

HOUSE SUBSTITUTE AMENDMENT NO. _____

for

HOUSE _____ AMENDMENT NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 174,
2 Page 8, Section 137.115, Line 194, by inserting after all of said section and line the following:

3
4 "143.071.1.For all tax years beginning before September 1, 1993, a tax is hereby imposed
5 upon the Missouri taxable income of corporations in an amount equal to five percent of Missouri
6 taxable income.

7 2.For all tax years beginning on or after September 1, 1993, and ~~ending~~ beginning on or
8 before December 31, 2019, a tax is hereby imposed upon the Missouri taxable income of
9 corporations in an amount equal to six and one-fourth percent of Missouri taxable income.

10 3.For all tax years beginning on or after January 1, 2020, a tax is hereby imposed upon the
11 Missouri taxable income of corporations in an amount equal to four percent of Missouri taxable
12 income.

13 4.The provisions of this section shall not apply to out-of-state businesses operating under
14 sections 190.270 to 190.285."; and

15
16 Further amend said bill, Page 13, Section 143.441, Line 35, by inserting after all of said section and
17 line the following:

18
19 "143.451.1.Missouri taxable income of a corporation shall include all income derived from
20 sources within this state.

21 2.For all tax years ~~ending~~ beginning on or before December 31, 2019, a corporation
22 described in subdivision (1) of subsection 1 of section 143.441 shall include in its Missouri taxable
23 income all income from sources within this state, including that from the transaction of business in
24 this state and that from the transaction of business partly done in this state and partly done in
25 another state or states.However:

26 (1)Where income results from a transaction partially in this state and partially in another
27 state or states, and income and deductions of the portion in the state cannot be segregated, then such
28 portions of income and deductions shall be allocated in this state and the other state or states as will
29 distribute to this state a portion based upon the portion of the transaction in this state and the portion
30 in such other state or states.

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

Action Taken _____ Date _____

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

3 (b)The amount of sales which are transactions wholly in this state shall be added to one-half
4 of the amount of sales which are transactions partly within this state and partly without this state,
5 and the amount thus obtained shall be divided by the total sales or in cases where sales do not
6 express the volume of business, the amount of business transacted wholly in this state shall be added
7 to one-half of the amount of business transacted partly in this state and partly outside this state and
8 the amount thus obtained shall be divided by the total amount of business transacted, and the net
9 income shall be multiplied by the fraction thus obtained, to determine the proportion of income to be
10 used to arrive at the amount of Missouri taxable income. The investment or reinvestment of its own
11 funds, or sale of any such investment or reinvestment, shall not be considered as sales or other
12 business transacted for the determination of said fraction.

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

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

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

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

22 (d)For purposes of this subdivision:

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

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

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

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

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

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

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

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

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

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

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

49 b. In the case of rental, lease, or license of tangible personal property, if and to the extent the

1 property is located in this state;

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

5 d. In the case of intangible property:

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (e) "Investment funds service corporation" includes any corporation or S corporation doing
49 business in the state which derives more than fifty percent of its gross income in the ordinary course

1 of business from the provision directly or indirectly of management, distribution or administration
2 services to or on behalf of an investment company or from trustees, sponsors and participants of
3 employee benefit plans which have accounts in an investment company. An investment funds service
4 corporation shall include any corporation or S corporation providing management services as an
5 investment advisory firm registered under Section 203 of the Investment Advisors Act of 1940, as
6 amended from time to time, regardless of the percentage of gross revenues consisting of fees from
7 management services provided to or on behalf of an investment company;

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

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

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

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

18 (g) "Qualifying sales", gross income derived from the provision directly or indirectly of
19 management, distribution or administration services to or on behalf of an investment company or
20 from trustees, sponsors and participants of employee benefit plans which have accounts in an
21 investment company. For purposes of this section, "gross income" is defined as that amount of
22 income earned from qualifying sources without deduction of expenses related to the generation of
23 such income;

24 (h) "Residence", presumptively the fund shareholder's mailing address on the records of the
25 investment company. If, however, the investment company or the investment funds service
26 corporation has actual knowledge that the fund shareholder's primary residence or principal place of
27 business is different than the fund shareholder's mailing address such presumption shall not
28 control. To the extent an investment funds service corporation does not have access to the records of
29 the investment company, the investment funds service corporation may employ reasonable methods
30 to determine the investment company fund shareholder's residence.

31 (5) Notwithstanding other provisions of law to the contrary, qualifying sales of an investment
32 funds service corporation, or S corporation, shall be considered wholly in this state only to the
33 extent that the fund shareholders of the investment companies, to which the investment funds
34 service corporation, or S corporation, provide services, are resided in this state. Wholly in this
35 state qualifying sales of an investment funds service corporation, or S corporation, shall be
36 determined as follows:

37 (a) By multiplying the investment funds service corporation's total dollar amount of
38 qualifying sales from services provided to each investment company by a fraction, the numerator of
39 which shall be the average of the number of shares owned by the investment company's fund
40 shareholders resided in this state at the beginning of and at the end of the investment company's
41 taxable year that ends with or within the investment funds service corporation's taxable year, and the
42 denominator of which shall be the average of the number of shares owned by the investment
43 company's fund shareholders everywhere at the beginning of and at the end of the investment
44 company's taxable year that ends with or within the investment funds service corporation's taxable
45 year;

46 (b) A separate computation shall be made to determine the wholly in this state qualifying
47 sales from each investment company. The qualifying sales for each investment company shall be
48 multiplied by the respective percentage of each fund, as calculated pursuant to paragraph (a) of this
49 subdivision. The product of this equation shall result in the wholly in this state qualifying sales. The

1 qualifying sales for each investment company which are not wholly in this state will be considered
2 wholly without this state;

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

6 (6)Notwithstanding the Multistate Tax Compact, sections 32.200 to 32.240, this section, and
7 section 143.461 to the contrary, sales and business transactions shall not include any intercompany
8 transactions, as that term is defined under 26 C.F.R. 1.1502 -13, between corporations that file a
9 consolidated income tax return in this state.

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

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

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

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

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

45 6.A corporation described in subdivision (4) of subsection 1 of section 143.441 shall include
46 in its Missouri taxable income all income arising from all sources within this state.Income shall
47 include revenue from each telephonic or telegraphic service rendered wholly within this state; from
48 each service rendered for which the only facilities of such corporation used are those in this state;
49 and from each service rendered over the facilities of such corporation in this state and in other state

1 or states, such proportion of such revenue as the mileage involved in this state shall bear to the total
 2 mileage involved over the lines of said company in all states. The taxpayer may elect to compute the
 3 portion of income from all sources within this state in the following manner:

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

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

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

15 8. If a corporation derives only part of its income from sources within Missouri, its Missouri
 16 taxable income shall only reflect the effect of the following listed deductions to the extent applicable
 17 to Missouri. The deductions are: (a) its deduction for federal income taxes pursuant to section
 18 143.171, and (b) the effect on Missouri taxable income of the deduction for net operating loss
 19 allowed by Section 172 of the Internal Revenue Code. The extent applicable to Missouri shall be
 20 determined by multiplying the amount that would otherwise affect Missouri taxable income by the
 21 ratio for the year of the Missouri taxable income of the corporation for the year divided by the
 22 Missouri taxable income for the year as though the corporation had derived all of its income from
 23 sources within Missouri. For the purpose of the preceding sentence, Missouri taxable income shall
 24 not reflect the listed deductions.

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

28 10. The provisions of this section do not impact any other apportionment election available to
 29 a taxpayer under Missouri statutes unless explicitly stated in this section.

30 143.461.1. A corporation shall elect to determine income applicable to this state by
 31 multiplying the total income from all sources by the fraction determined in the manner in section
 32 143.451 for all tax years ~~ending~~ beginning on or before December 31, 2019, and for all tax years
 33 beginning on or ~~before~~ after January 1, 2020, in the manner set forth in section 143.455; first, by
 34 filing written notice with the director of revenue on or before the due date of the return (including
 35 extensions of time) of the taxpayer's election, or, second, by failing to keep its books and records in
 36 such manner as to show the income applicable to this state, including gross income and deductions
 37 applicable thereto.

38 2. If the corporation shall keep its books and records so as to show the income applicable to
 39 this state by any other method of allocation between this state and other states, including gross
 40 income and deductions applicable thereto, and such method shows the income applicable to this
 41 state, including gross income and deductions applicable thereto, then it may, on or before sixty days
 42 before the end of any taxable year, petition the director of revenue, in writing, to be permitted in its
 43 return required to be filed to apportion to this state according to the method shown by such books or
 44 records. If the director of revenue finds that such method does show the income applicable to this
 45 state including gross income and the deductions applicable thereto, he or she shall notify the
 46 corporation, at least thirty days prior to the last day on which such corporation's return for that
 47 taxable year is to be filed, that it may use that method for the shorter of five years or as long as such
 48 method shows the income applicable to this state, including gross income and deductions applicable
 49 thereto.

1 3.The corporation shall cease using such method after the shorter of five years or whenever
2 the director of revenue finds and notifies such corporation on or before ninety days before the end of
3 the taxable year, that such method does not so show.Upon and after such expiration or revocation the
4 corporation shall be permitted to petition to use the same or another method of allocation that will
5 show such income including gross income and deductions applicable thereto as though no petition
6 had ever been filed.

7 4.Failure, after a method has expired or been revoked by the director of revenue, to submit a
8 method which the director of revenue finds will show such income applicable to this state including
9 gross income and deductions applicable thereto, on or before sixty days before the end of any
10 taxable year, or failure to make a return on the basis, which has been approved by the director of
11 revenue on petition of the corporation and which stands unrevoked or unexpired, shall constitute an
12 election to accept the determination of income applicable to this state by multiplying the total
13 income from all sources by the fraction determined in the manner set forth in section 143.451 for all
14 tax years [~~ending~~] beginning on or before December 31, 2019, and for all tax years [~~beginning~~] after
15 on or before January 1, 2020, in the manner set forth in section 143.455."; and

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

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20 THIS AMENDMENT SUBSTITUTES 0971H04.04H.