

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 3405

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE THOMPSON.

6234H.01P

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal section 143.436, RSMo, and to enact in lieu thereof one new section 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Section A. Section 143.436, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 143.436, to read as follows:

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

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

(1) "Affected business entity", any partnership or S corporation that elects to be subject to tax pursuant to subsection 11 of this section;

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

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

(4) "Member":

(a) A shareholder of an S corporation;

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

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

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.

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 as determined in this subsection.

26 **(a) For all tax years ending before December 31, 2026,** the sum of the separately  
27 and nonseparately computed income and deduction items, as described in 26 U.S.C. Section  
28 702(a), of the affected business entity, to the extent derived from or connected with sources  
29 within this state, as determined pursuant to section 143.455, shall be decreased by the  
30 percentage deduction that would be allowable to the owners under section 143.022, and  
31 increased or decreased by any modification made pursuant to sections 143.121 and 143.141  
32 that relates to an item of the affected business entity's income, gain, loss, or deduction, to the  
33 extent derived from or connected with sources within this state, as determined pursuant to  
34 section 143.455. The resulting amount shall be the partnership's Missouri net income or loss,  
35 which, if greater than zero, shall be multiplied by the highest rate of tax used to determine a  
36 Missouri income tax liability for an individual pursuant to section 143.011 to arrive at the tax  
37 due.

38 **(b) For all tax years ending on or after December 31, 2026, the sum of the**  
39 **separately and nonseparately computed income and deduction items, as described in 26**  
40 **U.S.C. Section 702(a), of the affected business entity shall be decreased by twenty**  
41 **percent of the affected business entity's ordinary business income as properly reported**  
42 **on the partnership's federal Form 1065 for the same tax year, and shall be increased or**  
43 **deceased by any modification made under sections 143.121 and 143.141 that relates to**  
44 **an item of the affected business entity's income, gain, loss, or deduction. The resulting**  
45 **amount, to the extent derived from sources within this state as determined under section**  
46 **143.455, shall be the partnership's Missouri net income or loss, which, if greater than**  
47 **zero, shall be multiplied by the highest rate of tax used to determine a Missouri income**  
48 **tax liability for an individual under section 143.011 to arrive at the tax due.**

49 **(c)** An affected business entity paying the tax pursuant to this subsection shall include  
50 with the payment of such taxes each report provided to a member pursuant to subsection 7 of  
51 this section.

52 (2) If a Missouri net loss is calculated pursuant to subdivision (1) of this subsection,  
53 such net loss may be carried forward to succeeding tax years for which the affected business  
54 entity elects to be subject to tax pursuant to subsection 11 of this section until fully used.

55 4. (1) Notwithstanding any provision of law to the contrary, a tax is hereby imposed  
56 on each affected business entity that is an S corporation and that is doing business in this  
57 state. Such affected business entity shall, at the time that the affected business entity's tax  
58 return is due, pay a tax as determined in this subsection.

59 (a) **For tax years ending before December 31, 2026,** the sum of the separately and  
60 nonseparately computed income and deduction items, as described in 26 U.S.C. Section 1366,  
61 of the affected business entity, to the extent derived from or connected with sources within  
62 this state, as determined pursuant to section 143.455, shall be decreased by the percentage  
63 deduction that would be allowable to the owners under section 143.022, and increased or  
64 decreased by any modification made pursuant to sections 143.121 and 143.141 that relates to  
65 an item of the affected business entity's income, gain, loss, or deduction, to the extent derived  
66 from or connected with sources within this state, as determined pursuant to section 143.455.  
67 The resulting amount shall be the S corporation's Missouri net income or loss, which if  
68 greater than zero, shall be multiplied by the highest rate of tax used to determine a Missouri  
69 income tax liability for an individual pursuant to section 143.011 to arrive at the tax due.

70 (b) **For all tax years ending on or after December 31, 2026, the sum of the**  
71 **separately and nonseparately computed income and deduction items, as described in 26**  
72 **U.S.C. Section 1366, of the affected business entity shall be decreased by twenty percent**  
73 **of the affected business entity's ordinary business income as properly reported on the S**  
74 **corporation's federal Form 1120-S for the same tax year, and shall be increased or**  
75 **deceased by any modification made under sections 143.121 and 143.141 that relates to**  
76 **an item of the affected business entity's income, gain, loss, or deduction. The resulting**  
77 **amount, to the extent derived from sources within this state as determined under section**  
78 **143.455, shall be the S corporation's Missouri net income or loss, which, if greater than**  
79 **zero, shall be multiplied by the highest rate of tax used to determine a Missouri income**  
80 **tax liability for an individual under section 143.011 to arrive at the tax due.**

81 (c) An affected business entity paying the tax pursuant to this subsection shall include  
82 with the payment of such taxes each report provided to a member pursuant to subsection 7 of  
83 this section.

84 (2) If a Missouri net loss is calculated pursuant to subdivision (1) of this section, such  
85 net loss may be carried forward to succeeding tax years for which the affected business entity  
86 elects to be subject to tax pursuant to subsection 11 of this section until fully used.

87 5. (1) If an affected business entity is a direct or indirect member of another affected  
88 business entity, the member affected business entity shall, when calculating its Missouri net

89 income or loss pursuant to subsection 3 or 4 of this section, subtract its distributive share of  
90 Missouri net income or add its distributive share of Missouri net loss from the affected  
91 business entity in which it is a direct or indirect member.

92 (2) Any member of an affected business entity may elect not to have tax imposed  
93 under this section with respect to the affected business entity's separately and nonseparately  
94 computed items described in subsection 3 or 4 of this section, as the case may be, and  
95 otherwise subject to tax under this section, to the extent such items are allocable to that  
96 member; however, any such opt-out election made by a nonresident member shall also  
97 comply with subdivision (3) of this subsection. If and to the extent one or more members of  
98 the affected business entity make an opt-out election, the affected business entity shall, in  
99 computing the tax under this section, subtract the opt-out members' allocable items described  
100 in the preceding sentence. The affected business entity shall, in applying the provisions of  
101 this section, take into account the effect of any opt-out election on each opt-out member's  
102 share of deductions, credits, and any other relevant items. **A member who has filed an opt-**  
103 **out election shall be ineligible for any tax credits or deductions under subsection 8 or 10**  
104 **of this section resulting from any tax year for which the opt-out election is effective.**

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

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

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

113 (4) An opt-out election shall be considered timely filed for a tax year, and for all  
114 subsequent tax years, if it is filed **on or before** ~~[or in conjunction with the annual return for~~  
115 ~~such tax year under section 143.511]~~ **the earlier of the due date, without regard to any**  
116 **extension, or the actual filing date of the affected business entity's return in compliance**  
117 **with this section.** If a member of an affected business entity does not timely file an opt-out  
118 election for a tax year, that member shall not be precluded from timely filing an opt-out  
119 election for subsequent tax years.

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

126           7. Each partnership and S corporation shall report to each of its members, for each tax  
127 year, such member's direct pro rata share of the tax imposed pursuant to this section by such  
128 partnership or S corporation if it is an affected business entity and its indirect pro rata share of  
129 the tax imposed on any affected business entity in which such affected business entity is a  
130 direct or indirect member. For each tax year in which it is subject to a tax under this section,  
131 the affected business entity shall file an affected business entity tax return on a date  
132 prescribed by the director of revenue. The payment of any interest, additions to tax, or  
133 penalties shall not be considered part of the tax imposed under this section.

134           8. (1) **For all tax years beginning on or before December 31, 2026**, each member  
135 that is subject to the tax imposed pursuant to section 143.011 or 143.041 shall be entitled to a  
136 credit against the tax imposed pursuant to section 143.011 or 143.041. Such credit shall be in  
137 an amount equal to such member's direct and indirect pro rata share of the tax paid pursuant to  
138 this section by any affected business entity of which such member is directly or indirectly a  
139 member.

140           (2) If the amount of the credit authorized by **subdivision (1)** of this subsection  
141 exceeds such member's tax liability for the tax imposed pursuant to section 143.011 or  
142 143.041, the excess amount shall not be refunded but may be carried forward to each  
143 succeeding tax year until such credit is fully taken.

144           (3) **For all tax years beginning on or after January 1, 2027, for each member that**  
145 **is subject to the tax imposed under section 143.011 or 143.041, there shall be deducted**  
146 **from the Missouri adjusted gross income, in determining Missouri taxable income, an**  
147 **amount equal to the sum of such member's direct and indirect pro rata share of the tax**  
148 **paid under this section by any affected business entity of which such member is directly**  
149 **or indirectly a member, divided by a percentage equal to the highest rate of tax imposed**  
150 **on individuals under section 143.011 for that tax year.**

151           9. (1) Each member that is subject to the tax imposed pursuant to section 143.011 as  
152 a resident or part-year resident of this state shall be entitled to a credit **under section 143.081**  
153 against the tax imposed pursuant to section 143.011 for such member's direct and indirect pro  
154 rata share of taxes paid to another state of the United States or to the District of Columbia, on  
155 income of any partnership or S corporation of which such person is a member that is derived  
156 therefrom, provided the taxes paid to another state of the United States or to the District of  
157 Columbia results from a tax that the director of revenue determines is substantially similar to  
158 the tax imposed pursuant to this section. Any such credit shall be calculated in a manner to be  
159 prescribed by the director of revenue, provided such calculation is consistent with the  
160 provisions of this section, and further provided that the limitations provided in subsection 2 of  
161 section 143.081 shall apply to the credit authorized by this subsection.

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

165 10. (1) **For all tax years beginning on or before December 31, 2026**, each  
166 corporation or fiduciary that is subject to the tax imposed pursuant to section 143.061 or  
167 143.071 and that is a member, or, in the case of a fiduciary subject to tax under section  
168 143.061, is the fiduciary of an estate or trust that is a member, shall be entitled to a credit  
169 against the tax imposed pursuant to section **143.061 or** 143.071. Such credit shall be in an  
170 amount equal to such corporation's, estate's, or trust's direct and indirect pro rata share of the  
171 tax paid pursuant to this section by any affected business entity of which such corporation,  
172 estate, or trust is directly or indirectly a member. Such credit shall be applied after all other  
173 credits.

174 (2) If the amount of the credit authorized by **subdivision (1) of** this subsection  
175 exceeds such corporation's or fiduciary's tax liability for the tax imposed pursuant to section  
176 143.061 or 143.071, the excess amount shall not be refunded but may be carried forward to  
177 each succeeding tax year until such credit is fully taken.

178 (3) **For all tax years beginning on or after January 1, 2027, for each corporation**  
179 **or fiduciary that is subject to the tax imposed under section 143.061 or 143.071 and that**  
180 **is a member or, in the case of a fiduciary subject to tax under section 143.061, is the**  
181 **fiduciary of an estate or trust that is a member, there shall be deducted, in determining**  
182 **Missouri taxable income, an amount equal to the sum of such corporation's, estate's, or**  
183 **trust's direct and indirect pro rata share of the tax paid under this section by any**  
184 **affected business entity of which such corporation, estate, or trust is directly or**  
185 **indirectly a member, divided by a percentage equal to the highest rate of tax imposed on**  
186 **individuals under section 143.011 for that tax year.**

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

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

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

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

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

200           13. (1) With respect to an action required or permitted to be taken by an affected  
201 business entity pursuant to this section, a proceeding under section 143.631 for  
202 reconsideration by the director of revenue, an appeal to the administrative hearing  
203 commission, or a review by the judiciary with respect to such action, a partnership or S  
204 corporation shall designate an affected business entity representative for the tax year, and  
205 such affected business entity representative shall have the sole authority to act on behalf of  
206 the affected business entity, and the affected business entity's members shall be bound by  
207 those actions.

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

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

214           14. ~~[The provisions of this section shall only apply to tax years ending on or after~~  
215 ~~December 31, 2022.~~

216           ~~15.]~~ The department of revenue may promulgate rules to implement the provisions of  
217 this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
218 created under the authority delegated in this section shall become effective only if it complies  
219 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
220 This section and chapter 536 are nonseverable and if any of the powers vested with the  
221 general assembly pursuant to chapter 536 to review, to delay the effective date, or to  
222 disapprove and annul a rule are subsequently held unconstitutional, then the grant of  
223 rulemaking authority and any rule proposed or adopted after August 28, 2022, shall be invalid  
224 and void.

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