

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

Offered By \_\_\_\_\_

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 769, Page 9,  
2 Section 143.433, Line 3, by inserting immediately after said section and line the following:

3  
4 "143.455. 1. Missouri taxable income of a corporation shall include all income derived from  
5 sources within this state.

6 2. For all tax years beginning on or after January 1, 2019, a corporation described in subdivision (1)  
7 of subsection 1 of section 143.441 shall determine its income derived from sources within this state by  
8 allocating and apportioning its net income as provided in this section.

9 3. As used in this section, unless the context otherwise requires, the following terms mean:

10 (1) "Apportionable income":

11 (a) All income that is apportionable under the Constitution of the United States and is not allocated  
12 under the laws of this state, including:

13 a. Income arising from transactions and activity in the regular course of the corporation's trade or  
14 business; and

15 b. Income arising from tangible and intangible property if the acquisition, management,  
16 employment, development, or disposition of the property is or was related to the operation of the  
17 corporation's trade or business; and

18 (b) Any income that would be allocable to this state under the Constitution of the United States, but  
19 that is apportioned rather than allocated pursuant to the laws of this state;

20 (2) "Commercial domicile", the principal place from which the trade or business of the corporation  
21 is directed or managed;

22 (3) "Financial organization", any bank, trust company, savings bank, industrial bank, land bank, safe  
23 deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan  
24 company, sales finance company, investment company, or any type of insurance company;

25 (4) "Non-apportionable income", all income other than apportionable income;

26 (5) "Public utility", any business entity:

27 (a) Which owns or operates any plant, equipment, property, franchise, or license for the transmission  
28 of communications, transportation of goods or persons, except by pipeline, or the production, transmission,  
29 sale, delivery, or furnishing of electricity, water or steam; and

30 (b) Whose rates of charges for goods or services have been established or approved by a federal,  
31 state, or local government or governmental agency;

32 (6) "Receipts", all gross receipts of the corporation that are not allocated under the provisions of this  
33 section, and that are received from transactions and activity in the regular course of the corporation's trade or  
34 business; except that receipts of a corporation from hedging transactions and from the maturity, redemption,  
35 sale, exchange, loan or other disposition of cash or securities, shall be excluded.

36 4. For purposes of allocation and apportionment of income under this section, a corporation is  
37 taxable in another state if:

38 (1) In that state it is subject to a net income tax, a franchise tax measured by net income, a franchise  
39 tax for the privilege of doing business, or a corporate stock tax; or

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1       (2) That state has jurisdiction to subject the corporation to a net income tax regardless of whether, in  
2 fact, the state does or does not do so.

3       5. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or  
4 patent or copyright royalties, to the extent that they constitute nonapportionable income, shall be allocated as  
5 provided in subsections 6 to 9 of this section.

6       6. (1) Net rents and royalties from real property located in this state are allocable to this state.

7       (2) Net rents and royalties from tangible personal property are allocable to this state:

8       (a) If and to the extent the property is utilized in this state; or

9       (b) In their entirety if the corporation's commercial domicile is in this state and the corporation is  
10 not organized under the laws of or taxable in the state in which the property is utilized.

11       (3) The extent of utilization of tangible personal property in a state is determined by multiplying the  
12 rents and royalties by a fraction, the numerator of which is the number of days of physical location of the  
13 property in the state during the rental or royalty period in the taxable year and the denominator of which is  
14 the number of days of physical location of the property everywhere during all rental or royalty periods in the  
15 taxable year. If the physical location of the property during the rental or royalty period is unknown or  
16 unascertainable by the corporation, tangible personal property is utilized in the state in which the property  
17 was located at the time the rental or royalty payer obtained possession.

18       7. (1) Capital gains and losses from sales of real property located in this state are allocable to this  
19 state.

20       (2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

21       (a) The property had a situs in this state at the time of the sale; or

22       (b) The corporation's commercial domicile is in this state and the corporation is not taxable in the  
23 state in which the property had a situs.

24       (3) Capital gains and losses from sales of intangible personal property are allocable to this state if  
25 the corporation's commercial domicile is in this state.

26       8. Interest and dividends are allocable to this state if the corporation's commercial domicile is in this  
27 state.

28       9. (1) Patent and copyright royalties are allocable to this state:

29       (a) If and to the extent that the patent or copyright is utilized by the payer in this state; or

30       (b) If and to the extent that the patent or copyright is utilized by the payer in a state in which the  
31 corporation is not taxable and the corporation's commercial domicile is in this state.

32       (2) A patent is utilized in a state to the extent that it is employed in production, fabrication,  
33 manufacturing, or other processing in the state or to the extent that a patented product is produced in the  
34 state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting  
35 procedures do not reflect states of utilization, the patent is utilized in the state in which the corporation's  
36 commercial domicile is located.

37       (3) A copyright is utilized in a state to the extent that printing or other publication originates in the  
38 state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting  
39 procedures do not reflect states of utilization, the copyright is utilized in the state in which the corporation's  
40 commercial domicile is located.

41       10. All apportionable income shall be apportioned to this state by multiplying the net income by a  
42 fraction, the numerator of which is the total receipts of the corporation in this state during the tax period and  
43 the denominator of which is the total receipts of the corporation everywhere during the tax period.

44       11. Receipts from the sale of tangible personal property are in this state if the property is received in  
45 this state by the purchaser. In the case of the delivery of goods by common carrier or by other means of  
46 transportation, including transportation by the purchaser, the place at which the goods are ultimately received  
47 after all transportation has been completed shall be considered as the place at which the goods are received  
48 by the purchaser. Direct delivery into this state by the taxpayer to a person or firm designated by a purchaser  
49 from within or without the state shall constitute delivery to the purchaser in this state.

50       12. (1) Receipts, other than receipts described in subsection 11 of this section, are in this state if the  
51 corporation's market for the sales is in this state. The corporation's market for sales is in this state:

52       (a) In the case of sale, rental, lease, or license of real property, if and to the extent the property is  
53 located in this state;

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

(c) In the case of sale of a service, if and to the extent the ultimate beneficiary of the service is located in this state and shall not be in this state if the ultimate beneficiary of the service rendered by the corporation or the corporation's designee is located outside this state; and

(d) In the case of intangible property:

a. That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state. Franchise fees or royalties received for the rent, lease, license, or use of a trade name, trademark, service mark, or franchise system or provides a right to conduct business activity in a specific geographic area "are used in this state" to the extent the franchise is located in this state; and

b. That is sold, if and to the extent the property is used in this state, provided that:

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

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

(iii) All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

(2) If the state or states of assignment under subdivision (1) of this subsection cannot be determined, the state or states of assignment shall be reasonably approximated.

(3) The director may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

13. (1) In the case of certain industries where unusual factual situations produce inequitable results under the apportionment and allocation provisions of this section, the director shall promulgate rules for determining the apportionment and allocation factors for each such industry, but such rules shall be applied uniformly.

(2) If the allocation and apportionment provisions of this section do not fairly represent the extent of the corporation's income applicable to this state, the corporation may petition for or the director may require:

(a) Separate accounting;

(b) The inclusion of one or more additional factors which will fairly represent the corporation's income applicable to this state; or

(c) The employment of any other method to effectuate an equitable allocation and apportionment of the corporation's income.

(3) The party petitioning for, or the director requiring, the use of any method to effectuate an equitable allocation and apportionment of the corporation's income pursuant to subdivision (2) of this subsection shall prove by a preponderance of evidence:

(a) That the allocation and apportionment provisions of this section do not fairly represent the extent of the corporation's income applicable to this state; and

(b) That the alternative to such provisions is reasonable.

The same burden of proof shall apply whether the corporation is petitioning for, or the director is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the corporation's income. Notwithstanding the previous sentence, if the director can show that in any two of the prior five tax years, the corporation had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the director shall not bear the burden of proof in imposing a different method pursuant to subdivision (2) of this subsection.

(4) If the director requires any method to effectuate an equitable allocation and apportionment of the corporation's income, the director cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the corporation's reasonable reliance solely on the allocation and apportionment provisions of this section.

(5) A corporation that has received written permission from the director to use a reasonable method

1 to effectuate an equitable allocation and apportionment of the corporation's income shall not have that  
 2 permission revoked with respect to transactions and activities that have already occurred unless there has  
 3 been a material change in, or a material misrepresentation of, the facts provided by the corporation upon  
 4 which the director reasonably relied.

5 14. Any corporation described in subdivision (1) of subsection 1 of section 143.441 organized in  
 6 this state or granted a permit to operate in this state for the transportation or care of passengers shall report its  
 7 gross earnings within the state on intrastate business and shall also report its gross earnings on all interstate  
 8 business done in this state. Such report shall be subject to inquiry for the purpose of determining the amount  
 9 of income to be included in Missouri taxable income. This subsection shall not apply to a railroad.

10 15. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall include in its  
 11 Missouri taxable income all income arising from all sources in this state and all income from each  
 12 transportation service wholly within this state, from each service where the only rails and lines of such  
 13 corporation used are those in this state, and such proportion of revenue from each service where the facilities  
 14 of such corporation in this state and in another state or states are used, as the mileage used over the rails and  
 15 lines of such corporation in the state shall bear to the total mileage used over the rails and lines of such  
 16 corporation. Qualified air freight forwarders shall use the miles of their related airline. The corporation may  
 17 elect to compute the portion of income from all sources within this state in the following manner:

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

19 (2) The amount of investment of such corporation on December thirty-first of each year in this state  
 20 in fixed transportation facilities, real estate and improvements, plus the value on December thirty-first of  
 21 each year of any fixed transportation facilities, real estate and improvements in this state leased from any  
 22 other railroad shall be divided by the sum of the total amount of investment of such corporation on December  
 23 thirty-first of each year in fixed transportation facilities, real estate and improvements, plus the value on  
 24 December thirty-first of each year, of any fixed transportation facilities, real estate and improvements leased  
 25 from any other railroad. Where any fixed transportation facilities, real estate or improvements are leased by  
 26 more than one railroad, such portion of the value shall be used by each railroad as the rental paid by each  
 27 shall bear to the rental paid by all lessees. The income shall be multiplied by the fraction thus obtained to  
 28 determine the proportion to be used to arrive at the amount of Missouri taxable income;

29 (3) For purposes of this subsection, "qualified air freight forwarder" means a taxpayer who meets all  
 30 of the following requirements:

31 (a) The taxpayer is primarily engaged in the facilitation of the transportation of property by air;

32 (b) The taxpayer does not itself operate aircraft; and

33 (c) The taxpayer is in the same affiliated group as an airline;

34 (4) For the purposes of this subsection, "miles" as they relate to airlines and qualified air freight  
 35 forwarders has the same meaning as "revenue aircraft miles flown" as prescribed by the United States  
 36 Department of Transportation uniform system of accounts and reports for large certificated air carriers under  
 37 14 CFR 241.

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

46 17. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall include in its  
 47 Missouri taxable income all income arising from all sources within this state. Income shall include revenue  
 48 from each telephonic or telegraphic service rendered wholly within this state; from each service rendered for  
 49 which the only facilities of such corporation used are those in this state; and from each service rendered over  
 50 the facilities of such corporation in this state and in other state or states, such proportion of such revenue as  
 51 the mileage involved in this state shall bear to the total mileage involved over the lines of said company in  
 52 all states. The corporation may elect to compute the portion of income from all sources within this state in  
 53 the following manner:

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

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

7       18. From the income determined in this section to be from all sources within this state shall be  
8 deducted such of the deductions for expenses in determining Missouri taxable income as were incurred in  
9 this state to produce such income and all losses actually sustained in this state in the business of the  
10 corporation.

11       19. If a corporation derives only part of its income from sources within Missouri, its Missouri  
12 taxable income shall only reflect the effect on Missouri taxable income of the deduction for net operating  
13 loss allowed by Section 172 of the Internal Revenue Code. The extent applicable to Missouri shall be  
14 determined by multiplying the amount that would otherwise affect Missouri taxable income by the ratio for  
15 the year of the Missouri taxable income of the corporation for the year divided by the Missouri taxable  
16 income for the year as though the corporation had derived all of its income from sources within Missouri.  
17 For the purpose of the preceding sentence, Missouri taxable income shall not reflect the deduction.

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

21  
22 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.