

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Bill No. 584, Page 4, Section 67.585, Line 86, by
2 deleting the word, "shall" and inserting in lieu thereof the word, "may"; and,

3
4 Further amend said bill, Page 9, Section 143.221, Line 28, by inserting after said section and line the
5 following:

6 "143.451. 1. Missouri taxable income of a corporation shall include all income derived from
7 sources within this state.

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

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

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

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

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

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

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

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

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1 this state and the purchaser's destination point is in this state;

2 c. Not "wholly in this state" or not "partly within this state and partly without this state" only
3 if both the seller's shipping point and the purchaser's destination point are outside this state.

4 (d) For purposes of this subdivision:

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

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

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

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

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

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

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

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

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

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

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

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

33 c. In the case of sale of a service, if and to the extent the benefit of the service is delivered to
34 a purchaser location in this state; and

35 d. In the case of intangible property:

36 (i) That is rented, leased, or licensed, if and to the extent the property is used in this state by
37 the rentee, lessee, or licensee, provided that intangible property utilized in marketing a good or
38 service to a consumer is "used in this state" if that good or service is purchased by a consumer who is
39 in this state. Franchise fees or royalties received for the rent, lease, license, or use of a trade name,
40 trademark, service mark, or franchise system or provides a right to conduct business activity in a
41 specific geographic area are "used in this state" to the extent the franchise location is in this 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 of
48 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 or
6 reasonably approximated under paragraph (f) of this subdivision, such sales shall be excluded from
7 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 selling
21 investment company shares or affiliated with a person that is engaged in the service of underwriting
22 or selling investment company shares. In the case of an open end company, such service of
23 underwriting or selling shares must be performed pursuant to a contract entered into pursuant to 15
24 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 Act
26 of 1940, as amended from time to time, (the act) or a company which would be required to register
27 as an investment company under the act except that such person is exempt to such registration
28 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 as
35 an investment advisory firm registered under Section 203 of the Investment Advisors Act of 1940, as
36 amended from time to time, regardless of the percentage of gross revenues consisting of fees from
37 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 only
42 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. The
32 qualifying sales for each investment company which are not wholly in this state will be considered
33 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 by
36 the investment funds service corporation without regard to this subdivision.

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

43 4. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall include
44 in its Missouri taxable income all income arising from all sources in this state and all income from
45 each transportation service wholly within this state, from each service where the only lines of such
46 corporation used are those in this state, and such proportion of revenue from each service where the
47 facilities of such corporation in this state and in another state or states are used, as the mileage used
48 over the lines of such corporation in the state shall bear to the total mileage used over the lines of

1 such corporation. The taxpayer may elect to compute the portion of income from all sources within
2 this state in the following manner:

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

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

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

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

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

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

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

42 8. If a corporation derives only part of its income from sources within Missouri, its Missouri
43 taxable income shall only reflect the effect of the following listed deductions to the extent applicable
44 to Missouri. The deductions are: (a) its deduction for federal income taxes pursuant to section
45 143.171, and (b) the effect on Missouri taxable income of the deduction for net operating loss
46 allowed by Section 172 of the Internal Revenue Code. The extent applicable to Missouri shall be
47 determined by multiplying the amount that would otherwise affect Missouri taxable income by the
48 ratio for the year of the Missouri taxable income of the corporation for the year divided by the

1 Missouri taxable income for the year as though the corporation had derived all of its income from
2 sources within Missouri. For the purpose of the preceding sentence, Missouri taxable income shall
3 not reflect the listed deductions.

4 9. Any investment funds service corporation organized as a corporation or S corporation
5 which has any shareholders resided in this state shall be subject to Missouri income tax as
6 provided in this chapter."; and

7
8 Further amend said bill, Page 27, Section 144.058, Lines 1-11, by deleting all of said lines from the
9 bill and inserting in lieu thereof the following:

10 "144.058. 1. In addition to all other exemptions granted under this chapter, there is hereby
11 specifically exempted from the provisions of sections 144.010 to 144.525 and sections 144.600 to
12 144.761 and from the computation of the tax levied, assessed, or payable under sections 144.010 to
13 144.525 and sections 144.600 to 144.761, electrical energy and gas, whether natural, artificial, or
14 propane; water, coal, and energy sources; chemicals, machinery, equipment, parts, and materials
15 used or consumed in connection with or to facilitate the generation, transmission, distribution, sale,
16 or furnishing of electricity for light, heat, or power; and any conduits, ducts, or other devices,
17 materials, apparatus, or property for containing, holding, or carrying conductors used or to be used
18 for the transmission of electricity for light, heat, or power service to customers.

19 2. In addition to all other exemptions granted under this chapter, there is hereby specifically
20 exempted from the provisions of sections 144.010 to 144.525, 144.600 to 144.761, 238.235, and the
21 local sales tax law as defined in section 32.085, and from the computation of the tax levied, assessed,
22 or payable under sections 144.010 to 144.525, 144.600 to 144.761, 238.235, and the local sales tax
23 law as defined in section 32.085, electrical energy, machinery, equipment, parts, and materials used
24 or consumed in connection with or to facilitate the storage or processing of data in any facility or
25 part of a facility that is used primarily for such data storage or processing. "Processing", as used in
26 this section, shall mean any action or process performed upon or using data in any form."; and

27
28 Further amend said bill by amending the title, enacting clause, and intersectional references
29 accordingly.