

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for House Bill No. 2540, Page 134, Section 143.225, Line  
2 47, by inserting after all of said section and line the following:

3  
4 "143.451. 1. Missouri taxable income of a corporation shall include all income derived  
5 from sources within this state.

6 2. A corporation described in subdivision (1) of subsection 1 of section 143.441 shall  
7 include in its Missouri taxable income all income from sources within this state, including that from  
8 the transaction of business in this state and that from the transaction of business partly done in this  
9 state and partly done in another state or states. However:

10 (1) Where income results from a transaction partially in this state and partially in another  
11 state or states, and income and deductions of the portion in the state cannot be segregated, then such  
12 portions of income and deductions shall be allocated in this state and the other state or states as will  
13 distribute to this state a portion based upon the portion of the transaction in this state and the portion  
14 in such other state or states.

15 (2) The taxpayer may elect to compute the portion of income from all sources in this state in  
16 the following manner, or the manner set forth in subdivision (3) of this subsection:

17 (a) The income from all sources shall be determined as provided, excluding therefrom the  
18 figures for the operation of any bridge connecting this state with another state.

19 (b) The amount of sales which are transactions wholly in this state shall be added to one-  
20 half of the amount of sales which are transactions partly within this state and partly without this  
21 state, and the amount thus obtained shall be divided by the total sales or in cases where sales do not  
22 express the volume of business, the amount of business transacted wholly in this state shall be added  
23 to one-half of the amount of business transacted partly in this state and partly outside this state and  
24 the amount thus obtained shall be divided by the total amount of business transacted, and the net  
25 income shall be multiplied by the fraction thus obtained, to determine the proportion of income to  
26 be used to arrive at the amount of Missouri taxable income. The investment or reinvestment of its  
27 own funds, or sale of any such investment or reinvestment, shall not be considered as sales or other  
28 business transacted for the determination of said fraction.

29 (c) For the purposes of this subdivision, a transaction involving the sale of tangible property  
30 is:

31 a. "Wholly in this state" if both the seller's shipping point and the purchaser's destination  
32 point are in this state;

33 b. "Partly within this state and partly without this state" if the seller's shipping point is in  
34 this state and the purchaser's destination point is outside this state, or the seller's shipping point is  
35 outside this state and the purchaser's destination point is in this state;

36 c. Not "wholly in this state" or not "partly within this state and partly without this state"

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1 only if both the seller's shipping point and the purchaser's destination point are outside this state.

2 (d) For purposes of this subdivision:

3 a. The purchaser's destination point shall be determined without regard to the FOB point or  
4 other conditions of the sale; and

5 b. The seller's shipping point is determined without regard to the location of the seller's  
6 principle office or place of business.

7 (3) The taxpayer may elect to compute the portion of income from all sources in this state in  
8 the following manner:

9 (a) The income from all sources shall be determined as provided, excluding therefrom the  
10 figures for the operation of any bridge connecting this state with another state;

11 (b) The amount of sales which are transactions in this state shall be divided by the total  
12 sales, and the net income shall be multiplied by the fraction thus obtained, to determine the  
13 proportion of income to be used to arrive at the amount of Missouri taxable income. The  
14 investment or reinvestment of its own funds, or sale of any such investment or reinvestment, shall  
15 not be considered as sales or other business transacted for the determination of said fraction;

16 (c) For the purposes of this subdivision, a transaction involving the sale of tangible property  
17 is:

18 a. "In this state" if the purchaser's destination point is in this state;

19 b. Not "in this state" if the purchaser's destination point is outside this state;

20 (d) For purposes of this subdivision, the purchaser's destination point shall be determined  
21 without regard to the FOB point or other conditions of the sale and shall not be in this state if the  
22 purchaser received the tangible personal property from the seller in this state for delivery to the  
23 purchaser's location outside this state;

24 (e) For the purposes of this subdivision, a transaction involving the sale other than the sale  
25 of tangible property is "in this state" if the taxpayer's market for the sales is in this state. The  
26 taxpayer's market for sales is in this state:

27 a. In the case of sale, rental, lease, or license of real property, if and to the extent the  
28 property is located in this state;

29 b. In the case of rental, lease, or license of tangible personal property, if and to the extent  
30 the property is located in this state;

31 c. In the case of sale of a service, if and to the extent the ultimate beneficiary of the service  
32 is located in this state and shall not be in this state if the ultimate beneficiary of the service rendered  
33 by the taxpayer or the taxpayer's designee is located outside this state; and

34 d. In the case of intangible property:

35 (i) That is rented, leased, or licensed, if and to the extent the property is used in this state by  
36 the rentee, lessee, or licensee, provided that intangible property utilized in marketing a good or  
37 service to a consumer is "used in this state" if that good or service is purchased by a consumer who  
38 is in this state. Franchise fees or royalties received for the rent, lease, license, or use of a trade  
39 name, trademark, service mark, or franchise system or provides a right to conduct business activity  
40 in a specific geographic area are "used in this state" to the extent the franchise location is in this  
41 state; and

42 (ii) That is sold, if and to the extent the property is used in this state, provided that:

43 i. A contract right, government license, or similar intangible property that authorizes the  
44 holder to conduct a business activity in a specific geographic area is "used in this state" if the  
45 geographic area includes all or part of this state;

46 ii. Receipts from intangible property sales that are contingent on the productivity, use, or  
47 disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing  
48 of such intangible property under item (i) of this subparagraph; and

1           iii. All other receipts from a sales of intangible property shall be excluded from the  
2 numerator and denominator of the sales factor;

3           (f) If the state or states of assignment under paragraph (e) of this subdivision cannot be  
4 determined, the state or states of assignment shall be reasonably approximated;

5           (g) If the state of assignment cannot be determined under paragraph (e) of this subdivision  
6 or reasonably approximated under paragraph (f) of this subdivision, such sales shall be excluded  
7 from the denominator of the sales factor;

8           (h) The director may prescribe such rules and regulations as necessary or appropriate to  
9 carry out the purposes of this section.

10          (4) For purposes of this subsection, the following words shall, unless the context otherwise  
11 requires, have the following meaning:

12           (a) "Administration services" include, but are not limited to, clerical, fund or shareholder  
13 accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial,  
14 internal auditing, legal and tax services performed for an investment company;

15           (b) "Affiliate", the meaning as set forth in 15 U.S.C. Section 80a-2(a)(3)(C), as may be  
16 amended from time to time;

17           (c) "Distribution services" include, but are not limited to, the services of advertising,  
18 servicing, marketing, underwriting or selling shares of an investment company, but, in the case of  
19 advertising, servicing or marketing shares, only where such service is performed by a person who is,  
20 or in the case of a closed end company, was, either engaged in the services of underwriting or  
21 selling investment company shares or affiliated with a person that is engaged in the service of  
22 underwriting or selling investment company shares. In the case of an open end company, such  
23 service of underwriting or selling shares must be performed pursuant to a contract entered into  
24 pursuant to 15 U.S.C. Section 80a-15(b), as from time to time amended;

25           (d) "Investment company", any person registered under the federal Investment Company  
26 Act of 1940, as amended from time to time, (the act) or a company which would be required to  
27 register as an investment company under the act except that such person is exempt to such  
28 registration pursuant to Section 80a-3(c)(1) of the act;

29           (e) "Investment funds service corporation" includes any corporation or S corporation doing  
30 business in the state which derives more than fifty percent of its gross income in the ordinary course  
31 of business from the provision directly or indirectly of management, distribution or administration  
32 services to or on behalf of an investment company or from trustees, sponsors and participants of  
33 employee benefit plans which have accounts in an investment company. An investment funds  
34 service corporation shall include any corporation or S corporation providing management services  
35 as an investment advisory firm registered under Section 203 of the Investment Advisors Act of  
36 1940, as amended from time to time, regardless of the percentage of gross revenues consisting of  
37 fees from management services provided to or on behalf of an investment company;

38           (f) "Management services" include but are not limited to, the rendering of investment advice  
39 directly or indirectly to an investment company making determinations as to when sales and  
40 purchases of securities are to be made on behalf of the investment company, or the selling or  
41 purchasing of securities constituting assets of an investment company, and related activities, but  
42 only where such activity or activities are performed:

43           a. Pursuant to a contract with the investment company entered into pursuant to 15 U.S.C.  
44 Section 80a-15(a), as from time to time amended;

45           b. For a person that has entered into such contract with the investment company; or

46           c. For a person that is affiliated with a person that has entered into such contract with an  
47 investment company;

48           (g) "Qualifying sales", gross income derived from the provision directly or indirectly of

1 management, distribution or administration services to or on behalf of an investment company or  
2 from trustees, sponsors and participants of employee benefit plans which have accounts in an  
3 investment company. For purposes of this section, "gross income" is defined as that amount of  
4 income earned from qualifying sources without deduction of expenses related to the generation of  
5 such income;

6 (h) "Residence", presumptively the fund shareholder's mailing address on the records of the  
7 investment company. If, however, the investment company or the investment funds service  
8 corporation has actual knowledge that the fund shareholder's primary residence or principal place of  
9 business is different than the fund shareholder's mailing address such presumption shall not control.  
10 To the extent an investment funds service corporation does not have access to the records of the  
11 investment company, the investment funds service corporation may employ reasonable methods to  
12 determine the investment company fund shareholder's residence.

13 (5) Notwithstanding other provisions of law to the contrary, qualifying sales of an  
14 investment funds service corporation, or S corporation, shall be considered wholly in this state only  
15 to the extent that the fund shareholders of the investment companies, to which the investment funds  
16 service corporation, or S corporation, provide services, are resided in this state. Wholly in this  
17 state qualifying sales of an investment funds service corporation, or S corporation, shall be  
18 determined as follows:

19 (a) By multiplying the investment funds service corporation's total dollar amount of  
20 qualifying sales from services provided to each investment company by a fraction, the numerator of  
21 which shall be the average of the number of shares owned by the investment company's fund  
22 shareholders resided in this state at the beginning of and at the end of the investment company's  
23 taxable year that ends with or within the investment funds service corporation's taxable year, and the  
24 denominator of which shall be the average of the number of shares owned by the investment  
25 company's fund shareholders everywhere at the beginning of and at the end of the investment  
26 company's taxable year that ends with or within the investment funds service corporation's taxable  
27 year;

28 (b) A separate computation shall be made to determine the wholly in this state qualifying  
29 sales from each investment company. The qualifying sales for each investment company shall be  
30 multiplied by the respective percentage of each fund, as calculated pursuant to paragraph (a) of this  
31 subdivision. The product of this equation shall result in the wholly in this state qualifying sales.  
32 The qualifying sales for each investment company which are not wholly in this state will be  
33 considered wholly without this state;

34 (c) To the extent an investment funds service corporation has sales which are not qualifying  
35 sales, those nonqualified sales shall be apportioned to this state based on the methodology utilized  
36 by the investment funds service corporation without regard to this subdivision.

37 (6) Notwithstanding the Multistate Tax Compact, sections 32.200 to 32.240; this section;  
38 and section 143.461 to the contrary, sales and business transactions shall not include any  
39 intercompany transactions between corporations of an affiliated group that file a consolidated  
40 income tax return in this state. For purposes of this subdivision, "affiliated group" has the same  
41 meaning as that term is defined under 26. U.S.C. Section 1504(a) and "intercompany transaction"  
42 has the same meaning as that term is defined under 26 C.F.R. Section 1.1502-13.

43 3. Any corporation described in subdivision (1) of subsection 1 of section 143.441  
44 organized in this state or granted a permit to operate in this state for the transportation or care of  
45 passengers shall report its gross earnings within the state on intrastate business and shall also report  
46 its gross earnings on all interstate business done in this state which report shall be subject to inquiry  
47 for the purpose of determining the amount of income to be included in Missouri taxable income.  
48 The previous sentence shall not apply to a railroad.

1           4. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall  
2 include in its Missouri taxable income all income arising from all sources in this state and all  
3 income from each transportation service wholly within this state, from each service where the only  
4 lines of such corporation used are those in this state, and such proportion of revenue from each  
5 service where the facilities of such corporation in this state and in another state or states are used, as  
6 the mileage used over the lines of such corporation in the state shall bear to the total mileage used  
7 over the lines of such corporation. The taxpayer may elect to compute the portion of income from  
8 all sources within this state in the following manner:

9           (1) The income from all sources shall be determined as provided;

10           (2) The amount of investment of such corporation on December thirty-first of each year in  
11 this state in fixed transportation facilities, real estate and improvements, plus the value on December  
12 thirty-first of each year of any fixed transportation facilities, real estate and improvements in this  
13 state leased from any other railroad shall be divided by the sum of the total amount of investment of  
14 such corporation on December thirty-first of each year in fixed transportation facilities, real estate  
15 and improvements, plus the value on December thirty-first of each year, of any fixed transportation  
16 facilities, real estate and improvements leased from any other railroad. Where any fixed  
17 transportation facilities, real estate or improvements are leased by more than one railroad, such  
18 portion of the value shall be used by each railroad as the rental paid by each shall bear to the rental  
19 paid by all lessees. The income shall be multiplied by the fraction thus obtained to determine the  
20 proportion to be used to arrive at the amount of Missouri taxable income.

21           5. A corporation described in subdivision (3) of subsection 1 of section 143.441 shall  
22 include in its Missouri taxable income one-half of the net income from the operation of a bridge  
23 between this and another state. If any such bridge is owned or operated by a railroad corporation or  
24 corporations, or by a corporation owning a railroad corporation using such bridge, then the figures  
25 for operation of such bridge may be included in the return of such railroad or railroads; or if such  
26 bridge is owned or operated by any other corporation which may now or hereafter be required to file  
27 an income tax return, one-half of the income or loss to such corporation from such bridge may be  
28 included in such return by adding or subtracting same to or from another net income or loss shown  
29 by the return.

30           6. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall  
31 include in its Missouri taxable income all income arising from all sources within this state. Income  
32 shall include revenue from each telephonic or telegraphic service rendered wholly within this state;  
33 from each service rendered for which the only facilities of such corporation used are those in this  
34 state; and from each service rendered over the facilities of such corporation in this state and in other  
35 state or states, such proportion of such revenue as the mileage involved in this state shall bear to the  
36 total mileage involved over the lines of said company in all states. The taxpayer may elect to  
37 compute the portion of income from all sources within this state in the following manner:

38           (1) The income from all sources shall be determined as provided;

39           (2) The amount of investment of such corporation on December thirty-first of each year in  
40 this state in telephonic or telegraphic facilities, real estate and improvements thereon, shall be  
41 divided by the amount of the total investment of such corporation on December thirty-first of each  
42 year in telephonic or telegraphic facilities, real estate and improvements. The income of the  
43 taxpayer shall be multiplied by the fraction thus obtained to determine the proportion to be used to  
44 arrive at the amount of Missouri taxable income.

45           7. From the income determined in subsections 2, 3, 4, 5 and 6 of this section to be from all  
46 sources within this state shall be deducted such of the deductions for expenses in determining  
47 Missouri taxable income as were incurred in this state to produce such income and all losses actually  
48 sustained in this state in the business of the corporation.

1           8. If a corporation derives only part of its income from sources within Missouri, its Missouri  
2 taxable income shall only reflect the effect of the following listed deductions to the extent  
3 applicable to Missouri. The deductions are: (a) its deduction for federal income taxes pursuant to  
4 section 143.171, and (b) the effect on Missouri taxable income of the deduction for net operating  
5 loss allowed by Section 172 of the Internal Revenue Code. The extent applicable to Missouri shall  
6 be determined by multiplying the amount that would otherwise affect Missouri taxable income by  
7 the ratio for the year of the Missouri taxable income of the corporation for the year divided by the  
8 Missouri taxable income for the year as though the corporation had derived all of its income from  
9 sources within Missouri. For the purpose of the preceding sentence, Missouri taxable income shall  
10 not reflect the listed deductions.

11           9. Any investment funds service corporation organized as a corporation or S corporation  
12 which has any shareholders resided in this state shall be subject to Missouri income tax as  
13 provided in this chapter.

14           10. The provisions of this section do not impact any other apportionment election available  
15 to a taxpayer under Missouri statutes unless explicitly stated in this section."; and

16  
17 Further amend said bill by amending the title, enacting clause, and intersectional references  
18 accordingly.