

SECOND REGULAR SESSION

HOUSE BILL NO. 1734

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRISTOFANELLI.

3364H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 143, RSMo, by adding thereto one new section relating to the taxation of partners and partnerships.

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 143.425, to read as follows:

143.425. 1. The following definitions apply for the purposes of this section, and do not affect the meaning given to any terms outside of this section:

(1) "Administrative adjustment request", an administrative adjustment request filed by a partnership under IRC Section 6227;

(2) "Audited partnership", a partnership subject to a partnership level audit resulting in a federal adjustment;

(3) "Corporate partner", a partner that is subject to taxation under section 143.071;

(4) "Direct partner", a partner that holds an interest directly in a partnership or pass-through entity;

(5) "Exempt partner", a partner that is exempt from taxation under subdivisions (1) or (4) of subsection 2 of section 143.441, except with respect to unrelated business taxable income;

(6) "Federal adjustment", a change to an item or amount determined under the IRC that is used by a taxpayer to compute Missouri individual or corporate income tax owed, whether that change results from action by the IRS, including a partnership level audit, or from the filing of an amended federal return, federal refund claim, or an

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 administrative adjustment request by the taxpayer. A federal adjustment is positive to the
19 extent that it increases Missouri taxable income as determined under section 143.431 or
20 Missouri adjusted gross income under sections 143.121 or 143.181, and is negative to the
21 extent that it decreases the above-described Missouri taxable income or Missouri adjusted
22 gross income;

23 (7) "Federal adjustments report", includes methods and forms, which shall be
24 prescribed by the department of revenue, for use by a taxpayer to report final federal
25 adjustments, including an amended Missouri tax return, a uniform multistate report, or
26 an information return, notwithstanding any law restricting the form or applicability of
27 information return filing;

28 (8) "Federal partnership representative", the person a partnership designates for
29 the tax year as the partnership's representative, or the person the IRS has appointed to act
30 as the federal partnership representative, under IRC Section 6223(a);

31 (9) "Final determination date", as follows:

32 (a) Except as provided under paragraphs (b) and (c) of this subdivision, if the
33 federal adjustment arises from an IRS audit or other action by the IRS, the final
34 determination date is the first day on which no federal adjustments arising from that audit
35 or other action remain to be finally determined, whether by IRS decision with respect to
36 which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or
37 contested, by a final decision with respect to which all rights of appeal have been waived
38 or exhausted. For agreements required to be signed by the IRS and the taxpayer, the final
39 determination date is the date on which the last party signed the agreement;

40 (b) For federal adjustments arising from an IRS audit or other action by the IRS,
41 if the taxpayer filed as a member of a Missouri consolidated return, the final determination
42 date means the first day on which no related federal adjustments arising from that audit
43 remain to be finally determined, as described under paragraph (a) of this subdivision, for
44 the entire group; and

45 (c) If the federal adjustment results from the filing of an amended federal return,
46 a federal refund claim, or an administrative adjustment request, or if the federal
47 adjustment is reported on an amended federal return or other similar report filed under
48 IRC Section 6225(c), the final determination date means the day on which the amended
49 return, refund claim, administrative adjustment request, or other similar report was filed;

50 (10) "Final federal adjustment", a federal adjustment that remains in effect after
51 the final determination date for such federal adjustment has passed;

52 (11) "Indirect partner", a partner in a partnership or pass-through entity, where
53 such partnership or pass-through entity itself holds a direct or indirect interest in another

54 partnership or pass-through entity. A partnership or pass-through entity holds an
55 "indirect interest" in another partnership or pass-through entity where its interest is held
56 through an indirect partner or series of indirect partners;

57 (12) "IRC", the Internal Revenue Code of 1986, as codified at 26 U.S.C. Section 1,
58 et seq., and amendments thereto, as the same may be or become effective, at any time or
59 from time to time, for the tax year, and applicable regulations as promulgated by the U.S.
60 Department of the Treasury;

61 (13) "IRS", the Internal Revenue Service of the U.S. Department of the Treasury;

62 (14) "Nonresident partner", an individual, trust, or estate partner that is not a
63 resident partner;

64 (15) "Partner", a person that holds an interest, directly or indirectly, in a
65 partnership or other pass-through entity;

66 (16) "Partnership", the meaning given to it under the IRC, as it is used in
67 Subchapter K of the IRC;

68 (17) "Partnership level audit", an examination by the IRS at the partnership level
69 under Subchapter C of Chapter 63 of Subtitle F of the IRC, as enacted by the Bipartisan
70 Budget Act of 2015, U.S. Pub.L. 114-74, and any amendments thereto, which results in
71 federal adjustments;

72 (18) "Pass-through entity", an entity, other than a partnership, that is not subject
73 to taxation under section 143.071, section 153.020, or chapter 148, and that is not subject
74 to any provision imposing tax in this state on, or measured by, the income, gross or net
75 premiums, or premium equivalents of insurance providers;

76 (19) "Reallocation adjustment", a federal adjustment resulting from a partnership
77 level audit or an administrative adjustment request that changes the shares of one or more
78 items of partnership income, gain, loss, expense, or credit allocated to direct partners. A
79 positive reallocation adjustment means the portion of a reallocation adjustment that would
80 increase federal adjusted gross income or federal taxable income for one or more direct
81 partners, and a negative reallocation adjustment means the portion of a reallocation
82 adjustment that would decrease federal adjusted gross income or federal taxable income
83 for one or more direct partners;

84 (20) "Resident partner", an individual, trust, or estate partner that is a resident of
85 this state under subsection 1 of section 143.101 for individuals, or under section 143.331
86 for trusts or estates, for the relevant tax period;

87 (21) "Reviewed year", the tax year of a partnership that is subject to a partnership
88 level audit from which federal adjustments arise;

89 (22) "Taxpayer", any individual or entity subject to a tax in this state or a
90 tax-related reporting requirement in this state and, unless the context clearly indicates
91 otherwise, includes a partnership subject to a partnership level audit or a partnership that
92 has made an administrative adjustment request, as well as a tiered partner of that
93 partnership;

94 (23) "Tiered partner", any partner that is a partnership or pass-through entity;

95 (24) "Unrelated business taxable income", the same meaning as defined in IRC
96 Section 512.

97 2. Except in the case of final federal adjustments that are reported by a partnership
98 and its partners using the procedures found under subsection 3 of this section, final federal
99 adjustments required to be reported for federal purposes under IRC Section 6225(a)(2),
100 and changes required to be reported under section 143.601, a taxpayer shall report and pay
101 any Missouri tax due with respect to final federal adjustments arising from an audit or
102 other action by the IRS or reported by the taxpayer on a timely filed amended federal
103 income tax return, including a return or other similar report filed under IRC Section
104 6225(c)(2), or federal claim for refund, by filing a federal adjustments report with the
105 department of revenue for the reviewed year and, if applicable, paying the additional
106 Missouri tax owed by the taxpayer no later than one hundred eighty days after the final
107 determination date.

108 3. (1) Except for adjustments required to be reported for federal purposes under
109 IRC Section 6225(a)(2) and the distributive share of adjustments that have been reported
110 as required under subsection 2 of this section, partnerships and partners shall report final
111 federal adjustments arising from a partnership level audit or an administrative adjustment
112 request and make payments as required under this subsection.

113 (2) (a) With respect to an action required or permitted to be taken by a
114 partnership under this subsection and a proceeding under the laws of this state permitting
115 reconsideration by the director of revenue, appeal to the administrative hearing
116 commission, or review by the judiciary with respect to that action, the state partnership
117 representative for the reviewed year shall have the sole authority to act on behalf of the
118 partnership, and the partnership's direct partners and indirect partners shall be bound by
119 those actions.

120 (b) The state partnership representative for the reviewed year is the partnership's
121 federal partnership representative unless the partnership designates in writing another
122 person as its state partnership representative.

(c) The department of revenue may establish reasonable qualifications and procedures for designating a person, other than the federal partnership representative, to be the state partnership representative.

(d) The state partnership representative shall be considered an authorized representative of the partnership and its partners under section 32.057 for the purposes of compliance with this section and participation in a proceeding referenced under paragraph (a) of this subdivision.

(3) Final federal adjustments subject to the requirements of this subsection, except for those subject to a properly made election under subdivision (4) of this subsection, shall be reported as follows:

(a) No later than ninety days after the final determination date, the partnership shall:

a. File a completed federal adjustments report with the department of revenue, including information as required by department of revenue rule or instruction;

b. Notify each of its direct partners of their distributive share of the final federal adjustments including information as required by the department of revenue; and

c. Pay any additional amount under section 143.411 that would have been due had the final federal adjustments originally been reported properly; and

(b) No later than one hundred eighty days after the final determination date, each direct partner that is taxed under sections 143.011 to 143.996, section 153.020, chapter 148, or any provision imposing tax in this state on, or measured by, the income, gross or net premiums, or premium equivalents of insurance providers, shall:

a. File a federal adjustments report reporting their distributive share of the adjustments reported to them under subparagraph b. of paragraph (a) of this subdivision; and

b. Pay any additional amount of tax due as if final federal adjustments had been properly reported, plus any additions, penalty, and interest due under sections 143.011 to 143.996 or other applicable tax law, less any credit for related amounts paid or withheld and remitted on behalf of the direct partner. The rate of interest on any interest due, as referenced in this subdivision, shall be determined under section 32.068.

(4) (a) Subject to the limitations imposed under paragraph (c) of this subdivision, an audited partnership making an election under this subdivision shall, no later than ninety days after the final determination date, file a completed federal adjustments report, including information as required by department of revenue rule or instruction, and notify the department of revenue that it is making the election under this subdivision;

(b) Subject to the limitations imposed under paragraph (c) of this subdivision, an audited partnership making an election under this subdivision shall, no later than ninety days after the final determination date, pay an amount, determined as follows, in lieu of taxes owed by its direct and indirect partners:

a. Exclude from final federal adjustments the distributive share of these adjustments reported to a direct exempt partner not subject to taxation under sections 143.011 to 143.996;

b. For the total distributive shares of the remaining final federal adjustments reported to direct corporate partners subject to taxation under the laws of this state and to direct exempt partners subject to taxation under sections 143.011 to 143.996, apportion and allocate such adjustments as provided under section 143.455 if applicable, and multiply the resulting amount by the current tax rate under section 143.071 for direct corporate partners and direct exempt partners that are corporations, or the highest tax rate under section 143.011 for direct exempt partners that are not corporations;

c. For the total distributive shares of the remaining final federal adjustments reported to nonresident direct partners subject to taxation under sections 143.011 to 143.996, determine the amount of such adjustments which is derived from or connected with sources in this state as described in section 143.421, and multiply the resulting amount by the highest tax rate under section 143.011;

d. For the total distributive shares of the remaining final federal adjustments reported to tiered partners:

(i) Determine the amount of such adjustments which is of a type that it would be subject to sourcing to this state under section 143.421; then, determine the portion of this amount that would be sourced to this state by applying section 143.421;

(ii) Determine the amount of such adjustments which is of a type that it would not be subject to sourcing to this state by a nonresident partner under section 143.421; and

(iii) Determine the portion of the amount determined under item (ii) of this subparagraph that can be established, under regulation issued by the department of revenue, to be properly allocable to nonresident indirect partners or other partners not subject to taxation on the adjustments;

e. Multiply the total of the amounts determined in items (i) and (ii) of subparagraph d., reduced by the amount determined in item (iii) of subparagraph d., by the highest tax rate under section 143.011;

f. For the total distributive shares of the remaining final federal adjustments reported to resident direct partners subject to taxation under section 143.011 for

193 individuals, or section 143.061 for estates, trusts, or fiduciaries, multiply that amount by
194 the highest tax rate under section 143.011;

195 g. For the total distributive shares of the remaining final federal adjustments
196 reported to direct partners subject to taxation under chapter 148, section 153.020, or any
197 provision imposing tax in this state on, or measured by, the income, gross or net premiums,
198 or premium equivalents of insurance providers, apportion and allocate such adjustments
199 in the manner provided by statute for that tax type, if applicable, and multiply the
200 resulting amount by the tax rate corresponding to the tax type applicable to that direct
201 partner; and

202 h. Add the amounts determined under subparagraphs b., c., e., f., and g. of this
203 paragraph, along with any additions, penalty, and interest due as provided under sections
204 143.011 to 143.961 or other applicable tax law. The rate of interest on any interest due, as
205 referred to in this subdivision, shall be determined under section 32.068;

206 (c) Final federal adjustments subject to this election exclude:

207 a. The distributive share of final audit adjustments that would, under section
208 143.455, be included in the apportionable income of any direct or indirect corporate
209 partner, provided that the audited partnership can reasonably determine this; and

210 b. Any final federal adjustments resulting from an administrative adjustment
211 request; and

212 (d) An audited partnership not otherwise subject to any reporting or payment
213 obligation to this state that makes an election under paragraph (c) of this subdivision
214 consents to be subject to the laws of this state related to reporting, assessment, payment,
215 and collection of Missouri tax calculated under the election.

216 (5) The direct and indirect partners of an audited partnership that are tiered
217 partners, and all of the partners of those tiered partners that are subject to taxation under
218 sections 143.011 to 143.961, are subject to the reporting and payment requirements of
219 subdivision (3) of this subsection, and the tiered partners are entitled to make the election
220 provided in subdivision (4) of this subsection. The tiered partners or their partners shall
221 make required reports and payments no later than ninety days after the time for filing and
222 furnishing statements to tiered partners and their partners as established under IRC
223 Section 6226 and the regulations thereunder. The department of revenue may promulgate
224 regulations to establish procedures and interim time periods for the reports and payments
225 required by tiered partners and their partners and for making the elections under this
226 subsection.

227 (6) (a) The election made under subdivision (4) of this subsection is irrevocable,
228 unless the director of revenue, in his or her discretion or that of the director's delegee,
229 determines otherwise.

230 (b) If properly reported and paid by the audited partnership or tiered partner, the
231 amount determined under paragraph (b) of subdivision (4) of this subsection shall be
232 treated as paid in lieu of taxes owed by its direct and indirect partners, to the extent
233 applicable, on the same final federal adjustments. The direct partners or indirect partners
234 may not take any deduction or credit for this amount or claim a refund of the amount in
235 this state. Nothing in this subdivision shall preclude a direct resident partner from
236 claiming a credit under section 143.081 against the tax otherwise due to this state for any
237 amounts paid by the audited partnership or tiered partner on the resident partner's behalf
238 to another state or local tax jurisdiction in accordance with the provisions of section
239 143.081.

240 (7) Nothing in this subsection prevents the department of revenue from assessing
241 direct partners or indirect partners for taxes they owe, using the best information
242 available, in the event that a partnership or tiered partner fails to timely make any report
243 or payment required under this subsection for any reason.

244 4. The department of revenue shall assess additional tax, interest, and penalties
245 arising from final federal adjustments arising from an audit by the IRS, including a
246 partnership level audit, or reported by the taxpayer on an amended federal income tax
247 return or as part of an administrative adjustment request, by the following dates:

248 (1) If a taxpayer files with the department of revenue a federal adjustments report
249 or an amended state tax return as required within the period provided under subsection
250 2 or 3 of this section, the department of revenue may assess any amounts, including in-lieu-
251 of amounts, taxes, interest, and penalties arising from those federal adjustments, if the
252 department of revenue issues a notice of the assessment to the taxpayer no later than:

253 (a) The expiration of the limitations period provided under section 143.711; or

254 (b) The expiration of the one-year period following the date of filing with the
255 department of revenue of the federal adjustments report; and

256 (2) If the taxpayer fails to file the federal adjustments report within the period
257 provided under subsection 2 or 3 of this section, as appropriate, or if the federal
258 adjustments report filed by the taxpayer omits final federal adjustments or understates the
259 correct amount of tax owed, the department of revenue may assess amounts or additional
260 amounts, including in-lieu-of amounts, taxes, interest, and penalties arising from the final
261 federal adjustments, if it mails a notice of the assessment to the taxpayer by a date which
262 is the latest of the following:

- 263 a. The expiration of the limitations period provided under section 143.711;
264 b. The expiration of the one-year period following the date the federal adjustments
265 report was filed with the department of revenue; or
266 c. Absent fraud, the expiration of the six-year period following the final
267 determination date.

268 5. A taxpayer may make estimated payments to the department of revenue,
269 following the process prescribed by the department of revenue, of the Missouri tax
270 expected to result from a pending IRS audit, prior to the due date of the federal
271 adjustments report, without having to file the report with the department of revenue. The
272 estimated tax payments shall be credited against any tax liability ultimately found to be
273 due to this state ("Final Missouri Tax Liability") and shall limit the accrual of further
274 statutory interest on that amount. If the estimated tax payments exceed the final tax
275 liability and statutory interest ultimately determined to be due, the taxpayer is entitled to
276 a refund or credit for the excess, provided the taxpayer files a federal adjustments report
277 or claim for refund or credit of tax under sections 143.781 or 143.821, no later than one
278 year following the final determination date.

279 6. Except for final federal adjustments required to be reported for federal purposes
280 under IRC Section 6225(a)(2), a taxpayer may file a claim for refund or credit of tax
281 arising from federal adjustments made by the IRS on or before the later of:

282 (1) The expiration of the last day for filing a claim for refund or credit of Missouri
283 tax under Section 143.801, including any extensions; or

284 (2) One year from the date a federal adjustments report prescribed under
285 subsection 2 or 3 of this section, as applicable, was due to the department of revenue,
286 including any extensions granted under subsection 7 of this section.

287
288 The federal adjustments report shall serve as the means for the taxpayer to report
289 additional tax due, report a claim for refund or credit of tax, and make other adjustments,
290 including adjustments to a taxpayer's net operating losses, resulting from adjustments to
291 the taxpayer's federal taxable income.

292 7. (1) Unless otherwise agreed in writing by the taxpayer and the department of
293 revenue, any adjustments made by the department or by the taxpayer after the expiration
294 of the appropriate limitations period found under section 143.711 or 143.801 are limited
295 to changes to the taxpayer's tax liability arising from federal adjustments.

296 (2) For purposes of compliance with this section, the time periods provided in
297 chapter 143 may be extended:

298 (a) Automatically, upon written notice to the department of revenue, by ninety days
299 for an audited partnership or tiered partner which has one hundred or more direct
300 partners; or

301 (b) By written agreement between the taxpayer and the department of revenue.

302 (3) Any extension granted under this subsection for filing the federal adjustments
303 report extends the last day prescribed by law for assessing any additional tax arising from
304 the adjustments to federal taxable income and the period for filing a claim for refund or
305 credit of taxes under section 143.781 or 143.821.

306 8. The department of revenue shall promulgate rules to implement the provisions
307 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that
308 is created under the authority delegated in this section shall become effective only if it
309 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
310 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
311 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
312 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
313 grant of rulemaking authority and any rule proposed or adopted after August 28, 2020,
314 shall be invalid and void.

315 9. This section applies to any adjustments to a taxpayer's federal taxable income
316 or federal adjusted gross income with a final determination date occurring on and after
317 January 1, 2021.

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