

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1912

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCGIRL.

4602H.01P

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 143.081 and 143.436, RSMo, and to enact in lieu thereof two new sections relating to the taxation of pass-through entities.

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

Section A. Sections 143.081 and 143.436, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 143.081 and 143.436, to read as follows:

143.081. 1. A resident individual, resident estate, and resident trust shall be allowed a  
2 credit against the tax otherwise due pursuant to sections 143.005 to 143.998 for the amount of  
3 any income tax imposed for the taxable year by another state of the United States (or a  
4 political subdivision thereof) or the District of Columbia on income derived from sources  
5 therein and which is also subject to tax pursuant to sections 143.005 to 143.998. For purposes  
6 of this subsection, the phrase "income tax imposed" shall be that amount of tax before any  
7 income tax credit allowed by such other state or the District of Columbia if the other state or  
8 the District of Columbia authorizes a reciprocal benefit for residents of this state.

9 2. The credit provided pursuant to this section shall not exceed an amount which  
10 bears the same ratio to the tax otherwise due pursuant to sections 143.005 to 143.998 as the  
11 amount of the taxpayer's Missouri adjusted gross income derived from sources in the other  
12 ~~[taxing]~~ jurisdiction bears to the taxpayer's Missouri adjusted gross income derived from all  
13 sources. In applying the limitation of the previous sentence to an estate or trust, Missouri  
14 taxable income shall be substituted for Missouri adjusted gross income. If the tax of more  
15 than one other ~~[taxing]~~ jurisdiction is imposed on the same item of income, the credit shall not  
16 exceed the limitation that would result if the taxes of all the other jurisdictions applicable to

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 the item were deemed to be of a single jurisdiction. **The provisions of this subsection shall**  
18 **apply to any credit allowed under this section, including a credit allowed under**  
19 **subdivision (2) of subsection 3 of this section.**

20 3. (1) For the purposes of this section, in the case of an S corporation, each resident S  
21 shareholder shall be considered to have paid a tax imposed on the shareholder in an amount  
22 equal to the shareholder's pro rata share of any net income tax paid by the S corporation to a  
23 state which does not measure the income of shareholders on an S corporation by reference to  
24 the income of the S corporation or where a composite return and composite payments are  
25 made in such state on behalf of the S shareholders by the S corporation.

26 (2) A resident S shareholder shall be eligible for a credit issued pursuant to this  
27 section in an amount equal to the ~~[shareholder's pro rata share of any]~~ **individual** income tax  
28 imposed pursuant to this chapter on **such shareholder's share of the S corporation's** income  
29 derived from sources in another state of the United States~~[-or a political subdivision thereof,]~~  
30 or the District of Columbia, and which is subject to **income** tax pursuant to this chapter but is  
31 not subject to **income** tax in such other jurisdiction **or a political subdivision thereof.**

32 4. For purposes of subsection 3 of this section, in the case of an S corporation that is a  
33 bank chartered by a state, the Office of Thrift Supervision, or the comptroller of currency,  
34 each Missouri resident S shareholder of such out-of-state bank shall qualify for the  
35 shareholder's pro rata share of any net tax paid, including a bank franchise tax based on the  
36 income of the bank, by such S corporation where bank payment of taxes are made in such  
37 state on behalf of the S shareholders by the S bank to the extent of the tax paid.

143.436. 1. This section shall be known and may be cited as the "SALT Parity Act".

2 2. For the purposes of this section, the following terms shall mean:

3 (1) "Affected business entity", any partnership or S corporation that elects to be  
4 subject to tax pursuant to subsection ~~[40]~~ **11** of this section;

5 (2) "Direct member", a member that holds an interest directly in an affected business  
6 entity;

7 (3) "Indirect member", a member that itself holds an interest, through a direct or  
8 indirect member that is a partnership or an S corporation, in an affected business entity;

9 (4) "Member":  
10

(a) A shareholder of an S corporation;

11 (b) A partner in a general partnership, a limited partnership, or a limited liability  
12 partnership; or

13 (c) A member of a limited liability company that is treated as a partnership or S  
14 corporation for federal income tax purposes;

15 (5) "Partnership", the same meaning as provided in 26 U.S.C. Section 7701(a)(2), **but**  
16 **not including a publicly traded partnership.** The term partnership shall include a limited  
17 liability company that is treated as a partnership for federal income tax purposes;

18 (6) "S corporation", a corporation or limited liability company that is treated as an S  
19 corporation for federal income tax purposes;

20 (7) "Tax year", the tax year of a partnership or S corporation for federal income tax  
21 purposes.

22 3. (1) Notwithstanding any provision of law to the contrary, a tax is hereby imposed  
23 on each affected business entity that is a partnership and that is doing business in this state.  
24 Such affected business entity shall, at the time that the affected business entity's return is due,  
25 pay a tax ~~[in an amount equal to]~~ **as determined in this subsection.** The sum of the  
26 separately and nonseparately computed **income and deduction** items, as described in 26  
27 U.S.C. Section 702(a), of the affected business entity, to the extent derived from or connected  
28 with sources within this state, as determined pursuant to section 143.455, **shall be** decreased  
29 by ~~[the deduction allowed under 26 U.S.C. Section 199A computed as if such deduction was~~  
30 ~~allowed to be taken by the affected business entity for federal tax purposes]~~ **the percentage**  
31 **deduction that would be allowable to the owners under section 143.022,** and increased or  
32 decreased by any modification made pursuant to ~~[section 143.471]~~ **sections 143.121 and**  
33 **143.141** that relates to an item of the affected business entity's income, gain, loss, or  
34 deduction, to the extent derived from or connected with sources within this state, as  
35 determined pursuant to section 143.455~~[, with such sum]~~. **The resulting amount shall be**  
36 **the partnership's Missouri net income or loss, which, if greater than zero, shall be**  
37 multiplied by the highest rate of tax used to determine a Missouri income tax liability for an  
38 individual pursuant to section 143.011 **to arrive at the tax due.** An affected **business** entity  
39 paying the tax pursuant to this subsection shall include with the payment of such taxes each  
40 report provided to a member pursuant to subsection 7 of this section.

41 (2) If ~~[the amount]~~ **a Missouri net loss is** calculated pursuant to subdivision (1) of  
42 this ~~[section results in a net loss]~~ **subsection,** such net loss may be carried forward to  
43 succeeding tax years for which the affected business entity elects to be subject to tax pursuant  
44 to subsection 11 of this section until fully used.

45 4. (1) Notwithstanding any provision of law to the contrary, a tax is hereby imposed  
46 on each affected business entity that is an S corporation and that is doing business in this  
47 state. Such affected business entity shall, at the time that the affected business entity's **tax**  
48 return is due, pay a tax ~~[in an amount equal to]~~ **as determined in this subsection.** The sum  
49 of the separately and nonseparately computed **income and deduction** items, as described in  
50 26 U.S.C. Section 1366, of the affected business entity, to the extent derived from or  
51 connected with sources within this state, as determined pursuant to section 143.455, **shall be**

52 decreased by ~~[the deduction allowed under 26 U.S.C. Section 199A computed as if such~~  
53 ~~deduction was allowed to be taken by the affected business entity for federal tax purposes]~~  
54 **the percentage deduction that would be allowable to the owners under section 143.022,**  
55 and increased or decreased by any modification made pursuant to ~~[section 143.471]~~ **sections**  
56 **143.121 and 143.141** that relates to an item of the affected business entity's income, gain,  
57 loss, or deduction, to the extent derived from or connected with sources within this state, as  
58 determined pursuant to section 143.455~~[-with such sum]~~. **The resulting amount shall be**  
59 **the S corporation's Missouri net income or loss, which if greater than zero, shall be**  
60 multiplied by the highest rate of tax used to determine a Missouri income tax liability for an  
61 individual pursuant to section 143.011 **to arrive at the tax due.** An affected **business** entity  
62 paying the tax pursuant to this subsection shall include with the payment of such taxes each  
63 report provided to a member pursuant to subsection 7 of this section.

64 (2) If ~~[the amount]~~ **a Missouri net loss is** calculated pursuant to subdivision (1) of  
65 this ~~[section results in a net loss]~~ **section,** such net loss may be carried forward to succeeding  
66 tax years for which the affected business entity elects to be subject to tax pursuant to  
67 subsection 11 of this section until fully used.

68 5. (1) If an affected business entity is a direct or indirect member of another affected  
69 business entity, the member affected business entity shall, when calculating its **Missouri** net  
70 income or loss pursuant to subsection 3 or 4 of this section, subtract its distributive share of  
71 **Missouri net** income or add its distributive share of **Missouri net** loss from the affected  
72 business entity in which it is a direct or indirect member ~~[to the extent that the income or loss~~  
73 ~~was derived from or connected with sources within this state, as determined pursuant to~~  
74 ~~section 143.455]~~.

75 (2) **Any member of an affected business entity may elect not to have tax imposed**  
76 **under this section with respect to the affected business entity's separately and**  
77 **nonseparately computed items described in subsection 3 or 4 of this section, as the case**  
78 **may be, and otherwise subject to tax under this section, to the extent such items are**  
79 **allocable to that member; however, any such opt-out election made by a nonresident**  
80 **member shall also comply with subdivision (3) of this subsection. If and to the extent**  
81 **one or more members of the affected business entity make an opt-out election, the**  
82 **affected business entity shall, in computing the tax under this section, subtract the opt-**  
83 **out members' allocable items described in the preceding sentence. The affected business**  
84 **entity shall, in applying the provisions of this section, take into account the effect of any**  
85 **opt-out election on each opt-out member's share of deductions, credits, and any other**  
86 **relevant items.**

87 (3) **Any opt-out election by a nonresident member shall be effective only if that**  
88 **member has agreed to:**

89           (a) File a return in accordance with the provisions of section 143.181 and to  
90 make timely payment of all taxes imposed on the member by this state with respect to  
91 income of the affected business entity; and

92           (b) Be subject to personal jurisdiction in this state for purposes of the collection  
93 of income taxes, together with related interest and penalties, imposed on the member by  
94 this state with respect to the income of the affected business entity.

95           (4) An opt-out election shall be considered timely filed for a tax year, and for all  
96 subsequent tax years, if it is filed before or in conjunction with the annual return for  
97 such tax year under section 143.511. If a member of an affected business entity does not  
98 timely file an opt-out election for a tax year, that member shall not be precluded from  
99 timely filing an opt-out election for subsequent tax years.

100           6. A nonresident individual who is a member shall not be required to file an income  
101 tax return pursuant to this chapter for a tax year if, for such tax year, the only source of  
102 income derived from or connected with sources within the state for such member, or the  
103 member and the member's spouse if a joint federal income tax return is or shall be filed, is  
104 from one or more affected business entities and such affected business entity or entities file  
105 and pay the tax due under this section.

106           7. Each partnership and S corporation shall report to each of its members, for each tax  
107 year, such member's direct pro rata share of the tax imposed pursuant to this section ~~on~~ by  
108 such partnership or S corporation if it is an affected business entity and its indirect pro rata  
109 share of the tax imposed on any affected business entity in which such affected business  
110 entity is a direct or indirect member. **For each tax year in which it is subject to a tax under**  
111 **this section, the affected business entity shall file an affected business entity tax return**  
112 **on a date prescribed by the director of revenue. The payment of any interest, additions**  
113 **to tax, or penalties shall not be considered part of the tax imposed under this section.**

114           8. (1) Each member that is subject to the tax imposed pursuant to section 143.011 **or**  
115 **143.041** shall be entitled to a credit against the tax imposed pursuant to section 143.011 **or**  
116 **143.041**. Such credit shall be in an amount equal to such member's direct and indirect pro  
117 rata share of the tax paid pursuant to this section by any affected business entity of which  
118 such member is directly or indirectly a member.

119           (2) If the amount of the credit authorized by this subsection exceeds such member's  
120 tax liability for the tax imposed pursuant to section 143.011 **or 143.041**, the excess amount  
121 shall not be refunded but may be carried forward to each succeeding tax year until such credit  
122 is fully taken.

123           9. (1) Each member that is subject to the tax imposed pursuant to section 143.011 as  
124 a resident or part-year resident of this state shall be entitled to a credit against the tax imposed  
125 pursuant to section 143.011 for such member's direct and indirect pro rata share of taxes paid

to another state of the United States or to the District of Columbia, on income of any partnership or S corporation of which such person is a member that is derived therefrom, provided the taxes paid to another state of the United States or to the District of Columbia results from a tax that the director of revenue determines is substantially similar to the tax imposed pursuant to this section. Any such credit shall be calculated in a manner to be prescribed by the director of revenue, provided such calculation is consistent with the provisions of this section, and further provided that the limitations provided in subsection 2 of section 143.081 shall apply to the credit authorized by this subsection.

(2) If the amount of the credit authorized by this subsection exceeds such member's tax liability for the tax imposed pursuant to section 143.011, the excess amount shall not be refunded and shall not be carried forward.

10. (1) Each corporation **or fiduciary** that is subject to the tax imposed pursuant to section **143.061 or** 143.071 and that is a member, **or, in the case of a fiduciary subject to tax under section 143.061, is the fiduciary of an estate or trust that is a member,** shall be entitled to a credit against the tax imposed pursuant to section 143.071. Such credit shall be in an amount equal to such corporation's, **estate's, or trust's** direct and indirect pro rata share of the tax paid pursuant to this section by any affected business entity of which such corporation, **estate, or trust** is directly or indirectly a member. Such credit shall be applied after all other credits.

(2) If the amount of the credit authorized by this subsection exceeds such corporation's **or fiduciary's** tax liability for the tax imposed pursuant to section **143.061 or** 143.071, the excess amount shall not be refunded but may be carried forward to each succeeding tax year until such credit is fully taken.

11. A partnership or an S corporation may elect to become an affected business entity that is required to pay the tax pursuant to this section ~~[in any tax year]~~. A separate election shall be made for each ~~[taxable]~~ tax year. Such election shall be made on such form and in such manner as the director of revenue may prescribe by rule. An election made pursuant to this subsection shall be signed by:

(1) Each member of the electing entity who is a member at the time the election is filed; ~~or~~

(2) Any officer, manager, or member of the electing entity who is authorized to make the election and who attests to having such authorization under penalty of perjury; **or**

**(3) The designated affected business entity representative of the electing entity.**

12. The provisions of sections 143.425 and 143.601 shall apply to any modifications made to an affected business entity's federal return, and such affected business entity shall pay any resulting underpayment of tax to the extent not already paid pursuant to section 143.425.

162           13. (1) With respect to an action required or permitted to be taken by an affected  
163 business entity pursuant to this section, a proceeding under section 143.631 for  
164 reconsideration by the director of revenue, an appeal to the administrative hearing  
165 commission, or a review by the judiciary with respect to such action, ~~[the affected~~  
166 ~~business entity]~~ **a partnership or S corporation** shall designate an affected business entity  
167 representative for the tax year, and such affected business entity representative shall have the  
168 sole authority to act on behalf of the affected business entity, and the affected business entity's  
169 members shall be bound by those actions.

170           (2) The department of revenue may establish reasonable qualifications and  
171 procedures for designating a person to be the affected business entity representative.

172           (3) The affected business entity representative shall be considered an authorized  
173 representative of the affected business entity and its members under section 32.057 for the  
174 purposes of compliance with this section, or participating in a proceeding described in  
175 subdivision (1) of this subsection.

176           14. The provisions of this section shall only apply to tax years ending on or after  
177 December 31, 2022.

178           15. The department of revenue may promulgate rules to implement the provisions of  
179 this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
180 created under the authority delegated in this section shall become effective only if it complies  
181 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
182 This section and chapter 536 are nonseverable and if any of the powers vested with the  
183 general assembly pursuant to chapter 536 to review, to delay the effective date, or to  
184 disapprove and annul a rule are subsequently held unconstitutional, then the grant of  
185 rulemaking authority and any rule proposed or adopted after August 28, 2022, shall be invalid  
186 and void.

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