

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 969

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COOPER (120) (Sponsor), SUTHERLAND, MOORE, STEVENSON, DEMPSEY, SCHAAF, HOBBS, RICHARD, WILSON (119), KINGERY, BAKER, FARES, MUNZLINGER, BROWN, DEEKEN, NIEVES, ST. ONGE, RUPP, DUSENBERG, HANAWAY, ENGLER, PHILLIPS, KING, ERVIN, SANDER, MILLER, MAYER, PARKER, DIXON, BIVINS, WALLACE, BEARDEN, ICET, SCHLOTTACH, CRAWFORD, HUNTER, VIEBROCK AND SMITH (14) (Co-sponsors).

Read 1<sup>st</sup> time January 8, 2004, and copies ordered printed.

Read 2<sup>nd</sup> time January 12, 2004, and referred to the Committee on Tax Policy January 12, 2004.

Reported from the Committee on Tax Policy January 13, 2004, with recommendation that the bill Do Pass.

Taken up for Perfection January 28, 2004. Bill ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

3592L.01P

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### AN ACT

To repeal section 143.431, RSMo, and to enact in lieu thereof two new sections relating to Missouri taxable income of corporations.

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

Section A. Section 143.431, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 143.431 and 143.435, to read as follows:

143.431. 1. The Missouri taxable income of a corporation taxable under [sections 143.011 to 143.996] **this chapter** shall be so much of its federal taxable income for the taxable year, with the modifications specified in subsections 2 and 3 of this section, as is derived from sources within Missouri as provided in section 143.451. The tax of a corporation shall be computed on its Missouri taxable income at the rates provided in section 143.071.

2. There shall be added to or subtracted from federal taxable income, the modifications to adjusted gross income provided in section 143.121 and the applicable modifications to itemized deductions provided in section 143.141. There shall be subtracted the federal income tax deduction provided in section 143.171. There shall be subtracted, to the extent included in

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.**

10 federal taxable income, corporate dividends from sources within Missouri. **For all tax years**  
11 **beginning on or after January 1, 2005, for purposes of computing Missouri taxable income**  
12 **under this section, there shall be added to or subtracted from federal taxable income any**  
13 **required amount in accordance with section 143.435.**

14         3. (1) If an affiliated group of corporations files a consolidated income tax return for the  
15 taxable year for federal income tax purposes [and fifty percent or more of its income is derived  
16 from sources within this state as determined in accordance with section 143.451], then it may  
17 elect to file a Missouri consolidated income tax return. The federal consolidated taxable income  
18 of the electing affiliated group for the taxable year shall be its federal taxable income.

19         (2) So long as a federal consolidated income tax return is filed, an election made by an  
20 affiliated group of corporations to file a Missouri consolidated income tax return may be  
21 withdrawn or revoked only upon substantial change in the law or regulations adversely changing  
22 tax liability under this chapter; or, with permission of the director of revenue upon the showing  
23 of good cause for such action. After such a withdrawal or revocation with respect to an affiliated  
24 group, it may not file a Missouri consolidated income tax return for five years thereafter, except  
25 with the approval of the director of revenue, and subject to such terms and conditions as he may  
26 prescribe.

27         (3) No corporation which is part of an affiliated group of corporations filing a Missouri  
28 consolidated income tax return shall be required to file a separate Missouri corporate income tax  
29 return for the taxable year.

30         (4) For each taxable year an affiliated group of corporations filing a federal consolidated  
31 income tax return does not file a Missouri consolidated income tax return, for purposes of  
32 computing the Missouri income tax, the federal taxable income of each member of the affiliated  
33 group shall be determined as if a separate federal income tax return had been filed by each such  
34 member.

35         (5) The director of revenue may prescribe such regulations not inconsistent with the  
36 provisions of this chapter as he may deem necessary in order that the tax liability of any affiliated  
37 group of corporations making a Missouri consolidated income tax return, and of each corporation  
38 in the group, before, during, and after the period of affiliation, may be returned, determined,  
39 computed, assessed, collected, and adjusted, in such manner as clearly to reflect the Missouri  
40 taxable income derived from sources within this state and in order to prevent avoidance of such  
41 tax liability.

**143.435. 1. As used in this section, the following terms mean:**

2         **(1) "Intangible expenses and costs", includes the following to the extent such**  
3 **amounts are allowed as deductions or costs in determining federal taxable income before**  
4 **operating loss deductions and special deductions for the taxable year under the Internal**

5 **Revenue Code:**

6 (a) Expenses, losses, and costs for, related to, or in connection directly or indirectly  
7 with the direct or indirect use, maintenance, or management of intangible property;

8 (b) Royalty or licensing fees related to the use of intangible property; and

9 (c) Other similar expenses and costs;

10 (2) "Intangible property", patents, trade names, trademarks, service marks,  
11 copyrights, and similar intangible assets;

12 (3) "Interest expenses and costs", amounts directly or indirectly allowed as  
13 deductions under Section 163 of the Internal Revenue Code of 1986, as amended, for  
14 purposes of determining taxable income under the Internal Revenue Code to the extent  
15 such expenses and costs are directly or indirectly for, relate to, or in connection with the  
16 direct or indirect use, maintenance or management of intangible property;

17 (4) "Related entity":

18 (a) A person or entity that directly or indirectly owns greater than fifty percent of  
19 the value of the outstanding stock, capital, or assets of the taxpayer; or

20 (b) An entity in which the taxpayer directly or indirectly owns greater than fifty  
21 percent of the value of the outstanding stock, capital, or assets.

22 The attribution rules of section 318 of the Internal Revenue Code of 1986, as amended,  
23 shall apply for the purpose of determining ownership for the purposes of this section.

24 2. Except as provided in subsection 3 of this section, for purposes of computing  
25 Missouri taxable income pursuant to section 143.431, a corporation shall add to its federal  
26 taxable income any amount deducted in the calculation of its federal taxable income for  
27 interest expenses and costs and intangible expenses and costs directly or indirectly paid,  
28 accrued, or incurred to or in connection with transactions with one or more related entities  
29 for the taxable year. To prevent the double taxation of the same income of different  
30 taxpayers, any amount added to the federal taxable income of the corporation in  
31 accordance with this section shall be subtracted from the federal taxable income of the  
32 related entity that received such amount.

33 3. The adjustments required in subsection 2 of this section shall not apply to  
34 interest expenses and costs and intangible expenses and costs that meet any of the  
35 following:

36 (1) The related entity during the same income year directly or indirectly paid,  
37 received, accrued, or incurred such expenses or costs to or from a person who is not a  
38 related entity; or

39 (2) The amount received by the related entity is subject to income tax or a tax  
40 similar in operation to the tax levied under this chapter in this state or any other state of

41 the United States or the District of Columbia or in a foreign nation that has a tax treaty  
42 with the United States; or

43 (3) The transaction giving rise to the interest expenses and costs or the intangible  
44 expenses and costs between the corporation and the related entity did not have as its  
45 primary purpose the avoidance of the tax due pursuant to this chapter. For the purposes  
46 of this section, the fact that the intangible expenses and costs or interest expenses and costs  
47 are within a range that would be paid by parties acting at arm's length as determined by  
48 an independent appraisal or other evidence and the existence of any two of the following  
49 facts with respect to a related entity shall be sufficient to establish a conclusive  
50 presumption that such transaction did not have as its primary purpose the avoidance of  
51 tax:

52 (a) The corporation has no rights of use or ownership of the intangible property  
53 except those rights granted by the related entity;

54 (b) The related entity is engaged in a profit-making business;

55 (c) Net income from the intangible expenses and costs or interest expenses and costs  
56 is retained and invested by the related entity for the benefit of the stockholders of the  
57 related entity;

58 (d) Expenses of maintaining, managing, and defending the property of the related  
59 entity are paid for by the related entity and if such services are provided by the  
60 corporation, the related entity pays for such services at an arm's length rate as determined  
61 by an independent appraisal or other evidence; or

62 (e) The related entity holds separate board meetings, maintains separate assets,  
63 executes separate contracts, maintains separate offices and has employees separate from  
64 the corporation.

65 4. With respect to any issue relevant to ascertaining the tax liability of a taxpayer  
66 this section shall be strictly construed against the taxing authority in favor of the taxpayer.  
67 The director of revenue shall have the burden of proof with respect to any factual issue  
68 relevant to ascertaining the liability of a taxpayer only if:

69 (1) The taxpayer has produced evidence that establishes there is a reasonable  
70 dispute with respect to the issue; and

71 (2) The taxpayer has adequate records of its transactions and provides the  
72 department of revenue reasonable access to these records.