751.3., RSMo computed as follows: 5% × $800 = $40. Note that the employer compensation is not allowed unless the withholding taxes are paid on or before the last date prescribed for their payment.

(10) Employer's Willful Failure to Collect, Truthfully Account For or Pay Over Employee Taxes. If any person willfully fails to collect, truthfully account for, pay over or willfully attempt, in any manner, to evade or defeat the tax or its payment, that person shall be liable for a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over in addition to any tax, interest, addition to tax or other penalty provided for by law.

(11) Employer Fraudulent Intent—Penalty. If any person, with fraudulent intent, shall fail to pay, or to deduct or withhold and pay, any tax or to make, render, sign or certify any return or to supply any information within the time required by law, that person shall be liable to a penalty of not more than $1,000 in addition to any other amounts required to be imposed, assessed and collected by the director of revenue.

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.*

**Original authority 1972.*

12 CSR 10-2.065 Failure to Pay Estimated Tax

PURPOSE: This rule sets forth guidelines in the determination of whether an individual, corporate or other taxpayer is subject to an additional tax for failure to pay estimated tax.

(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 143.761, RSMo and is applicable only with respect to taxable years beginning after December 31, 1972. Chapter 143, RSMo and the corresponding rules shall continue in force with respect to taxable years beginning before January 1, 1973.

(3) Definitions. As used in this rule—

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

(B) The term farmer shall mean an individual having an estimated Missouri adjusted gross income (MAGI) from farming for the taxable year which is at least two-thirds (2/3) of his/her total estimated MAGI taxable in this state for the taxable year. The term does not include a fisherman or a corporation.

(4) General rule section 143.761.1., 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 and is imposed without regard to whether or not extenuating circumstances disclose a reasonable cause or lack of willful neglect for the underpayment. There are no provisions for the payment of interest with respect to any underpayment of estimated tax.

(5) Amount and Period of Underpayment. The amount of the underpayment for any installment date is the excess of—

(A) Eighty percent (80%) (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, eighty percent (80%) (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.

(6) The amount of the addition is determined at the rate set forth in section (8) of this rule upon the underpayment of any installment of estimated tax for the year from the date the installment is required to be paid until the fifteenth day of the fourth month following the close of the taxable year, or the date the underpayment is paid, whichever is earlier. For the purposes 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 (5)(A) of this rule for the installment date, shall be considered a payment of any previous underpayment.

(7) 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.

(8) The rate of additions to tax for underpayment of estimated tax is six percent (6%) a year for the underpayment prior to January 1, 1983. Beginning January 1, 1983, the rate of additions to tax is the same as established by the director of revenue under authority of section 32.065, RSMo and 12 CSR 10-41.010 Annual Adjusted Rate of Interest.

(9) 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, Missouri Form 30 should be attached to the income tax return for the taxable year showing the applicability of an exception. There is no rule which precludes a taxpayer from making computations under each of the four (4) exceptions at each estimated tax installment date, and then bringing all payments as of that date up to whatever amount will avoid imposition of an addition to tax, using whatever exception would require the smallest amount to be paid. If this is done, however, the slightest error in computation, so that the taxpayer fails by as little as one dollar ($1) to satisfy at least one (1) of the exceptions, will result in the imposition of the additions to tax on the total amount of the underpayment and not on the amount by which the taxpayer fails to come within one (1) of the four (4) exceptions.

(10) Examples: The following examples illustrate the application of the provisions for the imposition of the additions to tax for any underpayment of estimated tax prior to January 1, 1983 (see section (8) for rate of additions to tax after December 31, 1982), in the case of an individual whose taxable year is the calendar year:

(A) An individual taxpayer files his/her return for calendar year 1974 on April 15, 1975 showing a total tax liability of $2,000. Taxpayer has paid a total of $1,000 of estimated tax in four (4) equal installments of $250 on each of the four (4) installment dates prescribed for the year. No other payments were made before the date the return was filed. Since the amount of each installment paid by the last date prescribed for its payment is less than one-quarter (1/4) of eighty percent (80%) of the tax shown on the return, an underpayment exists and the addition to the tax is applicable with respect to the underpayment existing as of each installment date and is computed as follows:

1. Amount of tax shown on return	$2,000
2. 80% of item 1.	$1,600
3. One-fourth of item 2.	$ 400
4. Amount of each installment paid	$ 250
5. Amount of underpayment for each installment date	$ 150

6. Addition to the tax—
   A. First installment—
      $150 × 6% × 365 days/365 days;
   B. Second installment—
      $150 × 6% × 304 days/365 days;
   C. Third installment—
      $150 × 6% × 212 days/365 days;
and
   D. Fourth installment—
      $150 × 6% × 90 days/365 days.

Note that the addition to tax are computed using the actual number of days that the underpayment continues. In the case of a corporate taxpayer whose fourth estimated tax payment would have been required to be filed on December 15, 1974, the calculation for the fourth installment period would be $150 × 6% × 121 days/365 days;

(B) Assume the same facts as in subsection (10)(A) of this rule except that the individual taxpayer (who is not a farmer) files his/her calendar year 1974 Missouri income tax return on February 28, 1975 and pays the balance due on that date. In this case, February 28, 1975 would be the last date the underpayment continues and the calculation dates would be as follows:

1. First installment—
   $150 × 6% × 319 days/365 days;
2. Second installment—
   $150 × 6% × 258 days/365 days;
3. Third installment—
   $150 × 6% × 166 days/365 days;
and
4. Fourth installment—
   $150 × 6% × 44 days/365 days;

(C) An individual taxpayer filed a declaration of estimated tax for the taxable year indicating an estimated liability of $8,000. Taxpayer made four (4) timely installment payments of $2,000 each during the year. Taxpayer's actual tax, as shown on the income tax return for the year, amounts to $10,000. In this case, there is no underpayment since each installment was at least equal to one-quarter (1/4) of eighty percent (80%) of the installment which would have been payable on the basis of his/her final tax for the year (1/4 × $10,000 × 80% = $2,000);

(D) Assume that a taxpayer whose final tax liability is $700, made the following installments during the year:

1. First installment—$100;
2. Second installment—$190;
3. Third installment—$100; and
4. Fourth installment—$140. Since each installment, based upon a final tax liability of $700, should have been at least $140 ($700 × 80% × 1/4), there is an underpayment for the first and third installments and an overpayment for the second installment. In this case, $40 of the $50 overpayment of the second installment is carried back to the first

installment and cuts off the six percent (6%) addition to tax for that installment as of the payment date for the second installment. The remaining $10 of the overpayment carries over to the third installment to reduce the underpayment for the installment to $30. In this example, the addition to the tax is computed as follows:

A. First installment—
$40 × 6% × 61 days/365 days;
B. Second installment—
no underpayment exists;
C. Third installment—$30 × 6% × 212 days/365 days; and
D. Fourth installment—no underpayment exists;

(E) Assume the same facts as in subsection (10)(D) of this rule except that the second installment was paid in the amount of $160. The $20 overpayment of the second installment would be carried back to the first installment but would not stop the underpayment period of the first installment for the entire amount of that installment. In this example, the addition to tax is computed as follows:

1. First installment—
$20 × 6% × 61 days/365 days; $20 × 6% × 365 days/365 days;
2. Second installment—no underpayment exists;
3. Third installment—
$40 × 6% × 212 days/365 days; and
4. Fourth installment—
no underpayment exists; and

(F) Taxpayer, a farmer, files an income tax return on February 15 of the succeeding year paying the total tax liability of $5,000 on that date. In this case, there is no underpayment of estimated tax since the filing of the return and payment of the tax on or before February 28 of the succeeding year is considered as the taxpayer's declaration of estimated tax which was required to be filed by January 15 of the succeeding taxable year under section 143.521.6., RSMo. In the event that the taxpayer in this example had filed his/her declaration of estimated tax on or before January 15 of the succeeding year, s/he would have been required to pay sixty-six and two-thirds (66 2/3%) of his/her total tax liability for the year on that date.

(11) Exceptions to Imposition of Additions to Tax in the Case of Individuals and 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, but only if 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 eighty percent (80%) (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 by—

1. Multiplying 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), or the adjusted gross income if the standard deduction is to be used, for the calendar months;

2. Dividing the resulting amount by the number of those calendar months;

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

4. Multiplying, in the case of a corporate taxpayer, the amount determined in paragraph (11)(B)3. of this rule by the applicable percentage determined under section 143.451, RSMo as of the last day of the month preceding the date prescribed for payment;

(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; or

(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 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 the case of a taxpayer required to file a return for the preceding taxable year.

(12) Examples: The following examples illustrate the application of the exceptions to the imposition of the addition to tax for an underpayment of estimated tax for a calendar year taxpayer. In cases of a calendar year corporate taxpayer, the fourth installment is due on December 15 of the taxable year rather than January 15 of the succeeding year in the case of individuals:

(A) An individual taxpayer files his/her 1974 calendar year Missouri income tax return on April 15, 1975 showing a total tax liability of $5,000. Taxpayer had filed a declaration of estimated tax on April 15, 1974 showing an estimated tax of $3,000 which was paid in four (4) equal installments of $750 each on April 15, June 15 and September 15, 1974, and January 15, 1975. The balance of $2,000 was paid with the return. Taxpayer has an underpayment or each installment period of $250 ($5,000 × 80% × 1/4 = equals $1,000). The 1973 calendar year return of the taxpayer showed a liability of $2,500. Since the total amount of estimated tax paid by each installment date equaled or exceeded the amount that would have been required to be paid on or before each of the installment dates if the estimated tax were the tax shown on the return for the preceding year, the exception described in subsection (11)(A) of this rule applies and no addition to tax for underpayment of estimated tax will be imposed;

(B) Assume the same facts as in subsection (12)(A) of this rule except that the four (4) timely paid estimated tax installments are made in the following amounts:

1. First installment—$500;
2. Second installment—$500;
3. Third installment—$750; and
4. Fourth installment—$750. Even though the total amount of estimated tax payments equals or exceeds the total tax shown on the taxpayer's return for the preceding year ($2,500), each installment must stand by itself in determining the applicability of the exceptions to the additions to tax. The exception in subsection (11)(A) of this rule would only apply as of the fourth installment in this example since that is the only date as of which the total amount paid equaled the amount that would have been required to have been paid computed as follows:

	Amount Required For Exception	Amount Paid
25% of tax	$ 625	$ 500
50% of tax	$1,250	$1,000
75% of tax	$1,875	$1,750
100% of tax	$2,500	$2,500

The same requirement that each installment must stand on its own applies to each of the four (4) exceptions to the addition to tax permitted by section 143.761.4., RSMo;

(C) Assume that a married taxpayer with two (2) dependent children files a combined return with his/her spouse for calendar year 1974. Taxpayer receives a monthly income from self-employment of $1,500 ($18,000 annually) and neither taxpayer nor his/her spouse have any other income for 1974. The following procedure will be followed in annualizing taxpayer's income:

1. Self-employment income during January, February and March		$ 4,500
2. Annualized income-line 1. × 12/3	$18,000	
3. Less: standard deduction	$ 2,000	
Exemptions	$ 3,200	
Estimated federal income tax	$ 2,500	$ 7,700
4. Annualized taxable income		$10,300
5. Estimated annual income tax		$ 393

If the taxpayer's payment of estimated tax for the first installment equaled or exceeded $78.60 ($393 × 80% × 1/4), the exception in subsection (11)(B) of this rule would apply and no addition to tax would be imposed for the first installment. The same procedure would be followed for each installment period to determine if the exception in subsection (11)(B) of this rule applies, except that the required installment amount would be multiplied by 2/4 of 80% and 3/4 of 80% respectively for the second and third installments. This exception does not apply to individuals with respect to the fourth installment due January 15 of the succeeding taxable year since the taxable income for the preceding calendar year had been determined on December 31 of the taxable year;

(D) Assume a calendar year corporation has a federal taxable income from all sources for the period January through May of $5,000 and that it has no positive or negative modifications for the period under sections 143.121 and 143.141, RSMo. Further assume that its allocation factor for the period is fifty percent (50%). The following procedure would be followed in determining whether the exception in subsection (11)(B) of this rule would apply to its required second installment payment due on June 15:

1. Net income all sources January through May		$ 5,000
2. Annualized income-line 1. 12/5	$12,000	
3. Less estimated federal tax	$ 2,640	
4. Annualized Missouri taxable income all sources		$ 9,360
5. Annualized Missouri taxable income at 50%		$ 4,680
6. Estimated Missouri income tax		$ 234

If the taxpayer's estimated tax payments paid on or before June 15 total at least $93.60 ($234 × 80% × 2/4), the exception in subsection (11)(B) of this rule would apply and no addition to tax would be imposed with respect to the second installment;

(E) Assume that a married taxpayer who files a combined return for calendar year 1974 with his/her spouse, has two (2) dependent children and receives a monthly salary of $1,500 on which $28 a month is withheld by his/her employer. During November and December of 1974, the taxpayer receives $3,400 of income not subject to withholding. S/he makes no estimated tax payments until January 15, 1975 at which time s/he pays $100. S/he uses the standard deduction in preparing his/her income tax return. There is no addition to tax for underpayment. Applying the ninety percent (90%) test of the exception in subsection (11)(C) of this rule, his/her status as of each payment date is—

Status Date	Income	Tax if For Full Year*	90% of Tax	Withheld and Paid
4-15	$ 4,500	0	0	$ 84
6-15	$ 7,500	$ 49	$ 44.10	$140
9-15	$12,000	$155	$139.50	$244
1-15	$21,400	$545	$490.50	$436

*The tax for the full year shown in the column was computed on the basis of the taxpayer filing a federal income tax return for the year and claiming the standard deduction in the computation of his/her federal income tax deduction for Missouri income tax purposes.

Since the total amount in the fifth column is larger than the amount in the fourth column on each of the first three (3) installment dates, there is no addition to the tax for underpayment, by reason of the exception in subsection (11)(C) of this rule. Also, there is no underpayment of the fourth installment, by reason of the exception in subsection (11)(B) of this rule (80% of $545 ì $436). Note that the exception in subsection (11)(C) does not apply to individuals with respect to the fourth installment;

(F) Taxpayer, a married man with one (1) child and a dependent parent, files a combined Missouri income tax return for 1974 with his spouse showing a total taxable income of $9,000 and a tax liability of $315. The taxpayer's 1973 income tax return showed a total taxable income of $7,500 and a total tax liability of $238 with exemptions claimed for only the taxpayer and his spouse. Assume that the taxpayer paid four (4) timely estimated tax payments of $50 each for 1974. The exception is subsection (11)(A) of this rule would not apply as the 1974 estimated tax payments of $200 do not equal or exceed the prior year's tax of $238. Under the exception in subsection (11)(D) of this rule, what would have been due on the 1973 return, computed with regard to the 1974 exemptions (totaling $3,200 instead of $2,400) would have been $199 which is less than the $200 paid; therefore the exception in subsection (11)(D) of this rule applies and no addition to the tax will be imposed; and

(G) The X Corporation was incorporated and began doing business on April 1, 1973 and filed its first Missouri income tax return for the period April 1, 1973 through December 31, 1973 showing a Missouri taxable income of $1,000 and a tax liability of $50. X Corporation pays four (4) timely estimated tax payments for 1974 in the amount of $25 each. On its calendar year 1974 Missouri income tax return, Corporation X shows a Missouri taxable income of $100,000 and a tax liability of $5,000. In this example, the exception in subsection (11)(A) of this rule would not apply since the preceding year's tax return did not cover a period of twelve (12) months. The exception in subsection (11)(D) of this rule does apply since taxpayer's estimated tax payments exceed that which would have been due on the 1974 return if it had been calculated at the 1974 rates but based on the facts shown on the 1973 return.

(13) Determination of Taxable Income for Installment Periods. In determining the applicability of the exceptions in section 143.761.4(2) and (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 dated 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. The cost of goods sold for the period shall be considered, unless a more exact determination is available, as that part of the cost of goods sold during the entire taxable year as the gross receipts from the sales for the installment period is to the gross receipts from the sales for the entire taxable year.

(14) 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 his/her taxable year to the extent that those items are attributable to months in the partnership taxable year which precede 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, 1974, 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, 1973 and ending on January 31, 1974; and

(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, 1974 his/her distributive share of partnership items for the period July 1, 1973—March 31, 1974; and for the installment due on June 15, 1974, s/he must take into account the amounts for the period July 1, 1973—May 31, 1974; and for the installment due on September 15, 1974, s/he must take into account the amounts for the entire partnership taxable year of July 1, 1973—June 30, 1974 (the date on which the partnership taxable year ends).

(15) Beneficiaries of Estates and Trusts. In determining the applicability of the exceptions in subsections (11)(A) and (B) 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 1986. Regulation 1.761 was originally filed Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 5, 1982, effective Feb. 11, 1983.

**Original authority 1972.*

12 CSR 10-2.067 Failure to Pay Estimated Tax for Tax Years Ending After December 31, 1983

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

(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 applicable only with respect to taxable years ending after December 31, 1983 and is intended as an interpretive guideline in the application of Chapter 143, RSMo.

(3) 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 having an estimated Missouri adjusted gross income (MAGI) from farming for the taxable year which is at least two-thirds (2/3) of his/her total estimated MAGI taxable in this state for the taxable year. The term does not include a fisherman or a corporation;

(C) The term large corporation shall mean that the corporation (or any predecessor corporation) in any of the three (3) preceding taxable years had a federal taxable income of at least one (1) million dollars and had a Missouri taxable income of at least one hundred thousand dollars ($100,000); and

(D) The term other corporation shall mean any corporation not defined in subsection (3)(C).

(4) General Rule. Section 143.761.1., 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 and is imposed without regard to whether or not extenuating circumstances disclosed a reasonable cause or lack of willful neglect for the underpayment. There are no provision for the payment of interest with respect to any underpayment of estimated tax.

(5) Amount and Period of Underpayment. The amount of the underpayment for any installment date is the excess of—

(A) Ninety percent (90%) in the case of corporations, eighty percent (80%) in the case of 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, eighty percent (80%) in the case of 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.

(6) The amount of the addition is determined at the rate set forth in section (8) of this rule upon the underpayment of any installment of estimated tax for the year from the date the installment is required to be paid until the fifteenth day of the fourth month following tax underpayment is paid, whichever is earlier. 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 (5)(A) of this rule for the installment date, shall be considered a payment of any previous underpayment.

(7) 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.

(8) Beginning January 1, 1983, the rate of additions to tax is the same as established by the director of revenue under authority of section 32.065, RSMo and 12 CSR 10-41.010 Annual Adjusted Rate of Interest.

(9) 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. Any error in computation of the estimate will result in the imposition of the additions to tax on the total amount of the underpayment and not on the amount by which the taxpayer fails to come within one (1) of the five (5) exceptions.

(10) Exceptions to Imposition of Additions to Tax. Exceptions shown in subsections (10)(A)—(D) apply to individuals. Exceptions shown in subsections (10)(A)—(E) apply to all corporations except large corporations as defined in subsection (3)(C) of this rule. Only the exceptions shown in subsections (10)(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 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, eighty percent (80%) in the case of 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 by—

1. Multiplying 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) or the AGI if the standard deduction is to be used for the calendar months;

2. Dividing the resulting amount by the number of those calendar months;

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

4. Multiplying, in the case of a corporation other than a large corporate taxpayer, the amount determined in paragraph (10)(B)3. of this rule by the applicable percentage determined under section 143.451 or 32.300, RSMo as of the last day of the month preceding the date prescribed for payment;

(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 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 by—

1. Multiplying by twelve (12) the taxable income;

2. Dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9 or 11) as the case may be; and

3. Using the calculations in paragraphs (10)(E)1. and 2. as follows:

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

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

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

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

(F) For example, illustrating the application of the provisions for imposition of addition to tax for any underpayment of estimated tax in the case of an individual, see the examples set out in 12 CSR 10-2.065(10); and

(G) Taxpayer, 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 payment of the tax on or before February 28 of the succeeding year is considered as the taxpayer's declaration of estimated tax which was required to be filed by January 15 of the succeeding taxable year under section 143.521.6., RSMo. In the event that the taxpayer in this example had filed his/her declaration of estimated tax on or before January 15 of the succeeding year, s/he would have 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.

(11) Example: The following example illustrates the application of the new exception to the imposition of the addition to tax for an underpayment of estimated tax for a calendar year large corporation:

(A) The Y Corporation is a large corporation meeting all requirements in subsection (3)(C). Assume in the first three (3) months of the taxable year its federal taxable income from all sources was two (2) million dollars and that it had no positive or negative modifications for the period under sections 143.121 and 143.141, RSMo. Further assume that its apportionment factor for the period is fifty percent (50%). The following procedure would be followed in determining whether the exception in subsection (10)(E) of this rule would apply to its required first installment payment due in the fourth month:

1. Net income all sources January through March	$ 2,000,000;
2. Annualized income—line 1. × 12/3	$ 8,000,000;
3. Less estimated federal tax	$ 3,659,750;
4. Annualized Missouri taxable income all sources	$ 4,340,250;
5. Annualized Missouri taxable income at 50%	$ 2,170,125; and
6. Estimated Missouri tax at 100%	$108,506.25.

If the large corporation estimated tax payments paid on or before the date due for the first installment is at least $24,413.82 ($108,506.25 × 90% × 1/4) no addition to tax would be imposed with respect to the first installment.

(12) 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 their fiscal year beginning July 1, 1983 and ending June 30, 1984 based upon a Missouri taxable income of $2,000,000 with a tax of $100,000. To avoid additions to tax, the 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 $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 (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 corporations 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.

(13) 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. The cost of goods sold for the period shall be considered, unless a more exact determination is available, as that part of the cost of goods sold during the entire taxable year as the gross receipts from the sales for the installment period is to the gross receipts from the sale for the entire taxable year.

(14) 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; and

(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).

(15) Beneficiaries of Estates and Trusts. In determining the applicability of the exceptions in subsections (10)(A) and (B) 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 1986. Original rule filed Dec. 30, 1983, effective April 12, 1984.*

**Original authority 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 ($1000). 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 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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(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:

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

$= $ 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 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 10-2.080 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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Any corporation which satisfies the requirements of Section 992 of the *Internal Revenue Code* of 1954 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 1986. Original rule filed July 13, 1976, effective Oct. 11, 1976.*

**Original authority 1972.*

12 CSR 10-2.085 Credit for New or Expanded Business Facility

PURPOSE: This rule clarifies and carries out the provisions of the credit for a new or expanded business facility as provided in sections 135.100—135.160, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Employee shall be defined as provided in *Internal Revenue Code* (IRC) Section 3121(d). To qualify as a new business facility employee under section 135.100(5), RSMo, an employee's work must be in direct connection with the operation of the new business facility. A new business facility employee shall not include a person who works on the average less than twenty (20) hours per week throughout the taxable year or a person employed on a seasonal basis who works less than eighty percent (80%) of the days of the season customary for the position in which the person is employed.

(2) The number of new business facility employees shall be determined, for each year the credit is claimed, as provided in section 135.100(4), RSMo. The number of new business facility employees shall be determined by dividing the sum of the number of new business facility employees on the last business day of each month of the taxable year during which the new business facility was in operation by the number of full calendar months during the taxable period the facility was in operation. The number of new business facility employees for each year must be at least two (2) more than the number of persons employed during the year preceding the taxable year in which commencement of commercial operations occurs at the new business facility. In determining the number of new business facility employees pursuant to subdivision 135.100(4), RSMo, any major fractional portion (which shall be deemed to be fifty-one percent (51%) or more) shall be considered one (1) employee for purposes of calculating the credit. For any taxable year, if the number of new business facility employees falls below two (2), the taxpayer shall not be allowed any credit. The number of these years when the credit is not allowed shall be subtracted from the available ten (10)-year period of the credit. If the number of new business facility employees in any year again equals or exceeds two (2) and the ten (10)-year period has not ended, the taxpayer may again claim the credit in each of the remaining years in which there are at least two (2) new business facility employees.

(3) Upon the change of ownership or lessee, the use of a facility must be changed substantially from its previous usage to be eligible for the credit, unless the facility had previously qualified for the credit (see section (11)). This section shall not apply to the purchaser of a new business facility who was the facility's lessee immediately prior to purchase. However, in this case, the credit shall be based upon the investment in the new business facility.

(4) "Depreciable tangible personal property,'' as used in section 135.100(7), RSMo, shall mean the tangible personal property as defined in IRC Section 167 and both acquired and used within the year the credit is

claimed. All real and tangible personal property shall be deemed to be acquired and used in the first year of eligibility for the federal depreciation deduction. The property shall have the same original total cost used by the taxpayer for the depreciation deduction for federal income tax purposes.

(5) New business facility investment shall be determined for each year in which the credit is claimed. All property shall be valued at its original cost basis, if owned, or eight (8) times the net annual rental rate if leased. If property is not regularly or periodically used by the taxpayer in the operation of the facility, the investment shall decrease by the original cost basis of the property. If the qualifying investment in the new business facility or expansion is increased, the increase may be used in the computation of the existing new business facility's credit pursuant to the requirements of subdivision 135.100(4), (9) or (6), RSMo. For an expansion or improvement to constitute a separate facility eligible for the credits, the investment must exceed either one hundred thousand dollars ($100,000) or, if less, one hundred percent (100%) of the total investment (original cost plus improvements and additions less retirements) in the original facility immediately prior to expansion. In the case of a facility qualifying under the exception in subdivision 135.100(9), RSMo, the investment in the new facility must exceed either one (1) million dollars or, if less, one hundred percent (100%) of the total investment (original cost plus improvements and additions less retirements) in the old facility at the time commercial operations were discontinued.

(6) The credit may be used only in the year for which it is calculated. Unused credits are forfeited and may not be carried forward or back to other years.

(7) A partner's distributive share of the credit shall be determined by the relevant provisions of the partnership agreement. If no such provisions exist, or if the purpose of the relevant provisions of the partnership agreement is tax avoidance, the share shall be determined by the provisions for the division of the general profits or losses as described in IRC Section 702(a)(9). If a partner retires, dies or sells his/her interest in the partnership, his/her distributive share of the credit for the taxable year shall be determined in accordance with the regulations promulgated under IRC Section 706. A shareholder of a corporation described in section 143.471, RSMo shall be allowed an amount of credit equal to the shareholder's *pro rata* share of the credit as determined in accordance with IRC Section 1377. The corporation or partnership shall provide to each shareholder or partner the information relating to his/her share or interest. A corporation described in section 143.471, RSMo or a partnership shall attach the following to its income tax return:

(A) A list of shareholders or partners;

(B) Each shareholder's or partner's proportionate share of ownership in the corporation or partnership;

(C) Each shareholder's or partner's Social Security number;

(D) Each shareholder's or partner's proportionate share of the taxpayer's new business facility income; and

(E) Each shareholder's or partner's proportionate share of the credit allowed under Chapter 135, RSMo.

(8) The credit available to a new business facility, expanded facility or additional facility may be applied to up to one hundred percent (100%) of the income tax liability on the taxpayer' new business facility income. The credit may not be applied against a tax liability incurred on income which is not attributed to a new business facility or the expanded portion of a facility which qualifies as a new business facility.

(9) The election by the taxpayer to defer commencement of the ten (10)-year period during which the credit is allowable is irrevocable. In the case of a corporation or partnership, the election shall be made by the entity and shall be binding upon all shareholders or partners.

(10) To perfect the election to defer commencement of the ten (10)-year period during which the credit is allowable, the taxpayer shall attach to its income tax return, for the taxable year in which commercial operations commenced at the qualifying facility, a written statement providing the following information: the location of the facility, the type of revenue-producing enterprise conducted at the facility, the number of new business facility employees employed at the facility, the number of employees employed at the facility, the number of employees employed in Missouri, the amount of new business facility investment in the facility, the amount of total investment employed in Missouri, the date of taxpayer's acquisition of the facility, a description of the method of acquisition of the facility, a description of any past business activity at the facility, a description of previous ownership of the facility and a statement that the taxpayer elects to deter the commencement of the credit to a specific taxable year. The taxable year specified may not be later than the third taxable year following the taxable year in which commencement of commercial operations at the new business facility occurs.

(11) In order to continue to qualify as a new business facility in the hands of a transferee, the transferee must operate the facility, which qualified for the credit prior to transfer, in a revenue-producing enterprise and otherwise continue to qualify for the credit.

(12) A transferor shall include with its income tax return a written statement to the director of revenue as required by subsection 135.130.3., RSMo, containing the following information: name, address and federal employer identification number of the transferor; name, address and federal employer identification number of the transferee; the date of commencement of operations at the new business facility, copies of each Missouri New Business Facility Credit Form filed by the transferor for each year in which the credit provided in section 135.110, RSMo was claimed; a description of the revenue-producing enterprise to be conducted by the transferee, if known; a full accounting of the investment of that portion of the facility to be retained by the transferor; a statement as to whether the transferor is related to the transferee as defined in section 135.100(8), RSMo; and a description of the method of transfer (that is, lease, sale, gift, and the like).

(13) Upon termination of the operation of a revenue-producing enterprise, the taxpayer shall notify the director of revenue of the termination in a written statement attached to the income tax return for the year in which the termination occurs. The notice shall include the following information: name, address and federal employer identification number of the taxpayer; the date of commencement of operations at the facility; the date of termination of operations at the facility; a copy of each Missouri New Business Facility Credit Form filed by the taxpayer for the facility for each year in which the credit provided in section 135.110, RSMo was claimed; a copy of the written statement electing to defer commencement of the ten (10)-year period if applicable; a description of the revenue-producing enterprise conducted by the taxpayer at the facility prior to termination; the number of employees retained

by the taxpayer but transferred to another operation of the taxpayer; information as to the disposition of investment in the facility; the reason for termination; the probability and possible date of resumption of operations and an accounting of any previous transfer under section 135.130, RSMo. Failure by the taxpayer to notify the director of revenue of termination as provided in this section shall be *prima facie* evidence that the termination was not due to reasonable cause.

(14) The director of revenue will consider the following items as major factors in determining whether "resumption of operations of a revenue-producing enterprise at such new business facility will provide increased opportunities for employment and result in a substantial contribution to the economy of the state" and whether "the termination of operations was due to reasonable cause" pursuant to section 135.140, RSMo: the length of time that the facility was dormant, the number of new business facility employees retained by the taxpayer at other operations at the time of termination, and the number of new employees to be hired upon resumption of operations. A dormant period exceeding five (5) years shall constitute *prima facie* evidence of a lack of reasonable cause for termination as well as lack of increased opportunities and substantial contribution to the economy upon resumption of operations.

(15) In the case of a member of an affiliated group of corporations who qualifies and elects to file a Missouri consolidated income tax return pursuant to subdivision 143.431.3(1), RSMo, the computation and use of the credit allowed under sections 135.100—135.160, RSMo shall be limited to that member's separate income tax liability as though a separate income tax return was filed.

(16) If the business is entitled to the credits established by sections 135.100—135.160, RSMo prior to designation of an enterprise zone, the designation of an enterprise zone does not change the character or amount of the prior credits. Any additional investments or employees by that business after designation of an enterprise zone and before the completion of the ten (10)-year period will be limited to the amount of credits available under sections 135.100—135.160, RSMo unless the additional investment and employees qualify by themselves under sections 135.200—135.255, RSMo, in which case the additional investment and employees shall qualify for the credits under sections 135.200—135.255, RSMo. In no case shall the same investment and employees be eligible for the credits available under both sections 135.100—135.160 and 135.200—135.255, RSMo.

(17) All procedural matters related to filing a claim under sections 135.100—135.160, RSMo including refunds, deficiencies, interest, contents of returns, limitations and penalties shall be determined pursuant to sections 143.481— 143.996, RSMo.

AUTHORITY: section 135.150, RSMo 1986. Original rule filed Jan. 15, 1985, effective June 13, 1985.*

**Original authority 1980, amended 1980, 1986, 1991.*

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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(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 1954 by Section 31 (tax withheld on wages), Section 33 (tax on a foreign country and United States possessions) and Section 39 (tax on certain uses of gasoline, special fuels and lubricating oils) 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 income of each member of the consolidated group; and

(B) The product computed in subsection (1)(A) shall be multiplied by a fraction, the numerator of which shall be the taxpayer's Missouri taxable income (excluding any federal income tax deduction) from Missouri sources and the denominator of which shall be the Missouri taxable income (excluding any federal income tax deduction) as though the taxpayer had derived all of its income from sources within Missouri.

(2) This rule applies to taxable years beginning on or after June 11, 1984.

AUTHORITY: section 143.961, RSMo 1986. Original rule filed Feb. 24, 1984, effective June 11, 1984. Amended: Filed Aug. 17, 1984, effective Dec. 13, 1984.*

**Original authority 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(s) 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 publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) In General. If the taxpayer's federal taxable income or federal tax reported on his/her 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 the change(s) within ninety (90) days after the final determination of the change(s) 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 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), 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 the change(s). 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.

AUTHORITY: section 143.961, RSMo 1994. 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.*

**Original authority 1972.*

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

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

12 CSR 10-2.120 Information at Source Reporting Requirements

PURPOSE: This rule specifies methods of reporting miscellaneous income from Missouri sources.

(1) Filing Requirements.

(A) Statement Required. All individuals, businesses and corporations who are required to make a federal at source information report and who make payments to a nonresident of rents, royalties, commissions, prizes, awards, other forms of compensation or other forms of fixed or determinable gains, profits or income having an annual combined worth of one thousand two hundred dollars ($1,200) or more, which are not subject to withholding and not a part of an information report of S corporations or partnerships, must file an annual statement of those payments regardless of the manner or form in which payment is made. However, annual statements will ***not*** be required of any individual, business or corporation making those payments to ***Missouri residents***.

(B) Form of Statement: Missouri Form 99 MISC which is comparable to federal Form 1099 MISC must be used. Copy 1 must be filed with the Department of Revenue with Form 96, Annual Summary and Transmittal of Information Returns. Copy 2 must be provided to the recipient. Copy 3 is the payer's copy and is optional. A copy of federal Form 1099 MISC may be used as a substitute for Missouri Form 99 MISC, if copies are clearly marked: Copy 1 Missouri copy and Copy 2 information supplied to the Missouri Department of Revenue.

(C) Due Dates. Information statements shall be filed with the Department of Revenue on or before February 28 of each year for the previous calendar year, except where extension of time to file has been approved by the director or by the Internal Revenue Service, and a copy provided to recipients by January 31.

(2) Optional Magnetic Tape Reporting. Individuals, businesses and corporations with computer capabilities may use magnetic tape to file information at source payments. The requirements for magnetic tape reporting is desired by those who do not file under the combined federal state program. A written request must be furnished to the Department of Revenue for approval outlining the proposed requirements.

(3) Penalty. In each case of failure to file a copy of the statement required by this section, (determined with regard to any extension of time to file) unless it is shown that the failure is due to reasonable cause and not willful neglect, there shall be paid upon notice and demand by the director of revenue, and in the same manner as tax, by the person so failing to file, a penalty of two dollars ($2) for each statement not so filed but the total amount imposed on the delinquent person for all failures during any calendar year shall not exceed one thousand dollars ($1000).

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

**Original authority 1972.*

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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(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 1972.*

12 CSR 10-2.130 Allocation of Taxable Social Security Benefits Between Spouses

PURPOSE: This rule explains the proper method of determining and reporting the taxable portion of Social Security benefits in cases where both spouses have income.

(1) Social Security benefits which are included in federal adjusted gross income (AGI) must be allocated between spouses on the Missouri Individual Income Tax Return, Form 40. 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. 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.

AUTHORITY sections 143.031, 143.111 and 143.181, RSMo 1994. Original rule filed Jan. 15, 1985, effective June 13, 1985.*

**Original authority: 143.031 and 143.611, RSMo 1972 and 143.181, RSMo 1972, amended 1983.*

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 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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(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 65. Each return shall have attached to it a copy of federal Form 1065 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 65 containing only its name, address and required signature and attach a copy of federal Form 1065 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.

AUTHORITY: sections 143.091, 143.401 and 143.581, RSMo 1994. Original rule filed July 11, 1985, effective Dec. 26, 1985.*

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

12 CSR 10-2.145 Regulation for Computation of Interest on Investment Tax Credit Carryback

PURPOSE: This rule establishes the date from which interest shall be imposed on deficiencies arising from investment credit carryback.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) No interest will be imposed on any deficiency attributable to the carryback of *Internal Revenue Code* section 46 investment tax credit if an amended Missouri income tax return is filed and the deficiency is paid within ninety (90) days following the due date, including any extensions of time to file, of the federal income tax return for the year in which the credit arises. If an amended Missouri income tax return is not filed within the prescribed period, interest shall begin to accrue on the deficiency of the ninety-first day after the federal due date, without regard for any extensions of time to file.

AUTHORITY: sections 143.601, 143.711 and 143.731, RSMo 1994. Original rule filed Oct. 1, 1985, effective Dec. 26, 1985.*

**Original authority: 143.601 and 143.711, RSMo 1972 and 143.731, RSMo 1972, amended 1982, 1988.*

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) Any obligations issued pursuant to the provisions of an Act of Congress of the United States known as the Farm Credit Act of 1971 are tax exempt. Obligations issued by the following United States government agencies and other exempt entities are tax exempt: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Land Banks, Federal Home Loan Banks, United States Postal Service, Federal Housing Administration Debentures, Public Housing Notes and Bonds, General Services Administration, Small Business Administration, Tennessee Valley Authority, Student Loan Marketing Association, Treasury Bills and Bonds, United States Individual Retirement Bonds, United States Series E. Bonds, United States Series H. Bonds, Commodity Credit Corporation, Federal Deposit Insurance Corporation, Federal Farm Loan Corporation, Federal Financing Bank Obligations, General Insurance Fund, National Credit Union Central Liquidity Facility, National Farm Loan Association, Public Debt, United States Certificates of Indebtedness, United States Freedom Shares, Zero Coupon Bonds, Certificate of Accrual on Treasury Securities (Cats), Zero Coupon Based Rate Adjustment Securities (Zebras), Treasury Investment Growth Receipts (Tigrs), Financial Corporation Bonds, Resolution Funding Corporation Bonds, Educational Institution Bonds, Financing Corporation Obligations, Puerto Rican Bonds, American Samoa, Guam, Northern Mallana Covenant, Northern Mariana, Virgin Islands, Federal Farm Credit Banks and Junior College Building Corporation Bonds, Series B, 1988.

(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, New Communities Debentures, Export-Import Bank of United States, Farmers Home Administration, Washington Metropolitan Area Transit Authority and Repurchase Agreements.

(3) See 12 CSR 10-2.155 with respect to the Missouri income taxation of interest received from a mutual fund or regulated investment company.

(4) The list of obligations provided in this regulation is not all inclusive.

AUTHORITY: section 143.961, RSMo 1994. 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.*

**Original authority: 143.961, RSMo 1972.*

*31 U.S.C. 3124, **Farmers & Traders State Bank v. Johnson**, 458 NE2d 1365 (1984).*

12 CSR 10-2.155 Regulated Investment Companies

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

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The term regulated investment company, (RIC or mutual fund) as used in this rule, shall mean an organization which meets the qualifications 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(a), RSMo, including those obligations described in 12 CSR 10-2.150. 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 (other than exempt-interest dividends as defined in *Internal Revenue Code* (Section 852(b)(5)) as determined by the RIC, and designated by the RIC as a state income tax exempt-interest dividend in a written notice mailed 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 exceeds five hundred dollars ($500) pursuant to section 143.121.3(a), RSMo.

(3) 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 must be attached to the Missouri income tax return when filed. 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 his/her interest during that year.

(4) Amounts excluded from federal taxable income on the taxpayer's federal return as exempt-interest dividends, as defined in IRC section 852(b)(5), must be included in Missouri taxable income pursuant to section 143.121.2(b), RSMo, to the extent that the interest from which they are derived would not be exempt from Missouri income tax if held directly by a resident.

(A) Example: An RIC declares and pays a federal exempt-interest dividend pursuant to IRC section 852(b)(5) of 100x dollars to all of its shareholders. The dividend is therefore exempt from federal income taxation. 20x dollars 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. 10x dollars 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(a), RSMo is exempt from Missouri income taxation. The remaining 70x dollars 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. An RIC may designate 30x dollars 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 his/her federal exempt-interest dividend (20x dollars plus 10x dollars divided by 100x dollars) from Missouri taxable income. The remaining seventy percent (70%) of the federal exempt-interest dividend is includable in Missouri taxable income by the shareholders of the RIC pursuant to section 143.121.2(b), RSMo.

AUTHORITY: section 143.961, RSMo 1994. 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.*

**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.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule *would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.*

(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% = $2250

State income tax added back (amount of allowable federal itemized deductions attributable to state income taxes)
$10,000 – $2,250 = $7750

Missouri itemized deductions
$15,500 – $7,750 = $7750

(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

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

(1) Federal Taxable Income Not Less Than Zero (0). Federal taxable income is the starting point for computing Missouri taxable income. Federal taxable income, as it is used to compute Missouri taxable income, may not be less than zero (0) or a negative figure.

(A) Example: In the current year taxpayer had a federal net operating loss of one (1) million dollars, of which one hundred twenty-five thousand dollars ($125,000) was attributable to Missouri income taxes. In a prior year, taxpayer had federal taxable income of $2,500,000. For this example, assume the taxpayer had no Missouri modifications to federal taxable income. Also assume the prior year return reflected a deduction of seven hundred fifty thousand ($750,000) for federal tax liability and after applying the net operating loss (NOL) the federal tax liability was reduced to four hundred fifty thousand dollars ($450,000). The taxpayer should determine his/her current and prior year Missouri income tax as follows:

Current year	Federal subtotal	<$ 875,000>
	Mo. state income tax	<$ 125,000>
	Federal NOL	<$1,000,000>
	Mo. return line -1	$ 0
	Mo. state income tax	$ 125,000
	Mo. taxable income	$ 125,000
	Mo. tax rate	× 5%
	Mo. tax due	$ 6,250
Prior year	Federal taxable income	$2,500,000
	Minus NOL carry back	<$1,000,000>
	Federal taxable income as amended	$1,500,000
	Minus federal tax liability	$ 450,000
	Mo. taxable income	$1,050,000
	Mo. tax rate	× 5%
	Mo. tax due	$ 52,500
	Mo. tax paid on original return	<$ 87,500>
	Mo. tax refund due	<$ 35,000>*

*The thirty-five thousand dollar ($35,000) refund includes $6,250 attributable to the $125,000 deduction for state taxes.

(2) 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 which is made on the consolidated return. If there is a consolidated gain, then the Missouri taxpayer may elect to carry loss backward or forward pursuant to *Internal Revenue Code* section 172.

1. Example: Company D files federal consolidated and Missouri separate returns. In 1986, Company D has a federal consolidated loss of one hundred thousand dollars ($100,000), which it carries back for federal income tax purposes to its return for 1983, reducing federal taxable income and federal income tax liability. Assuming taxpayer has separate company loss to carry back from 1986, that loss may be deducted on its separate Missouri return for 1983. That loss may not be used to reduce federal taxable income on the Missouri return to a negative number.

(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 follow: 1) a fraction shall be created, the numerator of which is the taxpayer's original taxable income reduced by its *pro rata* share of the consolidated loss and the denominator of which is the original consolidated taxable income reduced by total consolidated loss; and 2) total federal income tax of the consolidated group after deduction of the net operating loss is multiplied by the fraction to arrive at the adjusted federal income tax deduction.

(A) Example: First, allocate the loss to the loss companies.

Company	Line 30 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	1980 Original Line 30	1983 Allocated Loss	New Taxable Income	To Total Percent	1139 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

(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 a member of an affiliated group of corporations that files a federal consolidated return files a separate Missouri return or when a member included in a federal consolidated return is properly excluded from the Missouri consolidated return and its items of income and deduction are not included in the group's Missouri consolidated return, then the carryover attributes for the Missouri return may be different from the carryover attributes for the federal consolidated return. 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) and regulations as they 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. No loss or deduction will be allowed unless the taxpayer provides a schedule identifying the source of each loss or deduction.

AUTHORITY: section 143.961, RSMo 2000. 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.*

**Original authority: 143.961, RSMo 1972.*

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

12 CSR 10-2.175 Agricultural Unemployed Person

PURPOSE This rule establishes the requirements and procedures for claiming the tax credit on the agricultural unemployed person provided in sections 135.275–135.287, RSMo.

(1) The following definitions will be used in conjunction with sections 135.275–135.287, RSMo:

(A) Accountant—someone who normally received monetary compensation for preparation of financial statements;

(B) Lost possession—no longer owns, leases or rents;

(C) Operated—owned, leased or rented;

(D) Property—any tangible asset allowed in the calculation of the debt-to-asset ratio as defined in section 135.275(3), RSMo; and

(E) Three (3)-month period—same day, three (3) months after the beginning date. Example: January 15 through April 15.

(2) Notification to the Department of Revenue as referenced in section 135.282, RSMo shall mean that the business is required to notify the Department of Revenue of the date when employees are hired, discharged for cause or voluntarily terminated. Notification to the Department of Revenue of those dates will be required on the income tax return for the taxable year on which these credits apply. Notification to the Division of Employment Security shall be given within thirty (30) days of hiring, discharge for cause or voluntary termination.

(3) The tax credit given to businesses for employing agriculturally unemployed persons may be claimed from the date of hiring of the individual. If an individual does not have a certificate of eligibility at the time of his/her hiring but obtains a certificate of eligibility within thirty (30) days after that, the business may begin claiming a credit which shall accrue from the date of hiring.

(4) No credit will be granted for a period of fewer than three (3) months' continual service of at least twenty (20) hours each week.

(5) Businesses claiming tax credit for hiring an agricultural unemployed person must submit with their tax returns all original portions of the certificate of eligibility of each employee for which the credit is claimed. The business must also prepare and submit with its tax return, a summary page listing each employee's name, Social Security number, date of employment and amount of credit claimed for each employee. The total credit claimed for all employees must be shown also.

(6) The aggregate of tax credits claimed through New Business Facility and Enterprise Zone credit listed in Chapter 135, RSMo and agricultural unemployed person credit may not exceed eight hundred dollars ($800) per employee if the agricultural unemployed person credit is used in conjunction with either of the Chapter 135, RSMo credits.

(7) The credit for agricultural unemployed persons is a nonrefundable credit.

(8) Credits shall not accrue after July 1, 1988. Any unused credits may be used on a return filed prior to December 31, 1991. Credits may be claimed by any taxpayer whose taxable year ends after August 13, 1986, if the taxpayer has employed a certified agricultural unemployed person for at least three (3) consecutive months.

(9) Any person who receives certification from the Division of Employment Security as an agricultural unemployed person shall retain this status for a period of one (1) year. If employment is not found within this one (1)-year period, the certification will be void and the person must reapply for certification as agriculturally unemployed. Once a person is certified as an agricultural unemployed person and hired, the tax credit may be claimed by the employer, subsequent employer, or both, for a period of two (2) calendar years from the date of employment without the agricultural unemployed person having to apply for certification again.

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.*

**Original authority: 135.285, RSMo 1986.*

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 Partners and S Corporation Shareholders Composite Individual Income Tax Return Filing Requirements, Withholding of Income Tax Requirements and Partnership/S Corporation Withholding Exemption

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. Limited liability companies which are treated as partnership for income tax purposes, and limited liability partnerships, will be considered partnerships for purposes of this rule.*

(1) Who May File a Composite Return.

(A) Any partnership, S corporation, limited liability partnership or limited liability company (treated as a partnership for tax purposes), with nonresident partners or S corporation shareholders not otherwise required to file a Missouri individual income tax return may file a composite return on behalf of its nonresident partners or shareholders. If the nonresident partner's or S corporation shareholder's filing requirements result solely from one (1) or more interests in any other partnerships or S corporations, that nonresident partner or S corporation shareholder may be included in the composite return.

(B) A composite return may be filed by all nonresident partners or S corporation shareholders except—

1. Nonresidents of Missouri who have income in Missouri from sources other than the partnership or S corporation; or

2. Nonresidents of Missouri filing an individual income tax return.

(C) Nonresident partners or S corporation shareholders who do not qualify to file a composite return must file an individual income tax return in Missouri reflecting income from all sources including his/her distributive share of the partnership or S corporation income, as required under Chapter 143, RSMo. Nonresident partners or S corporation shareholders who do not file a composite return may be subject to withholding by the partnership or S corporation on their distributive share of the partnership's or S corporation's income for the taxable year of the partnership or S corporation as outlined in section (4).

(2) Time and Place for Filing Partnership or S Corporation Returns and Payment of Estimated Taxes.

(A) A partnership return or an S corporation return shall be filed based upon the provisions of the law effective for each taxable year.

(B) The partnership return or S corporation return shall reflect the total income of the partnership or S corporation from all sources and allocate to Missouri that portion of the total income which is derived from or connected with sources in Missouri by using the apportionment formula in section 32.200 or 143.451, RSMo. The ratio with a numerator of that portion of the total income which is derived from or connected with sources in Missouri and a denominator of the total income of the partnership or S corporation shall be the basis of allocation of each nonresident partner's or nonresident shareholder's income to Missouri by applying that percentage to the total distributable income of each nonresident partner or shareholder based upon his/her percentage of interest in the partnership or S corporation.

(C) The estimated tax shall be paid in four (4) equal installments. The first installment shall be 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.

(3) Filing Requirements for the Composite Individual Income Tax Return of Nonresident Partners or Nonresident S Corporation Shareholders.

(A) In lieu of each nonresident partner or S corporation shareholder filing a separate individual income tax return (provided they are not otherwise required to file a return), the partnership or S corporation may file an individual income tax return under the name of the partnership or S corporation on or before April 15 of each year. This return shall show on an appended schedule the name, address, Social Security number, the amount of each nonresident partner's or nonresident S corporation shareholder's income from Missouri sources as determined in subsection (2)(B) and the partner's or shareholder's federal distributive share of partnership or S corporation income.

(B) The tax rate to be applied to the Missouri income of each nonresident partner or S corporation shareholder determined in subsection (2)(B) in lieu of demonstrating the exact amount of this income, deductions and exemptions is six percent (6%).

(C) The sum of the amount determined in subsection (3)(B) will be paid by the partnership or S corporation in respect to the liability of all its nonresident partners or nonresident S corporation shareholders not otherwise required to file a return.

(D) Timely filing of the composite return by the partnership or S corporation and timely 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 and paying the tax on the individual income tax return.

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

(A) In addition to the withholding requirements outlined in Chapter 143, RSMo, partnerships and S corporations are required to withhold Missouri income tax from any nonresident individual partner(s) or S corporation shareholder(s) to which the partnership or S corporation pays or credits amounts on account of their distributive share of the partnership or S corporation 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; and income was generated by a transaction related to termination or liquidation; or no cash or other property was distributed in the current and prior taxable year. Note: Exceptions to the withholding requirement are not exceptions from Missouri income tax. The income generated by the termination or liquidation, although not subject to withholding, is subject to Missouri income tax;

4. The partnership/S corporation files a signed Form MO-3NR (Partnership/S Corporation Withholding Exemption/Revocation Agreement) that was provided to it by the nonresident partner or S corporation shareholder who has agreed to:

A. File a return in accordance with the provisions of section 143.181, RSMo and to make timely payment of all taxes imposed on the partner/S corporation shareholder by this state with respect to income of the partnership/S corporation; and

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/S corporation shareholder by this state with respect to the income of the partnership/S corporation; or

5. Form MO-3NR will be considered timely filed for a taxable year, and for all subsequent taxable years, if it is filed before or in conjunction with the annual return for such taxable year pursuant to section 143.511, RSMo. A partnership/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.

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

1. If the partner or shareholder submits a Form MO W-4, Missouri Withholding Allowance Certificate, Form MO W-4, the tax withheld may be determined based on the withholding tables provided by the director of revenue.

2. If no Form MO W-4 is submitted the highest rate used to determine a Missouri income tax liability for an individual, six percent (6%), will be applied to the Missouri income of each nonresident partner or S corporation shareholder determined in subsection (2)(B).

(D) If withholding is remitted to the Department of Revenue on behalf of a nonresident partner or S corporation shareholder who subsequently has no tax liability, the partnership or S corporation may file a claim for refund with the Department of Revenue to recover the amount remitted.

(5) Remitting Withholding on Nonresident Partners or S Corporation Shareholders to the Department of Revenue.

(A) 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 by the due date or extended due date for filing the partnership or S corporation 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. Form MO-1NR and Copy C 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 Copy A 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.

(B) A Form MO-2NR, Statement of Income Tax Payments for nonresident individual partners or S corporation shareholders, must be completed for each nonresident partner or shareholder to whom payments or credits were made and were subject to withholding.

1. Copy C must be attached to the Form MO-1NR when filed with the Department of Revenue.

2. Copy A of the Form MO-2NR must be provided to each nonresident partner or S corporation shareholder to whom payments or credits were made and were subject to withholding.

AUTHORITY: section 143.411, RSMo Supp. 1997. 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.*

**Original authority: 143.411, RSMo 1972, amended 1993, 1997.*

12 CSR 10-2.195 Special Needs Adoption Tax Credit

PURPOSE: This rule establishes the requirements and procedures for claiming the tax credit for a special needs adoption as provided in sections 135.325–135.339, RSMo.

(1) Special Needs Adoption Tax Credit. Any person residing in this state who, on or after January 1, 1988, legally adopts a special needs child as defined in section 135.326(3), RSMo or corresponding rules shall be eligible to receive a tax credit for nonrecurring, nonreimbursed adoption expenses. The tax credit may be applied to taxes due on the adoptive parent(s) individual income tax return for the year in which the adoption was finalized subject to the following limitations:

(A) The tax credit amount shall not exceed five thousand dollars ($5,000);

(B) The tax credit amount used may not exceed the tax liability for the tax year;

(C) Any amount of tax credit which exceeds the tax liability shall not be refunded but may be carried forward and applied against the taxpayer's income tax liability in any of the subsequent five (5) years from the initial year of adoption;

(D) No credit shall be allowable for nonrecurring adoption expenses for which a deduction or credit is allowable under any other provision of federal, state or local law;

(E) No credit shall be allowable for that portion of the nonrecurring adoption expenses paid from any funds received under any federal, state or local program;

(F) No credit shall be allowable for the expenses of adoption of any child who has attained the age of eighteen (18) unless the child has a medical condition or handicap, which is verifiable by medical findings, that would limit the child's ability to live independently of the adoptive parent(s); and

(G) The credit amount shall be reduced by an amount equal to the state's cost of providing care, treatment, maintenance and services when—

1. The special needs child is placed with no intent to return to the adoptive home in foster care or residential treatment licensed or operated by the Division of Family Services, the Division of Youth Services or the Department of Mental Health; or

2. A juvenile court temporarily or indefinitely relieves the adoptive parent(s) of custody of the special needs child.

(2) Claiming the Credit. Any taxpayer claiming the Special Needs Adoption Credit must attach the following to the individual income tax return filed for the year of the adoption:

(A) Completed Missouri Department of Revenue Form ATC, which indicates nonrecurring expenses subject to limitations as identified in subsections (1)(A)–(G); and

(B) Statement from one (1) of the entities identified in paragraph (1)(G)1. or 2. which states that the child qualifies as a special needs child.

(3) In the event that paragraph (1)(G)1. or 2. occurs, the adoptive parents shall obtain a statement from the Division of Family Services, Division of Youth Services, Department of Mental Health or Juvenile Court having jurisdiction, as appropriate providing the information as required and shall supply the statement to the Department of Revenue. Any credit amount will be reduced appropriately.

AUTHORITY: section 135.339, RSMo 1994. Original rule filed Aug. 2, 1988, effective Dec. 11, 1988.*

**Original authority: 135.339, RSMo 1987.*

12 CSR 10-2.200 Trucking Companies

PURPOSE: This rule sets forth the uniform provisions concerning multistate allocation and apportionment of income from trucking *companies which were enacted by the Multistate Tax Commission.*

(1) General. As used in this rule, the term trucking company means a motor common carrier, a motor contract carrier or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without Missouri, the amount of business income from sources within Missouri shall be determined pursuant to this rule, unless the taxpayer elects to apportion pursuant to section 143.451.4, RSMo. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income under section 32.200 (Article IV.1.), RSMo and the rules that interpret those provisions. Nonbusiness income is directly allocable to specific states pursuant to the provisions of section 32.200 (Article IV.4–8.), RSMo. Business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to Missouri plus the amount of business income attributable to Missouri constitutes the amount of the taxpayer's entire net income which is subject to tax in Missouri.

(2) Business and Nonbusiness Income. For definitions, rules and examples for determining business and nonbusiness income, see 12 CSR 10-2.075.

(3) Apportionment of Business Income. In general, the property factor shall be determined in accordance with section 32.200 (Article IV.10–12), RSMo, the payroll factor in accordance with section 32.200 (Article IV.13 and 14.), RSMo and the sales factor in accordance with section 32.200 (Article IV.15.–17.), RSMo, except as modified by this rule.

(A) The Property Factor. Owned property shall be valued at its original cost and property rented from others, including purchased transportation, shall be valued at eight (8) times the net annual rental rate in accordance with section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions. To the extent that the taxpayer's records reflect a separate charge incurred for the use of purchased transportation attributable to the property used, this separate charge shall be used in calculating the value of rented property. If a charge is not separated from that attributable to the compensation paid for the operator of the purchased transportation, the total combined charge shall be reduced by twenty percent (20%) to determine the portion of the charge attributable solely to the value of the rented property. Mobile property, other than purchased transportation, which is owned by other trucking companies and temporarily used by the taxpayer in its business and for which a per-diem or mileage charge is made shall not be included in the property factor as rented property. Mobile property which is owned by the taxpayer and temporarily used by other trucking companies in their business and for which a per-diem or mileage charge is made by the taxpayer shall be included in the property factor of the taxpayer.

(B) General Definitions. The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

1. Average value of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the Department of Revenue may require the averaging of monthly values during the income year or this averaging as is necessary to reflect properly the average value of the trucking company's property (see section 32.200 (Article IV.12.), RSMo and the rules that interpret those provisions);

2. Mobile property means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property, except for support vehicles used predominantly in a local capacity. Mobile property shall include purchased transportation;

3. A mobile property mile is the movement of a unit of mobile property a distance of one (1) mile whether loaded or unloaded;

4. Original cost is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions and improvements or partial dispositions) or, if the property has no basis, the valuation of this property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standard, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer (see section 32.200 (Article IV.11.), RSMo);

5. Property used during the course of the income year includes property which is available for use in the taxpayer's trade or business during the income year;

6. Purchased transportation means the taxpayer's use of a motor vehicle owned and operated by another for the purpose of transporting tangible personal property for which a charge, whether based upon a per diem, mileage or other basis, is incurred;

7. Temporarily used means the use of any mobile property owned by another for a period not to exceed thirty (30) days during any income year;

8. The value of owned real and tangible personal property means its original cost (see section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions); and

9. The value of rented real and tangible personal property means the product of eight (8) times the net annual rental rate (see section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions).

(C) The Denominator and Numerator of the Property Factor. The denominator of the property factor shall be the average value of all the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in Missouri during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this rule, shall be included in the numerator of the property factor in accordance with section 32.200 (Article IV.10.–12.), RSMo and 12 CSR 10-2.075. Mobile property, as defined in this regulation, which is located within and without Missouri during the income year shall be included in the numerator of the property factor in the ratio which mobile property miles in Missouri bear to the total mobile property miles.

(D) The Payroll Factor. The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business income (see section 32.200 (Article IV.13. and 14.), RSMo and 12 CSR 10-2.075). The numerator of the payroll factor is the total compensation paid in Missouri during the income year by the taxpayer. With respect to all personnel, except those performing services within and without Missouri, compensation paid to these employees shall be included in the numerator as provided in section 32.200 (Article IV.13. and 14.), RSMo and 12 CSR 10-2.075. Compensation paid to employees performing services within and without Missouri shall be included in the numerator of the payroll factor in the ratio which their services performed in Missouri bear to their services performed everywhere based on mobile property miles.

(E) The Sales (Revenue) Factor.

1. General. All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business which produce business income shall be included in the denominator of the revenue factor (see section 32.200 (Article IV.1.), RSMo and 12 CSR 10-2.075). The numerator of the revenue factor is the total revenue of the taxpayer. The total state revenue of the taxpayer other than revenue from hauling freight, mail and express shall be attributable to this state in accordance with section 32.200 (Article IV.15.–17.), RSMo and 12 CSR 10-2.075.

2. Numerator of the sales (revenue) factor from freight, mail and express. The total revenue of the taxpayer attributable to Missouri during the income year from hauling freight, mail and express shall be—

A. Intrastate. All receipts from any shipment which both originates and terminates within Missouri; and

B. Interstate. That portion of the receipts from movements or shipments passing through, into or out of Missouri as determined by the ratio which the mobile property miles traveled in Missouri bear to the total mobile property miles traveled from points of origin to destination.

(4) Records. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property as those terms are used in this rule. These records are subject to review by the Department of Revenue or its agents.

(5) *De Minimus Nexus* Standard. Notwithstanding any provision contained in this rule, 12 CSR 10-2.011 shall not apply to require apportionment of income to Missouri if during the course of the income tax year, the trucking company neither—

(A) Owns nor rents any real or personal property in Missouri except mobile property;

(B) Makes any pickups or deliveries within Missouri;

(C) Travels more than twenty-five thousand (25,000) mobile property miles within Missouri, provided that the total mobile property miles traveled within Missouri during the income tax year does not exceed three percent (3%) of the total mobile property miles traveled in all states by the trucking company during that period; nor

(D) Makes more than twelve (12) trips into this state.

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Jan. 18, 1989, effective May 11, 1989.*

**Original authority: 32.200, RSMo 1967 and 143.961, RSMo 1972.*

12 CSR 10-2.205 Railroads

PURPOSE: This rule sets forth the uniform provisions concerning multistate allocation and apportionment of income from railroads which were enacted by the Multistate Tax Commission.

(1) General. When a railroad has income from sources both within and without Missouri, the amount of business income from sources within Missouri shall be determined pursuant to this rule, unless the taxpayer elects to apportion pursuant to 143.451.4, RSMo. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and which portion constitutes nonbusiness income under section 32.200 (Article IV.1.), RSMo and the rules that interpret those provisions. Nonbusiness income is directly allocable to specific states pursuant to the provisions of section 32.200 (Article IV.4.–8.), RSMo. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(2) Business and Nonbusiness Income. For definitions, rules and examples for determining business and nonbusiness income, see 12 CSR 10–2.075.

(3) Apportionment of Business Income. In general, the property factor shall be determined in accordance with section 32.200 (Article IV.10.–12.), RSMo, except as modified in this rule.

(A) The Property Factor. Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rate in accordance with section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions. Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per-diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per-diem charge is made by the taxpayer are included in the property factor of the taxpayer.

(B) General Definitions. The following definitions are applicable to the numerator and denominator of the property factor:

1. Original cost is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements to capital additions or partial dispositions); or, if the property has no basis, the valuation of the property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the previously mentioned valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer (see section 32.200 (Article IV.11.), RSMo);

2. Rent does not include the per-diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad;

3. The value of owned real and tangible personal property shall mean its original cost (see section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions);

4. Average value of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the Department of Revenue may require the averaging of monthly values during the income year or averaging as necessary to effect properly the average value of the railroad's property (see section 32.200 (Article IV.12.), RSMo and the rules that interpret those provisions);

5. The value of rented real and tangible personal property means the product of eight (8) times the net annual rental rate (see section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions);

6. Net annual rental rate means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals;

7. Property used during the income year includes property which is available for use in the taxpayer's trade or business during the income year;

8. A locomotive mile is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one (1) mile under its own power; and

9. A car mile is a movement of a unit of car equipment a distance of one (1) mile.

(C) The Denominator and Numerator of the Property Factor. The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in Missouri during the income year. In determining the numerator of the property factor, all property except mobile or movable property (for example, passenger cars, freight cars, locomotives and freight containers which are located within and without Missouri during the income year) shall be included in the numerator of the property factor in accordance with section 32.200 (Article IV.10.–12.), RSMo, and the rules that interpret those provisions. Mobile or movable property (for example, passenger cars, freight cars, locomotives and freight containers which are located within and without Missouri during the income year) shall be included in the numerator of the property factor in the ratio which locomotive miles and car miles in the state bear to the total everywhere.

(D) The Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income (see section 32.200 (Article IV.13. and 14.), RSMo and the rules that interpret those provisions). The numerator of the payroll factor is the total amount paid in Missouri during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to employees shall be included in the numerator as provided in section 32.200 (Article IV.13. and 14.), RSMo and the rules that interpret those provisions. Compensation paid to enginemen and trainmen performing services on interstate trains shall be included in the numerator of the payroll factor in the ratio which their services performed in Missouri bear to their services performed everywhere. Compensation for services performed in Missouri shall be deemed to be the compensation reported or required to be reported by the employees for determining their income tax liability to Missouri.

(E) The Sales (Revenue) Factor.

1. General. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per-diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor (see section 32.200 (Article IV.1.), RSMo and the rules that interpret those provisions). The numerator of the revenue factor is the total revenue of the taxpayer in Missouri during the income year. The total revenue of the taxpayer in Missouri during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to Missouri in accordance with section 32.200 (Article IV.15.–17.), RSMo and the rules that interpret those provisions.

2. Numerator of sales (revenue) factor from freight, mail and express. The total revenue of the taxpayer in Missouri during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to Missouri as follows:

A. All receipts from shipments which both originate and terminate within Missouri; and

B. That portion of the receipts from each movement or shipment passing through, into or out of Missouri is determined by the ratio which the miles traveled in Missouri bear to the total miles traveled from origin to destination.

3. Numerator of sales (revenue) factor from passengers. The numerator of the sales (revenue) factor shall include:

A. All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within Missouri; and

B. That portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in Missouri bear to the total everywhere.

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Jan. 18, 1989, effective May 11, 1989.*

**Original authority: 32.200, RSMo 1967 and 143.961, RSMo 1972.*

12 CSR 10-2.210 Airlines

PURPOSE: This rule sets forth the uniform provisions concerning multistate allocation and apportionment of income from airlines which were enacted by the Multistate Tax Commission.

(1) General. When an airline has income from sources both within and without Missouri, the amount of business income from sources within Missouri shall be determined pursuant to section 32.200 (Article IV), RSMo of the Multistate Tax Commission except as modified by this rule, or unless the taxpayer elects to apportion pursuant to section 143.451.4, RSMo.

(2) Apportionment of Business Income.

(A) General Definitions. The following definitions apply to the terms used in the apportionment factor descriptions:

1. Value of owned real and tangible personal property shall mean its original cost (see section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions);

2. Cost of aircraft by type means the average original cost or value of aircraft by type which are ready for flight;

3. Original cost means the initial federal tax basis of the property plus the value of capital improvements to the property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property (see 12 CSR 10-2.075);

4. Average value of property means the amount determined by averaging the values at the beginning and ending of the income year, but the Department of Revenue may require the averaging of monthly values during the income year if averaging is necessary to reflect properly the average value of the airline's property (see section 32.200 (Article IV.12.), RSMo and the rules that interpret those provisions);

5. The value of rented real and tangible personal property means the product of eight (8) times the net annual rental rate (see section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions);

6. Net annual rental rate means the annual rental rate paid by the taxpayer;

7. Property used during the income year includes property which is available for use in the taxpayer's trade or business during the income year;

8. Aircraft ready for flight means aircraft owned or acquired through rental or lease (but no interchange) which are in the

possession of the taxpayer and are available for service on the taxpayer's routes;

9. Revenue service means the use of aircraft ready for flight for the production of revenue;

10. Transportation revenue means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, and the like; and

11. Departures means all takeoffs, regularly scheduled or charter flights, that occur during revenue service.

(B) Property Factor. Owned aircraft shall be valued at original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with section 32.200 (Article IV.11.), RSMo and the rules that interpret those provisions. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of the aircraft by the airline to the other participating airline. These aircraft shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

(C) The Denominator and Numerator of the Property Factor. The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in Missouri during the income year.

1. In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with section 32.200 (Article IV.10.–12.), RSMo. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows: departures of aircraft from locations in Missouri weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(D) The Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year (see section 32.200 (Article IV.13. and 14.), RSMo). The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to these employees shall be included in the numerator as provided in section 32.200 (Article IV.13. and 14.), RSMo. With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to these employees shall be included in the ratio of departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(E) Sales (Transportation Revenue) Factor. The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, and the like, are included in the denominator of the revenue factor (see section 32.200 (Article IV.1.), RSMo and the rules that interpret those provisions). Passive income items such as interest, rental income, dividends, and the like, will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the revenue factor is the total revenue of the taxpayer in Missouri during the income year. The total revenue of the taxpayer in Missouri during the income year is the result of the following calculation: the ratio of departure of aircraft in Missouri weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to Missouri.

(3) Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these rules. These records are to be subject to review by the respective state taxing authorities or their agents.

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Jan. 18, 1989, effective May 11, 1989.*

**Original authority: 32.200, RSMo 1967 and 143.961, RSMo 1972.*

Examples of the Manner in Which the Multistate Tax Commission Airline Regulation Would Apply to Specific Fact Situations

EXAMPLE #1: Assume the following facts for an airline for a tax year:

1. It has ten 747s ready for flight and in revenue service at an average cost per unit of $40,000,000 for nine of the aircraft. It rents the tenth 747 from another airline for $9,000,000 per year. At eight times rents, the latter is valued at $72,000,000 for apportionment purposes. The total 747 valuation is, therefore, $432,000,000 for property factor denominator purposes.

2. It has twenty 727s ready for flight in revenue service at an average cost per unit of $20,000,000. The total 727 valuation is, therefore, $400,000,000 for property factor denominator purposes.

3. It has nonflight tangible property (ntp) valued at original cost of $200,000,000.

4. It has the following annual payroll:

Flight personnel	$ 60,000,000
Nonflight personnel (np)	$ 40,000,000
Total	$100,000,000

5. From its operations, it has total receipts of $50,000,000, business net income of $1,000,000 and no nonbusiness income.

6. It has the following within State X:

a. 10% of its 747 flight departures:	$43,200,000
b. 20% of its 727 flight departures:	$80,000,000
c. 5% of its ntp:	$10,000,000
d. 15% of its np payroll:	$ 6,000,000

7. State X has a corporation tax rate of 10%.

The airline's tax liability to State X would be determined as follows:

Property Factor:

$$\frac{\$\ 43{,}200{,}000\ (747\text{s})\ +\ \$\ 80{,}000{,}000\ (727\text{s})\ +\ \$\ 10{,}000{,}000\ (\text{ntp})}{\$432{,}000{,}000\ +\ \$400{,}000{,}000\ +\ \$200{,}000{,}000} = \frac{\$133{,}200{,}000}{\$1{,}032{,}000{,}000} = .1291$$

Sales Factor:

$$\frac{\$43{,}200{,}000\ (747\text{s})\ +\ \$80{,}000{,}000\ (727\text{s})}{\$432{,}000{,}000\ +\ \$400{,}000{,}000} = \frac{\$123{,}200{,}000}{\$832{,}000{,}000} = .1481$$

Payroll Factor:

$$\frac{\$6{,}000{,}000\ (\text{nonflight})\ +\ \$8{,}880{,}000\ (.148 \times \$60{,}000{,}000)\ (\text{flight})}{\$100{,}000{,}000} = \frac{\$\ 14{,}880{,}000}{\$100{,}000{,}000} = .1488$$

Average Ratio:

$$\frac{.1291\ +\ .1481\ +\ .1488}{3} = \frac{.4260}{3} = .1420$$

Taxable Income in State X: .1420 × $1,000,000 = $142,000
Tax Liability to State X: .10 × $142,200 = $14,200

EXAMPLE #2: Same facts except that paragraphs 6. and 7. are changed to read:

6. It has the following within State Y:
   a. 6% of its 747 flight departures ($25,920,000)
   b. 31% of its 727 flight departures ($124,000,000)
   c. 3% of its ntp ($6,000,000)
   d. 7% of its NP payroll ($2,800,000)

7. State Y has a corporate tax rate of 6.5%.

The airline's tax liability to State Y would be determined as follows:

$$\frac{\$25{,}920{,}000\ (747s) + \$124{,}000{,}000\ (727s) + \$6{,}000{,}000\ (ntp)}{\$432{,}000{,}000 + \$400{,}000{,}000 + \$200{,}000{,}000} = \frac{\$155{,}920{,}000}{\$1{,}032{,}000{,}000} = .1511$$

Sales Factor:

$$\frac{\$25{,}920{,}000\ (747s) + \$124{,}000{,}000\ (727s)}{\$432{,}000{,}000 + \$400{,}000{,}000} = \frac{\$149{,}920{,}000}{\$832{,}000{,}000} = .1802$$

Payroll Factor:

$$\frac{\$2{,}800{,}000\ (nonflight) + \$10{,}812{,}000\ (flight)\ (that\ is,\ 1802 \times \$60{,}000{,}000)}{\$40{,}000{,}000 + \$60{,}000{,}000} = \frac{\$13{,}612.000}{\$100{,}000{,}000} = .1361$$

Average Ratio:

$$\frac{.1511 + 1802 + 1361}{3} = \frac{.4674}{3} = .1588$$

Taxable Income in State Y: .1558 × $1,000,000 = $155,800

Tax Liability to State Y: .065 × $155,800 = $10,127

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 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 compensation 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.

(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.

AUTHORITY: sections 143.183 and 285.230, RSMo Supp. 1998. 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.*

**Original authority: 143.183, RSMo 1994, amended 1998 and 285.230, RSMo 1988, amended 1994, 1997, 1998.*

12 CSR 10-2.230 Construction Contractors

PURPOSE: This rule sets forth the uniform provisions concerning multistate allocation and apportionment of income from construction contractors which were enacted by the Multistate Tax Commission.

(1) General. When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one (1) year from the date of execution of the contract to the date on which the contract is finally completed and accepted) and has income from sources both within and without Missouri from a trade or business, the amount of business income derived from these long-term contracts from sources within Missouri shall be determined pursuant to this rule. In these cases, the first step is to determine which portion of the taxpayer's income constitutes business income and which portion constitutes nonbusiness income under section 32.200 (Article IV.1.), RSMo and the rules that interpret that provision. Nonbusiness income is directly allocated to specific states under section 32.200 (Article IV.4.—8.), RSMo and the rules that interpret those provisions. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to Missouri plus the amount of business income attributable to Missouri, constitutes the amount of the taxpayer's entire net income which is subject to tax by Missouri.

(2) Business and Nonbusiness Income. For definitions, rules and examples for determining business and nonbusiness income, see 12 CSR 10-2.075.

(3) Methods of Accounting and Year of Inclusion. For general rules of accounting, definitions and methods of accounting, see sections 143.271—143.301, RSMo and the rules that interpret those provisions.

(4) Apportionment of Business Income. Business income is apportioned to Missouri by a three (3)-factor formula consisting of property, payroll and sales regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll and sales percentages is divided by three (3) to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to Missouri.

(A) Percentage of Completion Method. Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income year exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each long-term contract.

1. Example: A taxpayer using the percentage of completion method of accounting for long-term contracts entered into a long-term contract to build a structure for $9,000,000. The contract allowed three (3) years for completion and as of the end of the second income year the taxpayer's books of

account, kept on the accrual method, disclosed the following:

	Receipts	Expenditures
End of 1st income year	$2,500,000	$2,400,000
End of 2nd income year	$4,500,000	$4,100,000
Totals	$7,000,000	$6,500,000

In computing these expenditures, consideration was given to material and supplies on hand at the beginning and end of each income year. It was estimated that the contract was thirty percent (30%) completed at the end of the first income year and eighty percent (80%) completed at the end of the second income year. The amount to be included as business income for the first income year is $300,000 (30% of $9,000,000 or $2,700,000 less expenditures of $2,400,000 equals $300,000). The amount to be included as business income for the second income year is $400,000 (50% of $9,000,000 or $4,500,000 less expenditures of $4,100,000 equals $400,000).

(B) Completed Contract Method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to Missouri from each completed contract (see section (5) of this rule). All receipts and expenditures applicable to these contracts, whether complete or incomplete as of the end of the income year, are excluded from business income derived from other sources as, for example, short-term contracts, interest, rents, royalties, and the like, which are apportioned by the regular three (3)-factor formula of property, payroll and sales.

(C) Property Factor. In general, the numerator and denominator of the property factor shall be determined as set forth in section 32.200 (Article IV.10.—12.), RSMo and the rules that interpret those provisions. However, the following special rules are also applicable:

1. The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent the costs exceed progress billings (accrued or received depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor. The value of any construction costs attributable to construction projects in Missouri shall be included in the numerator of the property factor.

A. Example 1: Taxpayer commenced a long-term construction project in Missouri as of the beginning of a given year. By the end of its second income year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for that year is computed as follows:

	1st Year		2nd Year	
	Beginning	**Ending**	**Beginning**	**Ending**
Construction Costs	0	$1,000,000		
Progress billings		$ 600,000		
Balance 12/31—1/1		$ 400,000	$400,000	
Construction Costs—				
Total from beginning of project				$5,000,000
Progress billings—				
Total from beginning of project				$4,000,000
Balance 12/31				$1,000,000
Balance beginning of year				$ 400,000
Total				$1,400,000
Average (1/2)—Value used in property factor				$ 700,000

Note: It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity; see section 32.200 (Article IV.12.), RSMo and the rules that interpret that provision.

B. Example 2: Same facts as in subparagraph (4)(C)1.A. (Example 1) except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor;

2. Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight (8) times the net annual rental rate even though this rental expense may be capitalized into the cost of construction; and

3. The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately (see section (5)).

(D) Payroll Factor. In general the numerator and denominator of the payroll factor shall be determined as set forth in section 32.200 (Article IV.13. and 14.), RSMo and the rules that interpret those provisions. However, the following special rules are also applicable:

1. Compensation paid employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction;

2. Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment tax purposes shall be attributed to the state where the services are performed.

A. Example: A taxpayer engaged in a long-term contract in state X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to state Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with section 32.200 (Article IV.14.), RSMo and the rules that interpret that provision, the compensation is assigned to the numerator of state X; and

3. The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately (see section (5)).

(E) Sales Factor. In general the numerator and denominator of the sales factor shall be determined as set forth in section 32.200 (Article IV.15.—17.), RSMo and the rules that interpret those provisions. However, the following special rules are also applicable:

1. Gross receipts derived from the performance of a contract are attributable to Missouri if the construction project is located in Missouri. If the construction project is located partly within and partly without Missouri, the gross receipts attributable to Missouri are based upon the ratio which construction costs for the project in Missouri incurred during the income year bear to the total of construction costs for the entire project during the income year or any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

A. Example 1: A construction project was undertaken in Missouri by a calendar year taxpayer which had elected one (1) of the long-term contract methods of accounting. The following gross receipts (progress billings) were derived from the contract during the three (3) income years that contract was in progress:

	1st Year	2nd Year	3rd Year
Gross Receipts	$1,000,000	$4,000,000	$3,000,000

The gross receipts to be reflected in both the numerator and denominator of the sales factor for each of the three (3) years are the amounts shown.

B. Example 2: A taxpayer contracts to build a dam on a river at a point which lies half within Missouri and half within state X. During the taxpayer's first income year construction costs in this state were $2,000,000. Total construction costs for the project during the income year were $3,000,000. Gross receipts (progress billings) for the year were $2,400,000. Accordingly, gross receipts of $1,600,000 ($2,000,000 ÷ $3,000,000 = 66 2/3% × $2,400,000) are included in the numerator of the sales factor;

2. If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.

A. Example: A taxpayer which had elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was thirty percent (30%) completed. The bid price for the project was $9,000,000 and it had received $2,500,000 from progress billings as of the end of its current income year. The amount of gross receipts to be included in the sales factor for the current income year is $2,700,000 (30% of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements;

3. If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.

A. Example 1: A taxpayer which had elected the completed contract method of accounting entered into a long-term construction contract. By the end of its current income year (the second since starting the project), it had billed and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken and $3,000,000 had accrued in the current (second) year. The amount of gross receipts to be included in the sales factor for the current income year is $3,000,000.

B. Example 2: Same facts as in subparagraph (4)(E)3.A. (Example 1), except the taxpayer keeps its books on the cash basis and as of the end of its current income year had received only $2,500,000 of the $3,000,000 billed during the current year. The amount of gross receipts to be included in the sales factor for the current income year is $2,500,000; and

4. The sales factor, except as noted in paragraphs (4)(E)2. and 3., is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected and is computed for each income year even though under the completed contract method of accounting, business income is computed separately.

(F) Apportionment Percentage. The total of the property, payroll and sales percentages is divided by three (3) to determine the apportionment percentage. The apportionment percentage is then applied to business income to establish the amount apportioned to Missouri.

(5) Completed Contract Method—Special Computation. The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year the construction project is completed or accepted. Accordingly, a separate computation is made for each contract completed during the income year regardless of whether the project is located within or without Missouri in order to determine the amount of income

which is attributable to sources within Missouri. The amount of income from each contract completed during the income year apportioned to Missouri plus other business income apportioned to Missouri by the regular three (3)-factor formula such as interest income, rents, royalties, income from short-term contracts, and the like, plus all nonbusiness income allocated to Missouri is the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within Missouri using the completed contract method of accounting is computed as follows:

(A) In the income year the contract is completed, the income (or loss) is determined; and

(B) The income (or loss) determined in subsection (5)(A) is apportioned to Missouri by the following method:

1. A fraction is determined for each year the contract was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator is the total of all construction costs for the project;

2. Each percentage is multiplied by the apportionment formula percentage for that particular year as determined in subsection (4)(F) of this rule; and

3. The percentages determined for each year the contract was in progress are totaled. The amount of total income (or loss) from the contract determined in subsection (5)(A) is multiplied by the total percentage. The resulting income (or loss) is the amount of business income from the contract derived from sources within Missouri.

A. Example 1: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three (3) long-term contracts—Contract L in Missouri, Contract M in State X and Contract N in State Y. In addition, it has other business income (less expenses) during the income year 1990 from interest, rents and short-term contracts amounting to $500,000 and nonbusiness income allocable to Missouri of $8000. During 1990 it completed Contract M in State X at a profit of $900,000. Contracts L and N in Missouri and State Y, respectively, were not completed during the income year. The apportionment percentages of the taxpayer as determined in subsection (4)(F) of this rule and the percentages of contract costs as determined in subsection (5)(B) for each year Contract M in State X was in progress and are as follows:

	1988	1989	1990
Apportionment percentages	30%	20%	40%
Percentages of construction costs of Contract M each year to total construction costs—(100%)	20%	50%	30%

The corporation's net income subject to tax in this state for 1990 is computed as follows:

Business Income	$500,000
Apportion 40% to this state	$200,000
Add: Income from Contract M*	$252,000
Total business income derived from sources within this state	$452,000
Add: Nonbusiness income allocated to this state	$ 8,000
Net income subject to tax	$460,000

*Income from Contract M apportioned to this state

	1988	1989	1990	Total
Apportionment percentage	30%	20%	40%	
Percent of construction costs	20%	50%	30%	100%
Product	6	10%	12%	28%*

28% of $900,000 = $252,000

B. Example 2: Same facts as in subparagraph (5)(B)3.A. (Example 1) except that Contract L was started in 1990 in Missouri, the first year the taxpayer was subject to tax in Missouri. Contract L in Missouri and Contract N in state Y are incomplete in 1990.

The corporation's net income subject to tax in this state for 1990 is computed as follows:

Business income	$500,000
Apportion 40% to this state	$200,000
Add: Income from Contract M*	$108,000
Total business income derived from sources within the state	$308,000
Add: Nonbusiness income allocated to this state	$ 8,000
Net income subject to tax	$316,000

*Income from Contract M apportioned to this state

	1988	1989	1990	Total
Apportionment percentage	0%	0%	40%	
Percent of Construction Costs	20%	50%	30%	100%
Product	0%	0%	12%	12%*

*12% of $900,000 = $108,000

Note: Only 12% is used to determine the income derived from sources within this state since the corporation was not subject to tax in this state prior to 1990.

C. Example 3: Same facts as in subparagraph (5)(B)3.A. (Example 1) except that the figures relate to Contract L in Missouri and 1990 is the first year the corporation was taxable in another state (see section 32.200 (Article IV.2. and 3.), RSMo and the rules that interpret those provisions). Contracts M and N in states X and Y were started in 1990 and are incomplete.

The corporation's net income subject to tax in Missouri for 1990 is computed as follows:

Business income	$500,000
Apportion 40% to this state	$200,000
Add: Income for Contract L*	$738,000
Total business income derived from sources within this state	$938,000
Add: Nonbusiness income allocated to this state	$ 8,000
Net income subject to tax	$946,000

*Income from Contract L apportioned to this state

	1988	1989	1990	Total
Apportionment Percentage	100%	100%	40%	
Percentage of Construction Costs	20%	50%	30%	100%
Product	20%	50%	12%	82%*

82% of $900,000 = $738,000

(6) Computation for Year of Withdrawal, Dissolution or Cessation of Business—Completed Contract Method. Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within Missouri from incomplete contracts in progress outside Missouri on the date of withdrawal, dissolution or cessation of business in Missouri be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in Missouri.

(A) The amount of income (or loss) from each contract to be apportioned to this state by the apportionment method set forth in subsection (5)(B) of this rule shall be determined, as if the percentage of completion method of accounting were used, for all contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income (or loss) for each contract shall be the amount by which the gross contract price from each contract which corresponds to the percentage of the entire contract which has been completed from the commencement of the contract to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during this period in connection with each contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each contract.

1. Example: A construction contractor qualified to do business in Missouri had elected the completed contract method of accounting for long-term contracts. It was engaged in two (2) long-term contracts. Contract L in Missouri was started in 1988 and completed at a profit of $900,000 on December 16, 1990. The taxpayer withdrew on December 31, 1990. Contract M in state X was started in 1990 and was incomplete on December 31, 1990. The apportionment percentages of the taxpayer as determined in subsection (4) of this rule and percentages of construction costs are determined in subsection (5)(B) of this rule for each year Contract M in state X was in progress and are as follows:

	1988	1989	1990	Total
Apportionment percentage	30%	20%	40%	
Percentages of construction costs				
Contract L, Missouri	20%	50%	30%	100%
Contract M, State X	0%	10%	25%	35%

The corporation had other business income (net of expenses) of $500,000 during 1989 and $300,000 during 1990. The gross contract price of Contract M (State X) was $1,000,000 and it was estimated to be 35% completed on December 31, 1990. Total expenditures to date for Contract M (State X) were $300,000 for the period ended December 31, 1990.

The measure of tax for the taxable year ended December 31, 1990 is computed as follows:

	1988	1989	1990	Total
Apportionment percentage	30%	20%	40%	
Percentages of construction costs				
Contract L, Missouri	20%	50%	30%	100%
Contract M, State X	0%	10%	25%	35%

The corporation had other business income (net of expenses) of $500,000 during 1989 and $300,000 during 1990. The gross contract price of Contract M (State X) was $1,000,000 and it was estimated to be 35% completed on December 31, 1990. Total expenditures to date for Contract M (State X) were $300,000 for the period ended December 31, 1990.

The measure of tax for the taxable year ended 12/31/90 is computed as follows:

Taxable Year 1990	Income Year 1990	Income Year 1990
Business income	$500,000	$300,000
Apportionment percentage to this state	20%	40%
Amount apportioned to this state	$100,000	$120,000
Add: Income from Contracts		
*L (Missouri)	$252,000	
**M (State X)	$ 6,000	
Total business income derived from sources within this state	$100,000	$378,000

*Income from Contract L apportioned to this state

	1988	1989	1990	Total
Apportionment percentages	30%	20%	40%	
Percentage of construction costs	20%	50%	30%	100%
Product	6%	10%	12%	28%

28% of $900,000 = $252,000

**Income from Contract M apportioned to this state

	1988	1989	1990	Total
Apportionment percentages	0%	20%	40%	
Percentage of construction costs	0%	10%	25%	35%
Product	0%	2%	10%	12%***

***12.0% of $50,000 = $6,000

***Computation of apportionable income from Contract M based on percentage of completion method:

Total contract price	$1,000,000
Estimated to be 35% completed	$ 350,000
Less: Total expenditures to date	$ 300,000
Apportionable income	$ 50,000

AUTHORITY: sections 32.200 (Article VII) and 143.961, RSMo 1994. Original rule filed Dec. 17, 1990, effective April 29, 1991.*

**Original authority: 32.200, RSMo 1967 and 143.961, RSMo (1972).*

12 CSR 10-2.235 Government Pension Exemption

PURPOSE: This rule establishes the requirements and procedures for claiming the exemption provided in section 143.124, RSMo for government pensions.

(1) Background. On March 28, 1989, the United States Supreme Court ruled in the *Davis v. Michigan Department of Treasury* that a statute which exempts state and local retirement benefits from income tax without according similar treatment to federal retirement benefits unlawfully discriminates against federal retirees. Prior to this decision, only Missouri state and local governmental pension benefits were exempt from Missouri income tax. The applicability of that decision to Missouri was confirmed by the Missouri Supreme Court on May 25, 1989, in *Hackman v. Director of Revenue*. Hackman was retroactively applied to include all federal pensions for tax years beginning with 1985 through July 1, 1989. After July 1, 1989, six thousand dollars ($6,000) per year (three thousand dollars ($3,000) for a six (6)-month period) of government pension payments may qualify for an exemption against Missouri adjusted gross income (MAGI).

(2) All pension income which is taxable for federal purposes is also subject to tax by Missouri. However, recipients of government pension payments provided by the United States, this state, any other state or any political subdivision of this or any other state are eligible for an exemption against their MAGI, subject to certain income limitations as set forth in sections (3) and (4) of this rule. This exemption does not apply to private pensions.

(3) For the period beginning July 1, 1989 and ending December 31, 1989, ***each*** taxpayer receiving government retirement benefits is allowed an exemption of three thousand dollars ($3,000) against his/her MAGI for that period, determined pursuant to section 143.121, RSMo:

(A) If the filing status is single, head of household or qualifying widow(er) and MAGI is less than twelve thousand dollars ($12,500);

(B) If the filing status is married filing combined and combined MAGI is less than sixteen thousand dollars ($16,000); or

(C) If the filing status is married filing separately and MAGI is less than eight thousand dollars ($8000).

(4) For tax years beginning on or after January 1, 1990, ***each*** taxpayer receiving government retirement benefits will be allowed an exemption of six thousand dollars ($6,000) against his/her MAGI for that period, determined pursuant to section 143.121, RSMo—

(A) If the filing status is single, head of household or qualifying widow(er) and MAGI is less than twenty-five thousand dollars ($25,000);

(B) If the filing status is married filing combined and combined MAGI is less than thirty-two thousand dollars ($32,000); or

(C) If the filing status is married filing separately and MAGI is less than sixteen thousand dollars ($16,000).

(5) In determining MAGI for purposes of sections (3) and (4) of this rule, any Social Security benefits which are included in MAGI must be subtracted. This modified MAGI is used only for determining whether a taxpayer's income exceeds the maximum income limitations as set forth in section 143.124.2. and 3., RSMo.

(6) Social Security benefits are not considered retirement benefits for purposes of section 143.124, RSMo.

(7) If the taxpayer's modified MAGI is greater than the taxpayer's applicable wage limitation for his/her filing status, the entire pension exemption is lost. No phase out of the exemption is allowed.

(8) The taxpayer and his/her spouse may ***each*** qualify for a government pension exemption provided, both taxpayers receive a qualifying pension and either their combined or separate (depending on filing status) MAGI is less than the applicable income limitation.

(9) Section 143.124.8., RSMo states, in pertinent part, the provisions of this section shall apply to other pensions as "subsequently defined." However, as of April 8, 1993, no applicable legislation has passed. Subsequently, this exemption does not apply to private pensions.

(10) The following is a list of government pensions provided by the United States, this state, any other state or any political subdivision of this or any other state: United States Postal Service, Department of Army, Air Force Accounting and Finance Center/Retirement Payment (AFAFC/RPT), Marine Corp, Department of Health and Human Services (DHHS)/United States Public Health Service, Department of Navy, Navy Mutual Aid Association, Administrative Office—United States Courts, United States Coast Guard Pay and Personnel Center, DHHS, Department of State, Government of District of Columbia, Federal Reserve Bank Pensions and Tennessee Valley Authority Retirement System. Most federal pensions are administered by Office of Personnel Management (OPM). Other qualifying pensions are Public Teachers Retirement and state and local pensions (from any state). This list is not all inclusive.

(11) In order to claim this pension exemption on the Missouri return, the taxpayer must complete the government pension exemption portion of the Missouri return. A copy of the taxpayer's federal return, pages 1 and 2, and a 1099R must also be attached to the Missouri return.

AUTHORITY: section 143.961, RSMo 1994. Original rule filed Sept. 11, 1992, effective April 8, 1993.*

**Original authority 1972.*

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) 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 received by the department.

(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.

(5) Whenever notice is required to be sent by United States mail to be served on the director of revenue, it may be sent by an electronic transmission known as a fax. The fax is considered timely if the date printed on the document by the director's receiving electronic equipment is on or before the due date. A notice being served by fax on the director must be transmitted to the director's receiving electronic equipment using telephone number (573) 751-7150. As used in this rule and 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) If any return, document or payment is delivered by United States mail with a postmark date falling after the due date, the return, document or payment is considered late unless the postmaster for the jurisdiction where the payment was mailed, verifies in writing the payment was mailed on or before the due date, including any extension granted, and was delayed because of an error of the United States Postal Service and not because of an error by the taxpayer.

(7) Any return, document or payment may be delivered by a private delivery service (PDS) to meet the timely mailing as timely filing/paying rule. Such PDS must be a properly designated PDS by the Internal Revenue Service (IRS) at the time the return, document or payment is delivered. Refer to IRS rules to determine the designated PDS. The IRS publishes a list in March and September of each year. PDSs cannot deliver items to P.O. boxes. The United States Postal Services must be used to mail any return, document or payment to Missouri Department of Revenue P.O. box address.

(8) The PDS is required to either—1) record electronically to its database (kept in the regular course of its business) the date on which an item was given to the PDS for delivery; or 2) mark on the cover of the item the date on which an item was given to the PDS for delivery. The date recorded or the date marked under this regulation is treated as the postmark date for purposes of section 143.851, RSMo.

(9) If any date, including any extension of time for performing any act, falls on a Saturday, Sunday or a legal holiday in this state, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

(10) Example: Joe Jones, a Missouri taxpayer has a document that must be filed with the Department of Revenue on or before August 1, 1993. For that document to be considered timely, he must do one (1) of the following:

(A) Deposit the document with the United States Postal Service early enough that the United States postmark stamped on the envelope will be August 1, 1993 or earlier;

(B) Take the document to the United States Postal Office and have it registered by a postal employee on or before August 1, 1993; or

(C) 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, 1993.

AUTHORITY: sections 136.120 and 143.961, RSMo 1994. Original rule filed March 1, 1993, effective Oct. 10, 1993. Amended: Filed Sept. 29, 1999, effective March 30, 2000.*

**Original authority: 136.120, RSMo 1945; 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) Time and Place for Filing Returns and Payment of Taxes. Corporation income tax returns shall be filed on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year except where the taxpayer is an exempt organization. Exempt organizations shall have the same due date as set by the *Internal Revenue Code* of 1986, as amended. A person required to make and file a return, on the same day without assessment notice or demand, shall pay any tax due to the Director of Revenue. Installment payments may not be made. Returns must be mailed to the Department of Revenue, P.O. Box 700, Jefferson City, MO 65105-0700.

(2) Consolidated Federal Income Tax Returns Required—When. A corporation which participates in the filing of a consolidated federal income tax return (if no Missouri consolidated return is filed) shall determine its federal taxable income as if it had filed a separate federal income tax return for the year. The corporation shall attach to its Missouri Form MO-1120 a copy of a federal Form 1120, together with all pertinent schedules, where its separate federal taxable income is computed. One (1) complete copy of the actual consolidated federal income tax return for the year, together with all pertinent schedules, shall be submitted by the parent corporation, and all subsidiary members filing a separate Missouri return shall attach a statement to the return where the consolidated return of the group is incorporated by reference.

AUTHORITY: sections 143.511, 143.571 and 143.961, RSMo 1994. 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.*

**Original authority: 143.511, RSMo 1972, amended 1994 and 143.571 and 143.961, RSMo 1972.*

12 CSR 10-2.710 Net Operating Losses on Individual Income Tax Returns

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

(1) A taxpayer whose deductions for the year are more than his/her income for the year on his/her federal return (negative federal adjusted gross income) may have a net operating loss. The actual computation of the net operating loss is not identical to the computation of federal adjusted gross income or loss for the year. Therefore, the amount shown as a loss on Federal Form 1040 must be adjusted to arrive at the net operating loss for the year. Federal rules limit what can be deducted when figuring a net operating loss. A taxpayer must complete Schedule A of Federal Form 1045 in order to determine his/her actual net operating loss.

(2) If it is determined that a net operating loss has been incurred, a deduction may be carried back three (3) tax years before the loss year and/or carried forward fifteen (15) tax years after the loss year until the net operating loss is used up. The net operating loss deduction is a business deduction in the year to which it is carried, regardless of whether the taxpayer is engaged in a trade or business in that tax year. If the taxpayer elected on his/her federal return to forgo the carryback period, s/he must also forgo the carryback period on the Missouri return.

(3) In the year of the net operating loss, a taxpayer must perform the following to determine the amount to enter as federal adjusted gross income on the Missouri return. These procedures will prevent the potential double benefit from a net operating loss.

(A) Complete Schedule A of Federal Form 1045 to determine the net operating loss.

(B) Calculate the difference between the federal adjusted gross income and the net operating loss (the difference between the first line and the last line of Schedule A of Federal Form 1045).

1. If the net operating loss is greater than the federal adjusted gross income, enter the difference as a positive number on the federal adjusted gross income line on the Missouri return.

2. If the federal adjusted gross income is greater than the net operating loss, enter the difference as a negative number on the federal adjusted gross income line on the Missouri return.

(C) Complete the remainder of the Missouri return as required.

(D) Attach a copy of Schedule A of Federal Form 1045 to the Missouri return.

(4) If a net operating loss carryback creates a negative federal adjusted gross income for the year to which it is carried back to, the taxpayer must perform the following to determine the amount to enter as federal adjusted gross income on the Missouri return.

(A) Complete Schedule B of Federal Form 1045 to determine how much net operating loss will be used up in the current tax year and the net operating loss carryover to be carried to the next tax year.

(B) Calculate the difference between the federal adjusted gross income (after applying the net operating loss carryback) and the net operating loss carryover.

1. If federal adjusted gross income (after applying the net operating loss carryback) is greater than the net operating loss carryover, enter the difference as a positive number on the federal adjusted gross income line on the Missouri return.

2. If federal adjusted gross income (after applying the net operating loss carryback) is less than the net operating loss carryover, enter the difference as a negative number on the federal adjusted gross income line on the Missouri return.

(C) Complete the remainder of the Missouri return as required.

(D) Attach a copy of Schedule B of Federal Form 1045 to the Missouri return.

(5) Example: Taxpayer A owns a construction company that incurs a loss in 1994. When the taxpayer completes his/her federal return for 1994, federal adjusted gross income computes to –$185,000. The taxpayer computes his/her actual net operating loss on Federal Form 1045 as –$253,191. The taxpayer elects to carry the loss back three (3) years.

(A) Net operating loss is created in 1994:

Federal adjusted gross income = –$185,000 (From 1994 Federal Form 1040, line 32)

Net operating loss = –$253,191 (From 1994 Federal Form 1045, Schedule A)

Modified federal adjusted gross income = $68,191 for 1994 (Enter on 1994 Form MO-1040, Line 11)

(B) Net operating loss carryback to 1991:

Federal adjusted gross income = $131,000 (From 1991 Federal Form 1040, line 32)

Net operating loss carryback = –$253,191 Federal adjusted gross income after applying the net operating loss carryback = –$122,191

Net operating loss carryforward to 1992 =–$172,250 (From 1994 Federal Form 1045, Schedule B)

Modified federal adjusted gross income = $50,059 for 1991 (Enter on 1991 Form MO-1040, Line 11)

(C) Net operating loss carryback to 1992:

Federal adjusted gross income = $149,000 (From 1992 Federal Form 1040, line 32)

Net operating loss carryback = –$172,250

Federal adjusted gross income after applying the net operating loss carryback = -$23,250

Net operating loss carryforward to 1993 = –$65,500 (From 1994 Federal Form 1045, Schedule B)

Modified federal adjusted gross income = $42,250 for 1992 (Enter on 1992 Form MO-1040, Line 11)

(D) Net operating loss carryback to 1993:

Federal adjusted gross income = $179,000 (From 1993 Federal Form 1040, line 32)

Net operating loss carryback = –$65,500

Federal adjusted gross income after applying the net operating loss carryback = $113,500

Net operating loss carryforward = $0 (From 1994 Federal Form 1045, Schedule B)

Modified federal adjusted gross income = $113,500 for 1993 (Enter on 1993 Form MO-1040, Line 11)

(6) Example: Taxpayer B owns a retail store that incurs a loss in 1994. When the taxpayer completes his/her federal return for 1994, federal adjusted gross income computes to –$185,000. The taxpayer computes his/her actual net operating loss on Federal Form 1045 as –$180,000. The taxpayer elects to carry the loss back three (3) years.

(A) A net operating loss is created in 1994:

Federal adjusted gross income = –$185,000 (From 1994 Federal Form 1040, line 32)

Net operating loss = –$180,000 (From 1994 Federal Form 1045, Schedule A)

Modified federal adjusted gross income = –$5,000 for 1994 (Enter on 1994 Form MO-1040, Line 11)

(B) Net operating loss carryback to 1991:

Federal adjusted gross income = $131,000 (From 1991 Federal Form 1040, line 32)

Net operating loss carryback = –$180,000 Federal adjusted gross income after applying the net operating loss carryback = –$49,000

Net operating loss carryforward to 1992 = –$45,000 (From 1994 Federal Form 1045, Schedule B)

Modified federal adjusted gross income = –$4,000 for 1991 (Enter on 1991 Form MO-1040, Line 11)

(C) Net operating loss carryback to 1992:

Federal adjusted gross income = $149,000 (From 1992 Federal Form 1040, line 32)

Net operating loss carryback = –$45,000 Federal adjusted gross income after applying the net operating loss carryback = $104,000

Net operating loss carryforward = $0 (From 1994 Federal Form 1045, Schedule B)

Modified federal adjusted gross income = $104,000 for 1992 (Enter on 1992 Form MO-1040, Line 11)

(7) A nonresident taxpayer of Missouri must also follow the procedures outlined in sections (3) and (4) for the amount to enter on the federal adjusted gross income line on the Missouri return. When completing the Form MO-NRI to calculate the nonresident income percentage, if "Missouri Sources" line for "Missouri Nonresident Adjusted Gross Income" is equal to or greater than "All Sources" line for "Total Adjusted Gross Income," enter one hundred percent (100%) in the "Missouri Income Percentage" line.

AUTHORITY: section 143.961, RSMo 1994. Original rule filed Nov. 29, 1995, effective May 30, 1996.*

**Original authority 1972.*

12 CSR 10-2.720 Reporting Requirements for Individual Medical Accounts

PURPOSE: This rule provides the reporting requirements for individual medical accounts.

Editor's Note: The following material is incorporated into this rule by reference:
*1) Office of the Law Revision Counsel of the House of Representatives, **Internal Revenue Code**, Title 26 U.S. Code, sections 105 and 106 (Washington: Government Printing Office, 1988).*
In accordance with section 536.031(4), RSMo, the full text of material incorporated by reference will be made available to any interested person at the Office of the Secretary of State and the headquarters of the adopting state agency.

(1) Employer contributions to an individual medical account that are used to pay for health care expenses of the employee in accordance with section 143.999, RSMo, shall be exempt from state income tax under Chapter 143, RSMo, to the extent that such contributions are not excluded from gross income under 26 U.S.C. sections 105 and 106.

(A) Employers making contributions to an employee individual medical account must place in the "Other" box of the year end Wage and Tax Statement, the amount of the contribution, and specify next to the contribution, the word "IMA". The amount indicated as "IMA" must be modified (subtracted) from the employee's federal adjusted gross income to the extent that it is included in federal adjusted gross income. This amount must be entered on the Form MO-A as a subtraction from federal adjusted gross income. The box "Other" must be checked and the word "IMA" must be indicated on the description line. A copy of the Wage and Tax Statement must be attached to the employee's individual income tax return that is filed.

(2) Any amount in the employee's individual medical account that is unspent at the end of the year must remain in the account. The

Department of Insurance has established by regulation (20 CSR 400-9.100) a balance for the account which, if exceeded, allows the employee to withdraw any moneys in excess of such balance. Any moneys withdrawn from the account for non-medical purposes, and interest earned on such moneys, are considered Missouri taxable income as provided in section 143.999, RSMo, and must be reported on the Form MO-1040 in the year the non-medical withdrawal is completed.

(A) The individual medical account administrator must provide to the employee no later than January 31 following the previous calendar year, a statement indicating the beginning balance of the individual medical account, the amount of contributions to the account, the amount of medical withdrawals from the account, the amount of non-medical withdrawals from the account, the amount of interest earned on the account, the amount of interest earned on the non-medical withdrawals from the account, and the ending balance of the account. This statement must be attached to the employee's individual income tax return that is filed.

(B) The moneys withdrawn from the account for non-medical purposes and the interest earned on such moneys must be reported by the individual/employee as taxable income on the employee's individual income tax return. This amount must be entered on Form MO-A as an addition to federal adjusted gross income. The box "Other" must be checked and the words "IMA non-medical withdrawals" must be indicated on the description line.

(3) The amount in the employee's individual medical account is not subject to state income tax under Chapter 143, RSMo, while it remains in the account. Any amount spent from the employee's individual medical account on medical and health care expenses, and interest accrued on such amount, are exempt from state income tax under Chapter 143, RSMo.

AUTHORITY: section 143.961, RSMo 1994. Original rule filed Jan. 3, 1996, effective July 30, 1996.*

**Original authority 1972.*

12 CSR 10-2.730 Expenses Related to Production of Tax Exempt Interest Income

PURPOSE: This rule clarifies business expense reductions related to the production of exempt interest income pursuant to sections 143.431.2 and 143.121.3(a), RSMo.

(1) For purposes of this rule, exempt income means 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 earning of exempt income.

(2) Any expenses incurred in the production of exempt income shall reduce the exempt income pursuant to section 143.121.3(a), RSMo. This statute is modeled after 26 U.S.C. section 265 (*Internal Revenue Code*) which 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 a reasonable estimate. In general, the taxpayer should use the same or similar method to that used to compute related expenses for federal income tax purposes, provided that the method reasonably reflects related expenses for Missouri-exempt income.

(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 or 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. The taxpayer may propose an alternative method provided that it properly reflects the amount of related expenses.

(5) The reduction to exempt income shall be made only if related expenses total more than five hundred dollars ($500).

AUTHORITY: sections 143.121 and 143.431, RSMo 1994. Original rule filed July 19, 1996, effective March 30, 1997.*

**Original authority: 143.121, RSMo 1972, amended 1977, 1986, 1989, 1990 and 143.431, RSMo 1972.*