

FIRST REGULAR SESSION

HOUSE BILL NO. 1088

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROORDA.

2426L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 143, RSMo, by adding thereto one new section relating to oil company gross profits taxes, with penalty provisions.

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

Section A. Chapter 143, RSMo, is amended by adding thereto one new section, to be known as section 143.1040, to read as follows:

143.1040. 1. As used in this section, the following terms mean:

- (1) "Apportioned gross profits", the gross profits apportioned to this state by the apportionment fraction established in this section;**
- (2) "Business entity", all oil companies of a unitary business;**
- (3) "Gross profits", the gross profits of an oil company listed on the oil company's federal income tax return, or if the oil company did not file such return, the gross profits that the oil company would have listed had the oil company filed such return;**
- (4) "Gross receipts", all gross receipts of a business entity listed on the business entity's federal income tax return, or if the business entity did not file such return, the gross receipts that the business entity would have listed had the business entity filed such return;**
- (5) "Oil company", any entity that engages in the exploration, drilling, importation, refining, or wholesale distribution of petroleum products;**
- (6) "Petroleum products", any product of the industrial processing of crude oil and its fractionation products that is manufactured, refined, or used for the generation of power used in an internal combustion engine to propel motor vehicles of any kind or character, and to generate heat. Petroleum products include, but are not limited to,**

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.

18 gasoline, diesel fuel, kerosene, propane, and any other product of crude oil used for such
19 purpose;

20 (7) "Taxable year", the fiscal year, tax year, or tax period in which an oil company,
21 or any consolidated group with which an oil company participates in the filing of
22 consolidated returns, actually uses in reporting taxable income to the federal government;

23 (8) "Unitary business", a single economic enterprise that is made up either of
24 separate parts of a single entity or of a commonly controlled group of entities that are
25 sufficiently interdependent, integrated, and interrelated through their activities so as to
26 provide a synergy and mutual benefit that produces a sharing or exchange of value among
27 them and a significant flow of value to the separate parts;

28 (9) "Wholesale distribution", the making of one or more nonretail sales of
29 petroleum products.

30 2. For all taxable years beginning on or after January 1, 2010, in lieu of any tax
31 imposed on such business entities under chapter 143, RSMo, an annual excise tax of six and
32 seventeen one-hundredths percent is hereby imposed on the apportioned gross profits of
33 any business entity for exercising, whether in its own name or through any person,
34 association, business trust, corporation, joint venture, limited liability company, limited
35 partnership, partnership, or other entity, any of the following privileges:

36 (1) Doing business in this state;

37 (2) Carrying on activities within this state;

38 (3) Having capital or property employed or used in this state;

39 (4) Owning property in this state;

40 (5) Engaging in or transacting any activity in this state for the purpose of financial
41 gain or profit.

42 3. The gross profits of a business entity shall be calculated on a single entity basis
43 if a business entity consists of one oil company, or a combined entity basis if a business
44 entity consists of two or more oil companies.

45 4. If at least one oil company of a business entity transacts part of its business
46 outside this state, the apportionment fraction of a business entity shall be the Missouri
47 gross receipts divided by all of such business entity's gross receipts in all other
48 jurisdictions. All transactions among oil companies of a unitary business shall be
49 eliminated in computing the numerator and the denominator of the apportionment fraction
50 of a business entity. If all oil companies of a business entity transact all of their business
51 within this state, the business entity shall not apportion its gross profits.

52 5. A business entity liable for the tax under this section shall file a report of gross
53 profits taxable under this section and pay the tax as provided by the state department of

54 revenue. The oil companies of a business entity liable for the tax under this section shall
55 designate one oil company to act as the agent on behalf of the business entity. The agent
56 shall file the report and pay the tax required by this section. Any person authorized to file
57 tax returns or tax reports on behalf of the oil company that is the agent of the business
58 entity shall file the report under oath or affirmation.

59 6. There is hereby created in the state treasury the "Oil Company Gross Profits
60 Tax Fund", which shall consist of money collected under this section. The state treasurer
61 shall be custodian of the fund. In accordance with sections 30.170 and 30.180, RSMo, the
62 state treasurer may approve disbursements. Upon appropriation, money in the fund shall
63 be used solely for public mass transportation purposes. Notwithstanding the provisions
64 of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of
65 the biennium shall not revert to the credit of the general revenue fund. The state treasurer
66 shall invest moneys in the fund in the same manner as other funds are invested. Any
67 interest and moneys earned on such investments shall be credited to the fund.

68 7. (1) In addition to any other penalty provided by law, if the amount of any
69 estimated payment of tax due or payment of tax due is underpaid, a penalty shall be
70 imposed in the amount of five percent of the underpayment per month for the period of the
71 underpayment, up to a maximum of twenty-five percent of the underpayment.

72 (2) In addition to any other penalty provided by law, if a business entity fails to file
73 the report required by this section within two hundred seventy days of the original due
74 date of the report, a penalty of five hundred dollars shall be imposed on the business entity.

75 8. The cost of the tax imposed in this section, or any portion thereof, shall not be
76 added to, separately stated with, or included in the purchase price charged to a purchaser
77 of petroleum products. Any willful violation of this subsection shall be a class C
78 misdemeanor, and the seller of the petroleum products shall be required to pay an
79 additional penalty equal to the amount added to, separately stated with, or included with
80 the purchase price charged to the purchaser.

81 9. The department of revenue may promulgate rules to implement the provisions
82 of this section. Any rule or portion of a rule, as that term is defined in section 536.010,
83 RSMo, that is created under the authority delegated in this section shall become effective
84 only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and,
85 if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
86 nonseverable and if any of the powers vested with the general assembly under chapter 536,
87 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are
88 subsequently held unconstitutional, then the grant of rulemaking authority and any rule
89 proposed or adopted after August 28, 2009, shall be invalid and void.