

SECOND REGULAR SESSION

# HOUSE BILL NO. 1966

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COOPER (120).

Read 1st time March 7, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5536L.01I

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### AN ACT

To repeal section 143.431, RSMo, and to enact in lieu thereof one new section relating to net operating loss.

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Section A. Section 143.431, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 143.431, to read as follows:

143.431. 1. The Missouri taxable income of a corporation taxable under sections 143.011 to 143.996 shall be so much of its federal taxable income for the taxable year, with the modifications specified in subsections 2 to 4 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 federal taxable income, corporate dividends from sources within Missouri.

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

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

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18 withdrawn or revoked only upon substantial change in the law or regulations adversely changing  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

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

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

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

39           4. [If a net operating loss deduction is allowed for the taxable year, there shall be added  
40 to federal taxable income the amount of the net operating loss modification for each loss year  
41 as to which a portion of the net operating loss deduction is attributable.] (1) As used in this  
42 subsection, the following terms mean:

43           [(1) "Loss year", the taxable year in which there occurs a federal net operating loss that  
44 is carried back or carried forward in whole or in part to another taxable year;

45           (2)] (a) **"Available net operating loss", the amount of federal net operating loss that**  
46 **may be carried to the tax year for use as an offset in determining Missouri taxable income,**  
47 **as adjusted by the net operating loss modification;**

48           (b) "Net addition modification", for any taxable year, the amount by which the sum of  
49 all required additions to federal taxable income provided in this chapter, except for the net  
50 operating loss modification, exceeds the combined sum of the amount of all required subtractions  
51 from federal taxable income provided in this chapter;

52 [(3) "Net operating loss deduction", a net operating loss deduction allowed for federal  
53 income tax purposes under Section 172 of the Internal Revenue Code of 1986, as amended, or  
54 a net operating loss deduction allowed for Missouri income tax purposes under paragraph (d) of  
55 subsection 2 of section 143.121, but not including any net operating loss deduction that is  
56 allowed for federal income tax purposes but disallowed for Missouri income tax purposes under  
57 paragraph (d) of subsection 2 of section 143.121;

58 (4)] (c) "Net operating loss modification", [an amount equal to the lesser of the amount  
59 of the net operating loss deduction attributable to that loss year or the amount by which the total  
60 net operating loss in the loss year is less than the sum of:

61 (a) The net addition modification for that loss year; and

62 (b) The cumulative net operating loss deductions attributable to that loss year allowed  
63 for the taxable year and all prior taxable years] **the amount of net operating loss deduction**  
64 **used as an offset against a net addition modification or the amount of any net subtraction**  
65 **modification as limited by subdivision (3) of this subsection;**

66 (d) "Net subtraction modification", for any taxable year, the amount by which the  
67 sum of all required subtractions from federal taxable income provided in this chapter,  
68 except for the net operating loss modification, exceeds the combined sum of the amount of  
69 all required additions to federal taxable income provided by this chapter.

70 (2) **No tax shall be due under sections 143.011 to 143.996 to the extent that the**  
71 **amount of any available unused federal net operating loss exceeds Missouri additions to**  
72 **federal taxable income in any taxable year. No person shall be denied an otherwise**  
73 **allowable depreciation deduction under sections 143.011 to 143.996 over the life of any**  
74 **asset as a result of the addition adjustment to federal taxable income required by section**  
75 **143.121. For all taxable years ending on or after July 1, 2002, federal taxable income may**  
76 **be a positive or negative amount. Federal taxable income shall be adjusted by the amount**  
77 **of any available federal net operating loss carry forward or carry back, as modified by this**  
78 **section, such that any available loss may offset a net addition modification as set forth in**  
79 **this subsection.**

80 (3) **For property purchased on or after July 1, 2002, but before July 1, 2003,**  
81 **paragraph (c) of subsection 2 of section 143.121 and paragraph (g) of subsection 3 of**  
82 **section 143.121 shall allow for the deduction of depreciation expense under Section 168 of**  
83 **the Internal Revenue Code of 1986, as in effect on January 1, 2002. Where a subtraction**  
84 **modification under paragraph (g) of subsection 3 of section 143.121 contributes to the**  
85 **creation of a net subtraction modification, the amount of the net subtraction modification**  
86 **shall be added to the amount of the available net operating loss. Such adjustment shall be**

87 **limited to the lesser of the amount of the net subtraction modification or the amount of the**  
88 **subtraction modification required under paragraph (g) of subsection 3 of section 143.121.**

89 **(4) The amount of available net operating loss shall be established and maintained**  
90 **for each taxable year in which a federal net operating loss occurred. Net operating loss**  
91 **modifications shall be made to amounts carried from any individual loss year in the order**  
92 **allowed under paragraph (d) of subsection 2 of section 143.121.**

93 5. [For all tax years ending on or after July 1, 2002, federal taxable income may be a  
94 positive or negative amount.] Subsection 4 of this section shall be effective for all tax years with  
95 a net operating loss deduction attributable to a loss year ending on or after July 1, 2002, and the  
96 net operating loss modification shall only apply to loss years ending on or after July 1, 2002.

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