

# Rules of Department of Revenue

## Division 10—Director of Revenue

### Chapter 2—Income Tax

Title	Page
<b>12 CSR 10-2.005</b> Questions and Answers .....	5
<b>12 CSR 10-2.010</b> Capital Gain (Loss) Allocation Between Spouses .....	6
<b>12 CSR 10-2.015</b> Employers' Withholding of Tax .....	8
<b>12 CSR 10-2.016</b> Quarter-Monthly Period Reporting and Remitting Withholding Tax .....	12
<b>12 CSR 10-2.017</b> Transient Employer Financial Assurance Instrument for Employer's Withholding Tax .....	13
<b>12 CSR 10-2.020</b> Difference in Basis on December 31, 1972 .....	20
<b>12 CSR 10-2.025</b> Adjustment to Avoid Double Taxation .....	21
<b>12 CSR 10-2.030</b> Subsequent Change of Accounting Period .....	22
<b>12 CSR 10-2.035</b> Conformity of Missouri With Federal Accounting Methods .....	22
<b>12 CSR 10-2.040</b> Transitional Adjustments in Accounting Methods .....	23
<b>12 CSR 10-2.045</b> Missouri Consolidated Income Tax Returns .....	25
<b>12 CSR 10-2.050</b> Elective Division of Income.....	29
<b>12 CSR 10-2.055</b> Failure to File Tax Returns .....	31
<b>12 CSR 10-2.060</b> Failure to Pay Tax .....	32
<b>12 CSR 10-2.065</b> Failure to Pay Estimated Tax .....	33
<b>12 CSR 10-2.067</b> Failure to Pay Estimated Tax for Tax Years Ending After December 31, 1983 .....	37
<b>12 CSR 10-2.070</b> Interest on Overpayments .....	40
<b>12 CSR 10-2.075</b> Multistate Allocation and Apportionment.....	42
<b>12 CSR 10-2.080</b> Domestic International Sales Corporations .....	52
<b>12 CSR 10-2.085</b> Credit for New or Expanded Business Facility .....	52

<b>12 CSR 10-2.090</b>	Computation of Federal Income Tax Deduction for Consolidated Groups .....	54
<b>12 CSR 10-2.105</b>	Report of Changes in Federal Income Tax Return.....	54
<b>12 CSR 10-2.110</b>	Penalty for Filing Incomplete or Misleading Income Tax Returns (Rescinded December 26, 1985) .....	55
<b>12 CSR 10-2.115</b>	Enterprise Zone Credit and Exemption (Rescinded July 30, 1994) .....	55
<b>12 CSR 10-2.120</b>	Information at Source Reporting Requirements .....	55
<b>12 CSR 10-2.125</b>	Cultural Contributions.....	55
<b>12 CSR 10-2.130</b>	Allocation of Taxable Social Security Benefits Between Spouses.....	56
<b>12 CSR 10-2.135</b>	Frivolous Returns .....	56
<b>12 CSR 10-2.140</b>	Partnership Filing Requirements.....	56
<b>12 CSR 10-2.145</b>	Regulation for Computation of Interest on Investment Tax Credit Carryback.....	57
<b>12 CSR 10-2.150</b>	Tax Exempt Status of United States Government-Related Obligations .....	57
<b>12 CSR 10-2.155</b>	Regulated Investment Companies .....	57
<b>12 CSR 10-2.160</b>	State Income Tax Deduction Add-Back .....	58
<b>12 CSR 10-2.165</b>	Net Operating Losses.....	59
<b>12 CSR 10-2.170</b>	Wood Energy Credit (Rescinded September 6, 1992) .....	60
<b>12 CSR 10-2.175</b>	Agricultural Unemployed Person .....	60
<b>12 CSR 10-2.180</b>	Public Law 86-272 Immunity .....	61
<b>12 CSR 10-2.190</b>	Partners and S Corporation Shareholders Composite Individual Income Tax Return Filing Requirements and Withholding of Income Tax Requirements .....	62
<b>12 CSR 10-2.195</b>	Special Needs Adoption Tax Credit .....	64
<b>12 CSR 10-2.200</b>	Trucking Companies.....	64
<b>12 CSR 10-2.205</b>	Railroads.....	66
<b>12 CSR 10-2.210</b>	Airlines .....	67
<b>12 CSR 10-2.220</b>	Taxation of Nonresident Members of Professional Athletic Teams.....	71
<b>12 CSR 10-2.225</b>	Withholding of Tax by Nonresident Professional Athletic Teams .....	71

<b>12 CSR 10-2.226</b>	Withholding of Tax by Nonresident Professional Entertainers .....	72
<b>12 CSR 10-2.230</b>	Construction Contractors .....	72
<b>12 CSR 10-2.235</b>	Government Pension Exemption.....	77
<b>12 CSR 10-2.240</b>	Determination of Timeliness .....	78
<b>12 CSR 10-2.705</b>	Filing Corporation Tax Returns.....	79
<b>12 CSR 10-2.710</b>	Net Operating Losses on Individual Income Tax Returns .....	79
<b>12 CSR 10-2.720</b>	Reporting Requirements for Individual Medical Accounts .....	80
<b>12 CSR 10-2.730</b>	Expenses Related to Production of Tax Exempt Interest Income .....	81

**Title 12—DEPARTMENT OF REVENUE**  
**Division 10—Director of Revenue**  
**Chapter 2—Income Tax**

**12 CSR 10-2.005 Questions and Answers**

*PURPOSE: Income Tax Release 73.11 is rewritten and renumbered in order to comply with the uniform procedures adopted by the secretary of state under section 536.023, RSMo. No changes in the substantive effect of the release have been made. This rule represents the response of the Department of Revenue to questions involving the Missouri income tax treatment of Missouri resident individual cash basis taxpayers for calendar year 1973 and following years.*

(1) The following answers have been given by the income tax bureau in response to questions involving the 1973 Missouri income taxation of calendar year, cash basis Missouri resident individuals:

(A) Mr. A is a retired employee of a state agency. The Missouri statute authorizing his governmental pension also provides that “any annuity, benefits. . . under this act are exempt from any tax by the State of Missouri.” Mr. A’s 1973 federal adjusted gross income (FAGI) includes his \$2000 state retirement. Can he lower by \$2000 his 1973 Missouri return? The answer to this question is yes. He has a negative modification to FAGI in determining Missouri adjusted gross income (MAGI). This only applies to a retired government employee whose benefits are expressly exempted by a specific section of the *Revised Statutes of Missouri*. Mr. A’s explanation attached to page 2 of his Missouri Form 40 should include the amount received, the name of the employer and either an exemption notice from the employer or a reference to the specific Missouri statutory section;

(B) In 1973, B received a refund of his/her 1972 Missouri income tax. S/he included it in his/her 1973 FAGI because it was a tax that s/he previously deducted as a federal itemized deduction. Is the refund a negative modification to FAGI in determining MAGI? The answer to this question is no. No Missouri statute provides a negative modification or other special treatment for a Missouri income tax refund in determining MAGI (section 143.121, RSMo);

(C) C deducted medical expenses as an itemized deduction on his/her 1972 federal return. In 1973, s/he received an insurance reimbursement. On his/her 1973 federal income tax return, s/he reported the recovery of the previously deducted expense as income. S/he was not eligible to deduct medical expenses on his/her 1972 Missouri

income tax return. Is the medical expense reimbursement a negative modification to FAGI in determining MAGI? The answer to this question is no. No Missouri statute provides a negative modification or other special treatment for a medical insurance reimbursement in determining MAGI (section 143.121, RSMo);

(D) In 1973, D paid the \$200 balance on his/her 1972 federal income tax. Is it deductible on his/her 1973 Missouri return? The answer to this question is yes. The 1973 returns (Forms 40 and 40A) contain a line to claim this federal income tax payment for an old law year (Income Tax Release 73-1, March 1, 1973);

(E) In 1973, E paid 1972 federal self-employment tax of \$200. Is it deductible on the 1973 Missouri return? The answer to this question is no. Self-employment taxes for 1973 and later years (but not for 1972 and earlier years) are added to federal itemized deductions in determining Missouri itemized deductions. As discussed in subsection (1)(D) of this rule, a 1973 payment of federal income (but not self-employment) tax results in a 1973 deduction (sections 143.141(3)(c) and 143.171.2., RSMo);

(F) In 1973, F paid the \$200 balance on his/her 1972 federal return which reported both his/her federal income tax and his/her federal self-employment tax. Is it deductible on his/her 1973 Missouri return? In order to answer this question, it is necessary to allocate the 1972 and 1973 payments between income tax and self-employment tax. A taxpayer must allocate the 1973 payments consistent with his/her earlier 1972 allocation. The 1972 Missouri income tax return Form 28-10 indicated the 1972 federal payments allocated to income tax at lines 11, A and B on page 1 and indicated self-employment tax at line 4 on page 2. The allocation of the 1973 balance is determined by the 1972 return allocation.

1. Assume that F’s 1972 federal return showed an income tax of \$1250 and a self-employment tax of \$350. The \$1600 total was paid by \$1400 estimated and withholding tax in 1972, leaving a \$200 balance to be paid in 1973. Assume further that F on his/her 1972 Missouri return claimed a deduction for \$1250 federal income tax on page 1 and \$150 self-employment tax on page 2. The result is that his/her entire \$200 balance paid in 1973 is self-employment tax and no part of it is deductible on his/her 1973 return;

(G) What special problems do I have as the beneficiary of an estate or trust? The answer is that there are usually no problems. Your FAGI, your Missouri starting point already includes your share, if any, of the income and deductions of the estate or trust. Thus, your Missouri treatment is the same as

your federal. The only major exception is if the executor or trustee tells you that you have a fiduciary adjustment to add or subtract in determining your MAGI. If so, indicate your fiduciary adjustment on page 2 of your Missouri Form 40 with the explanation “fiduciary adjustment—(name of estate or trust).” Do this only if you are advised of a fiduciary adjustment by the executor or trustee. This will occur if the estate or trust has unusual items, such as federal or other non-Missouri governmental bond interest. Another exception is if your federal return includes a throw-back distribution (section 143.121.4. and 3(d), RSMo);

(H) What special problems do I have as the partner of a partnership? The answer is that there are usually no problems. Your FAGI, your Missouri starting point, already includes your share, if any, of the income and deductions of the partnership. Thus, your Missouri treatment is the same as the federal. The only exception is if the partnership tells you that you have a partnership adjustment to add or subtract in determining your MAGI. If so, indicate your partnership adjustment on page 2 of your Missouri Form 40 with the explanation “partnership adjustment—(name of partnership).” Do this only if you are advised of a partnership adjustment by the partnership. This will occur if the partnership has unusual items, such as federal or other non-Missouri governmental bond interest (section 143.121.5., RSMo); and

(I) What special problems do I have as the shareholder of a subchapter S corporation (electing small business corporation) filing federal form 1120S? The answer is that there are no problems. Your FAGI, your Missouri starting point, already includes your share, if any, of the income and deductions of the subchapter S corporation. Thus, your Missouri treatment is always the same as your federal.

*AUTHORITY: section 143.961, RSMo 1986.\*  
This rule was previously filed as Income Tax Release 73-11, Jan. 29, 1974, effective Feb. 8, 1974.*

\*Original authority 1972.

*Mobil Oil Corp. v. State Tax Commission of Missouri, 513 SW2d 319 (1974). In authorizing the prescription of rules relating to the administration of the income tax laws, former section 143.200, RSMo does not delegate to the director of revenue the power to promulgate rules of substantial law. The rules which the director of revenue is empowered by former section 143.200, RSMo to prescribe are limited to procedural rules useful in the administration and enforcement of the income tax laws. However, the statutory direction that the rules shall follow the federal rules as*

*nearly as practicable does not require or authorize the director to ignore a specific, pertinent, applicable state statute and promulgate rules in conflict therewith (subject matter of section 143.200, RSMo now covered by section 143.961, RSMo Supp. 1973).*

## **12 CSR 10-2.010 Capital Gain (Loss) Allocation Between Spouses**

**PURPOSE:** This rule sets forth the method to be used by married persons filing joint federal income tax returns in allocating capital gains and losses between the spouses for Missouri income tax purposes.

*Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by law.*

(1) The following general rules have been issued by the Missouri Department of Revenue and should be used in arriving at Missouri adjusted gross income (MAGI) of each spouse in situations involving gains or losses from sale or exchange of capital assets, but only if the husband and the wife file a joint federal income tax return for the year. The rules presume the applicability of the Missouri Income Tax Law of 1973 (Senate Bill 549).

(2) **Losses:** General Rule. If the losses from the sale or exchange of capital assets exceed the net gains from the sales, so that line 14, Schedule D, Form 1040 is a loss, then, subject to the limitation provided for in *Internal Revenue Code* (IRC) Section 1211, allocate the excess to the spouse responsible for the excess. If both spouses are responsible for the excess, then allocate the excess, subject to IRC Section 1211 limitation, between the spouses on a *pro rata* basis. Allocate excess short-term capital losses before allocating excess long-term capital losses.

(A) Example No. 1: Assume the following facts on the joint federal income tax return for 1973:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	\$15,000
Short-Term			
Gain (Loss)	0	0	
Long-Term			
Gain (Loss)	(\$2000)	(\$3000)	(\$5000)
FAGI			*\$14,000

\*Section 1211 Limitation of (\$1000)

<sup>4</sup>Section 1211 Limitation of (\$1000).

Missouri Answer: The amount of the excess is (5000) but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to (1000). Since both spouses are responsible for the excess, then allocate the (1000) on a *pro rata* basis, that is—husband ( $2/5 \times 1000$ ) and wife ( $3/5 \times 1000$ ).

MAGI is therefore—

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	
Less			
Section			
1211			
Deduction	(\$400)	(\$600)	
MAGI	\$9600	\$4400	\$14,000

(B) Example No. 2: Assume the following facts on the joint federal income tax return for 1973:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	\$15,000
Short-Term Gain (Loss)	(\$200)	(\$300)	(\$500)
Long-Term Gain (Loss)	(\$8000)	(\$3000)	(\$5000)
FAGI			*\$14,000

\*Section 1211 Limitation of (\$1000).

Missouri Answer: The Section 1211 limitation of (1000) should be allocated as follows:  
a) Allocate excess short-term losses of (500) first and, since both spouses are responsible for the excess, it should be allocated on a *pro rata* basis, that is—husband ( $2/5 \times 500$ ) and wife ( $3/5 \times 500$ ); b) Allocate the remaining (500) of the limitation from excess long-term losses and, since the husband is responsible for the excess, the remaining (500) should be allocated entirely to him. Note that husband must use \$2 of net long-term loss to offset \$1 of ordinary income.

MAGI is therefore—

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	
Less Section 1211			
Deduction	(\$700) i.e. S.T. (\$200)	(\$300) i.e. S.T. (\$300)	
x	+	+	
	L.T. (\$500)	0	
MAGI	\$9300	\$4700	\$14,000

(C) Example No. 3: Assume the following facts on the joint federal income tax return for 1973:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	\$15,000
Short-Term Gain (Loss)	(\$1000)	(\$1000)	(0)
Long-Term Gain (Loss)	(\$8000)	(\$3000)	(\$5000)
FAGI			*\$14,000

\*Section 1211 Limitations of (\$1000).

Missouri Answer: Since there are no net short-term losses, all of the IRC Section 1211 limitation of (1000) should be allocated from excess long-term losses. Since the husband is responsible for the excess, the entire amount of the limitation is allocated to him.

MAGI is therefore:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	
Less			
Section			
1211			
Deduction	(\$1000)	0	
MAGI	\$9000	\$5000	\$14,000

(3) Gains: General Rule. If net gains from the sale or exchange of capital assets exceed net losses from the sales, so that line 14, Schedule D, Form 1040 is a gain, then allocate the excess short-term capital gain to the spouse(s) responsible for the gains, and allocate the excess long-term capital gain to the spouse(s) responsible for the gain and allocate the IRC Section 1202 deduction in the same manner and to the same spouse(s) to whom excess long-term gains are allocated. If both spouses are responsible for the excess short-term (long-term) gain, then allocate the excess of short-term (long-term) gain on a *pro rata* basis.

(A) Example No. 4: Assume the following facts on the joint federal income tax return for 1973:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	\$15,000
Short-Term Gain (Loss)	0	0	
Long-Term Gain (Loss)	(\$3000)	(\$8000)	(\$5000)
FAGI			*\$17,500

\*\$5000 net long-term gain less IRC Section 1202 deduction of \$2500.

Missouri Answer: Since the excess gains are all net long-term gains and since the wife is

responsible for the excess, then allocate the entire amount of the excess to the wife and also allocate the entire IRC Section 1202 deduction to the wife.

MAGI is therefore—

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	
Plus			
Excess Gains	0	\$5000 (L.T.)	
Less Section 1202 Deduction	0	\$2500	
MAGI	\$10,000	\$7500	\$17,500

(B) Example No. 5: Assume the following facts on the joint federal income tax return for 1973:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	\$15,000
Short-Term Gain (Loss)	(\$8000)	(\$3000)	(\$5000)
Long-Term Gain (Loss)	(\$3000)	(\$8000)	(\$5000)
FAGI			*\$22,500

\*IRC Section 1202 deduction of \$2,500.

Missouri Answer: Since the husband is responsible for the entire amount of excess short-term gains, the excess is allocated to the husband. Since the wife is responsible for the entire amount of excess long-term gains, the excess, as well as the IRC Section 1202 deduction, should be allocated to her.

Missouri AGI is therefore:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	
Plus			
Excess Gains	\$5000 (S.T.)	\$5000 (L.T.)	
Less Section 1202 Deduction	0	\$2500	
MAGI	\$15,000	\$7500	\$22,500

(C) Example No. 6: Assume the following facts on the joint federal income tax return for 1973:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	\$15,000
Short-Term Gain (Loss)	(\$4000)	(\$1000)	(\$5000)
Long-Term			

Gain (Loss)	(\$2000)	(\$3000)	(\$5000)
FAGI			*\$22,500

(4/10 x 5000). The IRC Section 1202 deduction of 2500 is also allocated on 6/10—4/10 basis.

\*IRC section 1202 deduction of \$2500.

MAGI is therefore—

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	
Plus			
Excess Gains	\$300 (L.T.)	\$2000 (L.T.)	
FAGI			

<b>Husband</b>	<b>Wife</b>	<b>Total</b>
----------------	-------------	--------------

Less Section 1202 Deduction	\$1500	\$1000
MAGI	\$11,500	\$6000

(B) Example No. 8: Assume the following facts on the joint federal income tax return for 1973:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	15,000
Short-Term Gain (Loss)	(\$14,000)	(\$9000)	(\$5000)
Long-Term Gain (Loss)	(\$12,000)	(\$2000)	(\$10,000)
FAGI			*\$17,500

\*Excess of net long-term capital gain over net short-term capital loss is \$5000, less IRC Section 1202 deduction of \$2500.

Missouri Answer: Since net long-term capital gain exceeds net short-term capital loss, the \$5000 figure reported on line 14, Schedule D, Form 1040 is an excess long-term gain. Since the husband is responsible for the excess, then allocate the entire amount of the excess to the husband and also allocate the entire IRC Section 1202 deduction to the husband.

MAGI is therefore:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	
Plus			
Excess Gains	\$5000 (L.T.)	0	
FAGI			

\*Excess of net long-term capital gain over net short-term capital loss is \$5000, less IRC Section 1202 deduction \$2500.

Missouri Answer: Since net long-term capital gains exceeds net short-term capital loss, the 5000 figure reported on line 14, Schedule D, Form 1040 is an excess long-term gain. Since both spouses are responsible for the excess, then the excess long-term capital gain, as well as the IRC Section 1202 deduction, are allocated to the spouses on a *pro rata* basis, that is—husband (6/10 x 5000) and wife

(4/10 x 5000). The IRC Section 1202 deduction of 2500 is also allocated on 6/10—4/10 basis.

(C) Example No. 9: Assume the following facts on the joint federal income tax return for 1973:

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	\$15,000
Short-Term Gain (Loss)	(\$20,000)	(\$9000)	\$11,000
Long-Term Gain (Loss)	(\$28,000)	\$22,000	(\$6000)
FAGI			*\$20,000

\*Excess of net short-term gain over net long-term capital loss is \$5000.

**Missouri Answer:** Since net short-term capital gains exceed net long-term capital loss, the \$5000 figure reported on line 14, Schedule D, Form 1040 is an excess short-term gain. Since the husband is responsible for the entire amount of excess short-term gain, the excess is allocated to the husband.

MAGI is therefore—

	<b>Husband</b>	<b>Wife</b>	<b>Total</b>
Wages	\$10,000	\$5000	
Plus Excess Gains	\$5000 (S.T.)	0	
Less Section 1202 Deduction	0	0	
MAGI	\$15,000	\$5000	\$20,000

**AUTHORITY:** section 143.961, RSMO 1986.\* This rule was previously filed as Income Tax Release 73-11, Jan. 29, 1974, effective Feb. 8, 1974.

\*Original authority 1972.

## 12 CSR 10-2.015 Employers' Withholding of Tax

**PURPOSE:** This rule provides a guide to employers in properly fulfilling their responsibilities of withholding Missouri taxes from the wages of employees.

**PUBLISHER'S NOTE:** The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMO. Such material will be provided at the cost established by state law.

(1) General Information. The Missouri general assembly in 1972 enacted Senate Bill

549, a new Missouri income tax law. This law adopts many provisions and terms of the *Internal Revenue Code*. Its withholding provisions are applicable to wages paid after December 31, 1972. The "Missouri Employer's Tax Guide" and this rule are designed to assist employers in withholding Missouri income tax from wages paid from sources in Missouri. An employer may generally follow the provisions of the Internal Revenue Service (IRS) publication titled "Employer's Tax Guide" Circular E relating to withholding income tax. An employer already assigned a Missouri withholding tax identification number will not need to obtain a new one. If a business is discontinued, transferred or sold, the employer must file an Employer's Withholding Final Report, Form MO-941F, to close the employer's withholding account. If the business of another employer is acquired, do not use the number assigned to that business; a new number must be obtained.

(2) Employers. An employer is any person, firm, corporation, association, fiduciary of any kind or other type of organization for whom an individual performs service as an employee, unless the person or organization for whom the individual performs service does not have control of the payment of compensation for the service, (section 143.191, RSMO). The term employer means the person, including all government agencies, who controls the payment of the compensation. An employer required to withhold Missouri income tax is personally liable for the tax. Any amount of tax actually deducted and withheld by an employer is a special fund in trust for the director of revenue (section 143.241, RSMO). An employee does not have a right of action against the employer in respect to any money deducted and withheld from his/her wages if it is paid over to the director of revenue in good faith compliance with the Missouri Income Tax Law.

(3) Registration of Employers. Every employer must register with the Missouri Department of Revenue by completing the Missouri Tax Registration Application, Form DOR-2643. A permanent registration number will be assigned. A new application is required, and a new Missouri tax identification number will be assigned, when any change in ownership or ownership type occurs. An employer who receives a new identification number as a result of a change in ownership type, must file an Employer's Withholding Final Report, Form MO-941F, to close the old account. These numbers are not transferable and should be referred to in all reports and correspondence concerning withholding.

(4) Employer With More Than One (1) Payroll Unit—Complex Employer. If a consolidated report and remittance of the tax withheld cannot be made by the employer because of the complexity of the organization, branch offices or divisions may be designated as withholding agents. These agents can perform the actual withholding and remitting. However, regardless of any internal arrangements which may be established by the complex employer, the legal responsibility and liability under the law still rests with the home office. If the complex employer has designated withholding agents, and the agents wish to claim the compensation deduction, only one (1) agent will be entitled to the full deduction and the remaining agents will be entitled to one-half percent (1/2%) deduction of income taxes withheld if the returns are filed timely. The filing frequency for a complex employer is determined by the total amount withheld by all reporting units.

(5) Seasonal. If your business is only open for several months out of the year, you may register as a seasonal employer.

(6) Employees. The term employee for Missouri withholding purposes has the same meaning as it has for federal withholding (see "Employer's Tax Guide," Circular E, published by the IRS). This definition is the same for Missouri residents and nonresidents.

(7) Wages. The term wages for Missouri withholding purposes has the same meaning as it has for federal withholding (see "Employer's Tax Guide," Circular E, published by the IRS). Wages include all pay given to an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses and commissions, regardless of how measured or paid.

(8) Interstate Transportation Employees.

(A) Rail, Motor and Private Motor Carriers. 49 U.S.C. section 11504, limits state taxation on wages of employees of rail, motor and private motor carriers. Missouri withholding is required on rail, motor and private motor carrier employees whose state of residence is Missouri. Employees of rail carriers and motor carriers who perform regularly assigned duties in more than one (1) state are subject to state income tax only in their state of residency.

(B) Air and Water Carriers. 49 U.S.C. sections 1512 and 11504, limit taxation on wages of employees of air and water carriers to the employee's state of residence, and to the state in which the employee earns more than fifty percent (50%) of the wages paid by the air or

water carrier if different from the state of residence.

(9) Nonresident Employees Subject to Withholding. If a nonresident employee performs all services within Missouri, tax shall be withheld from all wages paid as in the case of a resident. If services are performed partly within and partly without the state, only wages paid for services performed within Missouri are subject to Missouri withholding tax. If only a portion of an employee's wages is subject to Missouri withholding tax, then the amount of Missouri tax required to be withheld is calculated using a percent of the amount listed in the withholding tables. The calculation begins by determining the amount that would be withheld if all the wages were subject to Missouri withholding. This amount is then multiplied by a percent which is determined by dividing the wages subject to Missouri withholding tax by the total federal wages.

(A) Example: Nonresident earns \$20,000 in wages, \$12,000 from Missouri sources. Missouri withholding would be 60% ( $\$12,000 \div \$20,000$  equals 60%) of the withholding required on \$20,000. Therefore, if \$100 per month should be withheld for an individual earning \$20,000, then for this nonresident, \$60 should be withheld each month ( $100 \times 60\% = \$60$ ).

(10) Resident of Missouri Employed in Another State. A Missouri resident paying income tax to another state because of employment in that state may file a Withholding Affidavit For Missouri Residents, Form MO W-4C which provides for exclusion from withholding when fifty percent (50%) or more of the services are performed in a state other than Missouri. The original copy must be mailed to the Department of Revenue and the duplicate retained by the employer as the basis for not withholding from the employee's wages. When a Missouri resident is employed less than fifty percent (50%) in another state having a state income tax, only income received for services performed in Missouri or another state not having a state income tax is subject to Missouri withholding. In determining the amount of tax to be withheld, the employer should use only the balance of income not subject to withholding by another state.

(A) Example: A resident employee earns \$1,500 per month, is single and claims one allowance. The employee performs 40% of his/her services in Kansas. The remaining 60% of the employee's services are performed in Missouri. If the total withholding on all earnings is \$40 per month, the actual withholding for Missouri would be \$24 ( $\$40 \times 60\% = \$24$ ).

(11) Missouri Employer with Nonresident Employees. If a nonresident employee performs all services outside Missouri, his/her wages are not subject to Missouri withholding. A nonresident employee performing services in more than one (1) state is subject to withholding as outlined in section (9).

(12) Supplemental Wage Payments. If supplemental wages are paid, such as bonuses, commissions, overtime pay, back pay, including retroactive wage increases or reimbursements for nondeductible moving expenses in the same payment with regular wages, withhold Missouri income tax as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid in a different payment from regular wages, the method of withholding income tax depends in part on whether income tax is withheld from the employee's regular wages.

(A) If income tax has been withheld from the employee's regular wages, choose either one (1) of the following methods for withholding income tax on the supplemental wages:

1. Method One. Withhold at a flat percentage rate of three percent (3%) of the supplemental wages, using zero withholding allowances; or

2. Method Two. Add the supplemental wages to the employee's regular wages paid to the employee within the same calendar year for the payroll period and determine the income tax to be withheld as if the aggregate amount were one payment. Subtract the tax already withheld from the regular wage payment and withhold the remaining tax from the supplemental wage payment.

(B) If income tax has not been withheld from the regular wages (for example, where an employee's withholding exemption exceeds his/her wages), use Method Two described in paragraph (12)(A)2. of this rule. Add the supplemental wages to the regular wages paid within the same calendar year for the payroll period and withhold income tax on the total amount as though the supplemental wages and regular wages were one (1) payment for a regular payroll period.

(13) Tips Treated as Supplemental Wages. Employers must withhold Missouri income tax based upon total tips reported by the employee. Withhold income tax on tips using the same options indicated for withholding on supplemental wage payments.

(14) Vacation Pay. Vacation pay received by an employee is subject to withholding as though it were a regular wage payment made for the payroll periods during the vacation. If vacation pay is paid in addition to regular

wages for the vacation period, the vacation pay is treated as a supplemental wage payment. An employee who is not a resident of Missouri but works in Missouri is subject to withholding on his/her vacation pay.

(15) Lump-Sum and Periodic Distribution. Missouri follows the federal guidelines for lump-sum and periodic distributions. If a lump-sum distribution, withhold at the rate of six percent (6%). If a periodic distribution, follow the computer formula or tax tables.

(16) Determining Proper Amount to Withhold. To determine income tax withholding, take the following factors into account:

(A) Wages paid during the payroll period, including tips and vacation pay;

(B) Marital status—There are separate withholding tables for single and married employees; and

(C) Withholding allowances as indicated on the MO W-4.

(17) Exemption for Nontaxable Individuals. Exemption from withholding for an individual is valid only if the employee submits to the employer a completed Form MO W-4 (Employee's Withholding Allowance Certificate), certifying that the employee has no income tax liability from the previous year and expects none for the current year. The employee must file a Form MO W-4 annually if s/he wishes to continue to be exempt.

(18) Employee Withholding Allowance Certificate. Each employee is required to file a completed Form MO W-4 to determine the number of exemptions to which the employee is entitled. The Form MO W-4 must be used by the employer to determine the amount of Missouri income tax which must be withheld from each paycheck. If an employee has more than one (1) employer, s/he may want to reduce the number of allowances on any MO W-4 that does not pertain to his/her principal employer. Failure to reduce the MO W-4 allowances could cause an employee to have too little tax withheld and make the employee subject to underpayment penalties. If an employee expects to have income other than his/her wages, s/he may request to have additional amounts withheld in addition to the amounts indicated by the allowances claimed on the employee's MO W-4. The additional amount should be included on line 6 of the MO W-4. Employers are required to submit a copy of each completed Form MO W-4 or an equivalent form for each new employee to the Missouri Department of Revenue within twenty (20) days of completion of each form. The department will in turn forward the Form MO W-4 to the Division of Child Support Enforcement.

(19) Withholding Tables. Withholding tables prepared by the Missouri Department of Revenue take into account allowable deductions; therefore withholding is based on gross wages before any deductions, such as Federal Insurance Contribution Act (FICA), state unemployment insurance, pension funds, or insurance, etc. In determining the amount of tax to be withheld, the employer should use the table for the correct payroll period—daily, weekly, bi-weekly, semimonthly and monthly periods. Any other period would be a miscellaneous pay period. Tables show wage brackets in the two (2) left-hand columns. The withholding allowances are shown at the top of each of the remaining columns and correspond to the number of allowances claimed by an employee on the Form MO W-4.

(20) Percentage Formula Withholding. A percentage withholding formula has been published by the director of revenue and it may be used on electronic data processing equipment for withholding Missouri income tax. Any other method must be submitted to and approved by the director of revenue. The formula is mathematically stated as gross income minus standard deduction, minus personal and dependent exemptions, minus federal income tax withheld equals taxable income. Taxable income multiplied by the rate equals Missouri withholding. The formula is illustrated in the "Missouri Employer's Tax Guide."

(21) Filing Frequency Requirements. Missouri withholding returns must be filed by the due date as long as an account is maintained with the Missouri Department of Revenue, even if there was no payroll for the reporting period. Returns must be filed each reporting period, even though there may not have been any tax withheld. There are four (4) filing frequencies: quarter-monthly, monthly, quarterly and annually (section 143.221 and 143.225, RSMo). A newly registered employer is initially assigned a filing frequency on the basis of his/her estimation of future withholdings. If the assigned filing frequency differs from the filing requirements established by statute, it is the employer's responsibility to immediately notify the Department of Revenue. The time for filing shall be as follows:

(A) Quarter-Monthly. Employers required to withhold nine thousand (\$9,000) or more per month for at least two (2) months during the preceding twelve (12) months shall file on a quarter-monthly basis;

(B) Monthly. Employers required to withhold two hundred fifty dollars (\$250) per month for at least two (2) months during the

preceding twelve (12) months shall file on a monthly basis;

(C) Quarterly. Employers not required to file and pay taxes withheld on a monthly basis who withheld at least twenty dollars (\$20) per quarter during at least one (1) quarter of the preceding four (4) quarters shall file on a quarterly basis; and

(D) Annually. Employers required to withhold less than twenty dollars (\$20) during any of the preceding four (4) quarters shall file on an annual basis.

(22) Reporting Requirement. Every employer withholding Missouri income tax from employee's wages is required by statute to report and remit the tax to the state of Missouri on the Missouri Form MO-941. See regulation 12 CSR 10-2.016 for information on filing a Form MO-941P to remit required payments on Quarter-Monthly accounts.

(A) A separate reporting form must be filed for each reporting period. A personalized booklet of reporting forms detailing the employer's name, address, employer identification number, filing frequency and due date is provided to each active account. The voucher booklet supplied to an employer required to pay on a quarter-monthly basis also includes payment vouchers Form MO-941P, for the four (4) quarter-monthly periods. If an employer misplaces, damages or does not receive the necessary reporting forms, replacement forms should be requested, allowing sufficient time to file a timely return. If a blank form is used, the employer's name, address and identification number must appear as filed on previous returns and the period for which the remittance is made must be indicated. Failure to receive reporting forms does not relieve the employer of responsibility to report and remit tax withheld. If an employer temporarily ceases to pay wages a return must be filed for each period indicating that no tax was withheld. Failure to do so will result in the issuance of estimated billing notices.

(B) On or before January 31, or with the final return filed at an earlier date, each employer must file a Form MO W-3 and copies of all withholding tax statements, Form W-2, copy 1, for the year. Large numbers of forms may be forwarded to the Department of Revenue in packages of convenient size. Each package must be identified with the name and account number of the employer and the packages must be consecutively numbered. Any employee's copies of the Withholding Statement (Form W-2) which cannot be delivered to the employee after reasonable effort is exerted, should be transmitted to the Missouri Department of Revenue by July 31 of the next calendar year. Any branch establishments of the employer may

send any undeliverable employee's copies directly to the Department of Revenue. The Department of Revenue will accept computer produced magnetic tape records instead of the paper Form W-2. The employer must meet tape data specifications which are established by the Department of Revenue.

(C) If an employer goes out-of-business or ceases to pay wages, a Final Report MO-941F must be filed. This form, which is included in the voucher booklet, is provided to all active accounts.

(23) Time and Place for Filing Returns and Remitting Tax.

(A) All returns and remittances must be filed with the Department of Revenue at the specific address indicated on the voucher. The dates on which the returns and payments are due are as follows:

1. Quarter-Monthly (see 12 CSR 10-2.016). The quarter-monthly periods are: the first seven (7) days of a calendar month; the eighth to the fifteenth day of a calendar month; the sixteenth to the twenty-second day of a calendar month; and the twenty-third day through the last day of a calendar month. Payments must be mailed within three (3) banking days after the end of the quarter-monthly period or received by the Department of Revenue or its designated depository within four (4) banking days after the end of the quarter-monthly period. A monthly return (MO-941) reconciling the quarter-monthly payments and detailing any underpayment of tax is due by the fifteenth day of the following month except for the third month of a quarter in which case the MO-941 is due the last day of the succeeding month;

2. Monthly. Return and payment must be made by the fifteenth day of the following month except for the third month of a quarter in which case the return is due the last day of the succeeding month;

3. Quarterly. Return and payment must be made on or before the last day of the month following the close of the calendar quarter; and

4. Annually. Return and payment must be made on or before January 31 of the succeeding year.

(B) When the due date falls on a Saturday, Sunday or legal holiday, the return and payment will be considered timely if made on the next business day (section 143.851, RSMo).

(24) Correcting Mistakes in Reporting or Withholding.

(A) Overpayment. If withholding tax has been over reported, the employer must file an Employer's Withholding Tax Overpayment Amended Report, Form MO-941X along with supporting documentation; such as a

copy of your payroll ledger, records or W-2s. A claim for credit or refund of an overpayment of withheld tax must be filed by the taxpayer within three (3) years from the time the return was filed or two (2) years from the time the tax was paid, whichever period expires later. If no return was filed by the taxpayer, a claim for credit or refund must be filed within two (2) years from the time the tax was paid. No claim for credit or refund will be allowed after the expiration of the period of limitation prescribed in section 143.801, RSMo.

(B) Underpayment. If withholding tax has been under-reported, the employer must file an Employer's Withholding Tax Underpayment Amended Return, Form MO-941U to report the additional withholding.

(25) Erroneous Withholding. If Missouri tax has been withheld from an employee's paycheck and the employee is not subject to Missouri tax, it is the employer's responsibility to complete an Employer's Withholding Tax Overpayment Amended Report, Form MO-941X along with supporting documentation; such as a copy of your payroll ledger, records or W-2s.

(26) Employer Compensation. For every remittance made to the director of revenue, on or before the respective due date for the payment involved, each employer (except the United States, the state of Missouri and all agencies and political subdivisions of the state of Missouri or the United States government) may deduct and retain as compensation the following percentages of the total amount of the tax withheld and paid annually: two percent (2%) of the first five thousand dollars (\$5,000) or less; one percent (1%) of the amount in excess of five thousand dollars up to ten thousand dollars (\$5,000-\$10,000); one-half percent (1/2%) of the amount collected in excess of ten thousand dollars (\$10,000). The employer is not entitled to any compensation if any payment is not made on or before the due date. Compensation for complex employers is covered in section (4).

(27) Failure to Pay Taxes Withheld—Special Deposits. Any employer who fails to remit income tax withheld, or to file tax returns as required, may be required to deposit the taxes in a special trust account for Missouri (see subsection 32.052, RSMo). Penalties are provided for failure to make payment. If the director of revenue finds that the collection of taxes required to be deducted and withheld by an employer may be jeopardized by delay, s/he may require the employer to remit the tax or make a return at any time. A lien outstanding with regard to any tax administered by the director shall be a sufficient basis for

this action (see subsection 143.221.4, RSMo). In addition, any officer, director, statutory trustee or employee of any corporation who has direct control, supervision or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to subsection 143.241.2, RSMo.

(28) Statements for Employees. Two (2) designated copies of the "W-2 Wage and Tax Statement" must be provided to each employee to whom wages were paid and were subject to withholding whether or not tax was withheld on the payments. Wages include sickness or injury payments made by an employer under wage continuation plans and all remuneration whether paid in cash or otherwise. The W-2 form supplied by the IRS must be used for this purpose unless the employer uses a substitute form approved by the Department of Revenue. If it becomes necessary to correct Form W-2 after it has been issued to an employee, two (2) corrected statements must be issued to the employee and a copy mailed to the Department of Revenue. The new copies must be clearly marked "Corrected by Employer." In case a withholding statement is lost or destroyed, a substitute copy must be issued to the employee and must be clearly marked "Reissued by Employer." If employment terminates during the year two (2) copies of Form W-2, copy 2 and C, must be provided to the employee within thirty (30) days of the last payment of wages. Interrupted or intermittent employment is not considered terminated as long as there is reasonable expectation of further employment on the part of both the employer and the employee. If an employee's services are terminated and a Form W-2 has been provided for the period worked during the year and the employee is later reemployed by the same employer during the calendar year, another withholding statement must be provided to the employee covering only the later period of employment within the calendar year. All withholding statements must be furnished to employees not later than January 31 of the following calendar year for which the W-2 applies.

#### (29) Records to Be Kept by Employers.

(A) The following records must be retained for all employees:

1. Name, address, Social Security number and period of employment;
2. Amounts and dates of all wage payments subject to the Missouri withholding tax;
3. Employees' state income tax withholding allowance certificate;

4. Employer's state income tax withholding registration number;

5. Record of quarter-monthly, monthly, quarterly and annual returns filed including dates and amounts of payments;

6. Records that would assist the Missouri Department of Revenue in auditing the employer's records; and

7. All records should be kept for at least three (3) years after the date the taxes to which they relate become due, or the date the taxes are paid, whichever is later.

(B) In addition to the records listed in paragraphs (29)(A)1.—7., all records of the allocation of working days in the state of Missouri must be retained for all nonresident employees.

#### (30) Penalties, Interest and Additions to Tax.

(A) Interest at the statutory rate must be included on all payments of tax not filed on a timely basis. Interest is subject to change on an annual basis pursuant to section 32.065, RSMo.

(B) An employer's failure to file a timely return, unless due to reasonable cause and not due to willful neglect, will result in additions to tax of five percent (5%) per month or a fraction of a month not to exceed twenty-five percent (25%) pursuant to subdivision 143.741(1), RSMo.

(C) A deficiency is subject to an addition to tax of five percent (5%) if the delinquency is due to negligence or disregard of rules, or fifty percent (50%) if the deficiency is due to fraud pursuant to subdivision 143.751(1) and (2), RSMo.

(D) Failure to timely pay tax requires a five percent (5%) addition to tax pursuant to subdivision 143.751(3), RSMo.

(E) A quarter-monthly penalty of five percent (5%) in lieu of all other penalties, interest or additionns to tax will be imposed on a quarter-monthly period underpayment pursuant to section 143.225, RSMo.

(F) A person who willfully fails to collect, account for or pay withholding taxes is subject to a penalty equal to the amount not paid to the state, pursuant to section 143.751(4), RSMo. In addition, any officer, director, statutory trustee or employee of any corporation who has direct control, supervision or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to subsection 143.241.1, RSMo.

(G) Criminal penalties are also provided in sections 143.911—143.951, RSMo.

(H) A Certificate of Tax Lien may be filed for record with the recorder's office. The lien shall arise on the date an assessment becomes final and shall attach to all real and personal

property owned by or acquired by the taxpayer. A Certificate of Tax Lien also may be filed with the clerk of the circuit court and shall have the force and effect of a default judgment pursuant to section 143.902, RSMo.

(I) Failure to file a timely Wage and Tax Statement, W-2, is subject to a penalty of two dollars (\$2) per statement not to exceed one thousand dollars (\$1,000) unless the failure is due to reasonable cause and not willful neglect pursuant to subdivision 143.741(2), RSMo.

*AUTHORITY:* section 143.961, RSMo 1994.\* This rule was previously filed as "Missouri Employer's Tax Guide" Feb. 20, 1973, effective March 2, 1973. Original rule filed Jan. 29, 1974, effective Feb. 8, 1974. Emergency amendment filed Jan. 13, 1983, effective Jan. 23, 1983, expired May 23, 1983. Amended: Filed Jan. 13, 1983, effective April 11, 1983. Amended: Filed March 9, 1984, effective July 1, 1984. Amended: Filed June 2, 1993, effective Nov. 8, 1993. Amended: Filed July 28, 1995, effective Jan. 30, 1996. Amended: Filed Feb. 6, 1998, effective Aug. 30, 1998.

\*Original authority 1972.

## 12 CSR 10-2.016 Quarter-Monthly Period Reporting and Remitting Withholding Tax

*PURPOSE:* Under the State Income Tax Law (section 143.011, RSMo), this rule establishes the requirement of reporting and remitting withholding taxes on a quarter-monthly period to protect state revenue and improve the cash flow of revenue for the state.

(1) If an employer is required under sections 143.191–143.265, RSMo to deduct and withhold the aggregate amount of nine thousand dollars (\$9,000) or more in each of at least two (2) months during the prior twelve (12) months, the employer must file a return (MO-941P) and remit payment to the director of revenue on a quarter-monthly basis. Amounts remitted on a quarter-monthly basis shall be treated as payments on the employer's monthly return (MO-941). A monthly return (MO-941) reconciling the quarter-monthly payments is required by the fifteenth day of the following month, except for the return for the third month of the quarter which is due the last day of the following month. The employer shall mail a quarter-monthly payment voucher (MO-941P) and payment to the address provided on Form MO-941P within three (3) banking days following the end of the quarter-monthly period or deliver the form and payment to the direc-

tor of revenue in Jefferson City, Missouri or his/her designated depository within four (4) banking days after the end of the quarter-monthly period. The compensation authorized in section 143.261, RSMo may be taken by the employer against the payment required to be made only if the payment is made by the employer on a timely basis as provided in section 143.851, RSMo. Banking days shall not include Saturday, Sunday or legal holidays.

(2) A quarter-monthly filer has the option to—

(A) Pay one hundred percent (100%) of the estimated quarter-monthly amount, as determined by the department, within three (3) banking days after end of each quarter-monthly period (four (4) times a month); or

(B) Pay at least ninety percent (90%) of the actual tax due by the due date of that particular quarter-monthly period. If there is no payroll during a quarter-monthly period, no quarter-monthly payment voucher is necessary.

1. Example: An employer has a semi-monthly payroll cycle which falls on January 15 and on January 31. The actual Missouri income tax withholding for the January 15 payroll is \$12,000. The employer must remit at least 90% of the \$12,000 (\$10,800) with the second quarter-monthly payment voucher that is due no later than January 18. The actual Missouri income tax withholding for the January 31 payroll is \$15,000. The employer must remit at least 90% of the \$15,000 (\$13,500) with the fourth quarter-monthly payment voucher that is due no later than February 3. Since the employer did not have a payroll during the first or third quarter-monthly periods, a quarter-monthly payment voucher does not need to be submitted for those two periods.

2. Example: An employer has only one monthly payroll period and it falls on January 20 payroll. The actual Missouri income tax withholding for the January 20 payroll is \$30,000. The employer must remit at least 90% of the \$30,000 (\$27,000) with the third quarter-monthly payment voucher that is due no later than January 25. Since the employer did not have a payroll during the first, second or fourth quarter-monthly periods, a quarter-monthly payment voucher does not need to be submitted for those three periods. Any required additional tax due must be paid on or before the due date of the return.

(3) Quarter-monthly period means—

(A) The first seven (7) days of a calendar month;

(B) The eighth to fifteenth day of a calendar month;

(C) The sixteenth to twenty-second day of a calendar month; and

(D) The twenty-third day through the last day of a calendar month.

(4) A quarter-monthly penalty of five percent (5%) in lieu of all other penalties, interest or additions to tax imposed by the statutes will be charged on the amount of the underpayment for each quarter-monthly period. The quarter-monthly penalty of five percent (5%) of underpayment for each quarter-monthly period will not be imposed if one (1) of the following exceptions is met:

(A) One hundred percent (100%) of the estimated quarter-monthly amount, as determined by the department, is paid within three (3) banking days after the end of each quarter-monthly period (four (4) times a month); or

(B) At least ninety percent (90%) of the actual tax due is paid by the due date of that particular quarter-monthly period. If there is not a payroll during a quarter-monthly period, no quarter-monthly payment voucher is necessary.

(5) If any employer reports withholding on a complex unit reporting basis, then the nine thousand dollar (\$9000) aggregate amount as defined in section (1) is the total of all amounts required to be deducted and withheld by section 143.191, RSMo for all individual units of an employer.

(6) Overpayments. If withholding tax has been over reported in any one (1) period, an Employer's Withholding Tax Overpayment Amended Report (Form 941X) must be filed with the Department of Revenue, along with supporting documentation; such as a copy of your payroll ledger, records or W-2's. An overpayment notice will be issued by the director for any excess remittance over the actual amount due for a period. An employer cannot take credit for an overpayment until s/he has received notification from the director of revenue.

(7) Underpayments. If withholding tax has been underreported in any one (1) period, the employer must file an Employers' Withholding Tax Underpayment Amended Return, Form MO-941U to report the additional withholding. However, no penalty for underpayment of any amount required to be paid will be imposed on any employer for failure to comply with the quarter-monthly

filing requirements for the first two (2) months the employer is obligated to make quarter-monthly payments.

(8) Any employer who has been placed on a quarter-monthly filing frequency who consistently is not required to deduct and withhold nine thousand dollars (\$9,000) or more for a monthly period may request permission from the director to file and pay on a less frequent basis. An employer must file and pay on a quarter-monthly basis for a minimum of twelve (12) months before requesting a change in filing frequency.

*AUTHORITY: section 143.961, RSMo 1994.\* Emergency rule filed Oct. 13, 1982, effective Nov. 1, 1982, expired Feb. 28, 1983. Original rule filed Oct. 13, 1982, effective Jan. 13, 1983. Emergency amendment filed Nov. 12, 1982, effective Nov. 22, 1982, expired Feb. 28, 1983. Amended: Filed March 9, 1984, effective June 11, 1984. Amended: Filed June 2, 1993, effective Jan. 31, 1994. Amended: Filed April 14, 1995, effective Sept. 30, 1995. Amended: Filed Feb. 6, 1998, effective Aug. 30, 1998.*

\*Original authority 1972.

## 12 CSR 10-2.017 Transient Employer Financial Assurance Instrument for Employer's Withholding Tax

*PURPOSE: This rule establishes guidelines for filing financial assurance instruments to secure payment of withholding tax by out-of-state transient employers.*

*Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by law.*

### (1) Out-of-State Transient Employer Defined.

(A) Transient employer means an employer as defined in sections 143.191, 287.030 and 288.032, RSMo making payment of wages taxable under the Missouri income tax law, the Workers' Compensation Law and the Missouri employment security law who is not domiciled in Missouri and who temporarily transacts any business within Missouri. The transaction of business is considered temporary at any time it cannot be reasonably

expected to continue for a period of at least twenty-four (24) consecutive months.

(B) Transient employers shall not include any employer who is not subject to Missouri income tax because of the provisions of 15 U.S.C. 381.

(C) Every transient employer shall file with the director of revenue a financial assurance instrument including, but not limited to, a cash bond, surety bond or an irrevocable letter of credit as defined in the Uniform Commercial Code Section 400.5-103, RSMo.

(2) Types of Financial Assurance Instruments. Financial assurance instruments which may be posted to secure payments of taxes by out-of-state transient employers shall be in the form of a surety bond, cash bond or an irrevocable letter of credit issued by any state or federal financial institution, or any other financial assurance instrument which is deemed acceptable by the director of revenue. Other financial assurance instruments will be reviewed for approval on a case-by-case basis.

(A) A surety bond shall be issued by an insurance company licensed for bonding in Missouri on behalf of the applicant on the form provided by the Department of Revenue. An example of this form is printed with this rule. The form shall bear the seal of the insurance company, the effective date and be accompanied by a power of attorney letter if signed by the attorney-in-fact. It also shall contain the signature of the applicant.

(B) A cash bond shall be paid to the director of revenue in the form of a cashier's check, money order or certified check and be accompanied by a notarized cash bond form provided by the Department of Revenue. An example of this form is printed with this rule.

(C) An irrevocable letter of credit issued by any state or federal financial institution may be submitted to the Department of Revenue on a form provided by the department. An example of this form is printed with this rule.

1. The letter of credit shall be irrevocable and the beneficiary shall be the Department of Revenue. Payment shall be made immediately upon presentment of a demand for payment signed by the director of revenue or a designated representative.

2. All letters of credit shall conform to the Department of Revenue's required format. A standard letter of credit form embodying this format shall be provided by the Department of Revenue. All letters of credit shall be accompanied by an authorization for release of confidential information allowing the director of revenue or a designee to release confidential tax information to the issuing bank.

3. A demand for payment upon a letter of credit shall be presented for payment only for reasons that bond proceeds are needed to satisfy any delinquencies or claims as provided for in section 285.230, RSMo.

4. Letters of credit shall have a term of one (1) year and shall be automatically renewable on an annual basis for an additional one (1) year. A letter of credit may be cancelled by the issuer sixty (60) days after written notice is delivered to the Department of Revenue. Upon the notice of cancellation, the transient employer shall be required to file a new financial assurance instrument on or before the expiration of the sixty (60)-day period. If the required financial assurance instrument is not received within that time period, the employer commits the crime of failure to file a financial assurance instrument if the employer knowingly fails to comply.

5. If a transient employer ceases business or desires to substitute a financial assurance instrument for his/her letter of credit, the director of revenue shall retain the letter of credit for a period of ninety (90) days or until the director of revenue is satisfied that no claims exist against the letter of credit.

6. A transient employer shall be required to increase the amount of the letter of credit in any situation where the employer would be required to increase its financial assurance instrument as provided for in section 285.230, RSMo. This additional instrument may be satisfied by increasing the letter of credit or submitting an additional financial assurance instrument.

(3) Amount of Financial Assurance Instrument. The amount of the financial assurance instrument shall be determined by the director of revenue. This financial assurance instrument shall not be less than the average estimated quarterly withholding tax liability of the taxpayer, but in no case less than five thousand dollars (\$5000) nor more than twenty-five thousand dollars (\$25,000).

(A) Example 1: Mr. Kansas Contractor has been awarded a contract to renovate a building in Kansas City, Missouri. Mr. Kansas Contractor has employed ten (10) Missouri residents to assist in the renovation. The employees are being paid four hundred dollars (\$400) in wages per week. Each employee is married, claiming one (1) personal exemption and no dependent exemptions. Mr. Kansas Contractor is required to post the minimum five thousand dollar (\$5000) financial assurance instrument.

(B) Example 2: Mrs. Illinois Drywaller accepts a contract to drywall several new apartment complexes in St. Louis, Missouri. Mrs. Illinois Drywaller hires numerous Missouri resident drywallers to assist in the work. Mrs. Illinois Drywaller's Missouri

monthly withholding is twenty-three hundred dollars (\$2300). Mrs. Illinois Drywaller is required to post a financial assurance instrument in the amount of six thousand nine hundred dollars (\$6900). The six thousand nine hundred dollars (\$6900) is the approximate amount of withholding for these employees for one (1) calendar quarter.

(4) General Financial Assurance Instrument Examples. The following are general examples illustrating the out-of-state transient employer financial assurance instrument requirement:

(A) Example 1: Mr. Jones, an out-of-state contractor, has been awarded a contract to perform work in Missouri. He must obtain and file an application for a Missouri Employer's Withholding Tax Number. Furthermore, he does not meet the criteria to be exempt from the financial assurance instrument requirement. Mr. Jones, therefore, must submit a financial assurance instrument with the application before he can obtain his Missouri Withholding Tax Identification Number;

(B) Example 2: Mrs. Davis is an out-of-state contractor whose principal place of business is in a county of another state which borders Missouri. Mrs. Davis is a transient employer and must file an application for a Missouri Employer's Withholding Tax Number. Mrs. Davis has not been under contract to perform work in Missouri for at least sixty (60) days each year for the past two (2) calendar years and, therefore, must submit a financial assurance instrument with the Missouri Tax Registration Application; and

(C) Example 3: Mr. Smith, an out-of-state contractor, has been awarded a contract to perform work in Missouri. Mr. Smith is a transient employer and must file an application for a Missouri Employer's Withholding Tax Number. Mr. Smith does meet all the criteria for exemption from the financial assurance instrument requirement. Therefore, he is not required to file a financial assurance instrument with the application but must notify the Department of Revenue of his exemption status.

(5) Replacing or Applying for Return of Financial Assurance Instrument.

(A) If a cash bond is replaced by a different type of financial assurance instrument, the cash bond will be refunded to the taxpayer; provided, all taxes due are paid and the taxpayer files a request for refund on the forms provided by the Department of Revenue.

(B) If a surety bond is replaced by a different type of financial assurance instrument, the surety bond will be cancelled; provided, the issuing insurance company provides the

Department of Revenue with a written notice sixty (60) days prior to the cancellation date. This cancellation shall not affect any liability incurred or accrued prior to the termination of the sixty (60)-day period.

(C) If an irrevocable letter of credit is replaced by a different type of financial assurance instrument, the irrevocable letter of credit will be returned to the issuing financial institution; provided, the financial institution provides the Department of Revenue with a written notice sixty (60) days prior to the cancellation date. Cancellation shall not affect any liability incurred or accrued prior to the termination of the sixty (60)-day period.

(6) Exemptions From the Out-of-State Transient Employer Financial Assurance Instrument Requirement. Employers meeting all the following criteria are not required to file a transient employer withholding tax financial assurance instrument:

(A) The principal place of business of the employer must be in a county of another state which borders Missouri;

(B) The employer must have been under contract to perform work in Missouri for at least sixty (60) days each year for the past two (2) calendar years immediately preceding the employer's initial application for exemption from the transient employer bonding requirements; and

(C) The employer must have in his/her possession a tax clearance issued by the Department of Revenue stating that the transient employer has complied with the tax laws of this state and with the provisions of the Workers' Compensation and employment security laws during the period set out in subsection (6)(B) of this rule. On or before January 31 of each year, except January 31 following the year during which the employer meets these criteria, the employer shall submit a request to the Department of Revenue for a renewed tax clearance.

(7) Certification of Workers' Compensation Insurance. Every transient employer shall certify to the director of revenue that the employer has sufficient Workers' Compensation insurance either through a self-insured plan or through a private company (carrier). A transient employer shall provide the Department of Revenue with a copy of its Workers' Compensation insurance policy. The insurance policy shall be forwarded to the Division of Workers' Compensation of the Missouri Department of Labor and Industrial Relations for verification of the insurance policy.

*AUTHORITY: section 143.961, RSMo 1986 and Senate Bill 4477 of the 87th General Assembly to be codified as section 285.230,*

*RSMo in 1994.\* Original rule filed Aug. 8, 1989, effective Nov. 26, 1989. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995.*

*\*Original authority: 143.961, RSMo 1972 and 285.230, RSMo 1988, amended 1994.*



MISSOURI DEPARTMENT OF REVENUE  
CENTRAL PROCESSING BUREAU  
CENTRAL REGISTRATION SECTION  
P.O. BOX 3300, JEFFERSON CITY, MISSOURI 65105-3300  
**TRANSIENT EMPLOYER CASH BOND**

FORM  
**2982**  
(REV. 7-88)

**REQUIREMENTS FOR COMPLETING FORM:**

1. Form must be properly completed.
2. Signed by applicant.
3. Must be notarized.
4. **NO** personal or company checks will be accepted.

**KNOW ALL MEN BY THESE PRESENTS:**

OWNER'S NAME \_\_\_\_\_

BUSINESS NAME \_\_\_\_\_

COUNTY \_\_\_\_\_

STATE \_\_\_\_\_

We, as principal, hereby file with the Missouri Department of Revenue this Transient Employer Cash Bond and the attached Cashier's Check or Money Order in the amount of \_\_\_\_\_  
(\$ \_\_\_\_\_ ).

We understand that we are required to comply with all provisions of the Missouri Employer Withholding Tax Law, the Workers' Compensation Law; the Missouri Employment Security Law and all amendments thereto.

We understand that whenever we cease to engage in activity within the state it shall be our duty to notify the Director of Revenue in writing at least ten (10) days prior to the time discontinuance takes effect. We understand that we will be released from the bonding requirement conditioned upon the faithful compliance with all of the provisions of chapters 143, 287 and 288, RSMo., pertaining to the Missouri Employer Withholding Tax Law, the Workers' Compensation Law, the Employment Security Law and all amendments thereto.

If we become delinquent and owe the State of Missouri any tax or other payments, penalties or interest under the provisions of the Missouri Withholding Tax Law; the Workers' Compensation Law; the Missouri Employment Security Law and all amendments thereto, the Director of Revenue may forfeit this bond and apply it to any unpaid delinquencies or claims. Should this occur, we understand that we may be required to file any additional bond set forth by Section 285.230 RSMo., Supp. 1988.

WITNESS OUR HANDS AT \_\_\_\_\_

, MISSOURI

ON THIS \_\_\_\_\_

DAY OF \_\_\_\_\_

, 19\_\_\_\_\_

SIGNATURE OF OWNER, PARTNER OR CORPORATE OFFICER \_\_\_\_\_

**NOTARY**

NOTARY PUBLIC EMBOSSED SEAL

	STATE _____	COUNTY (OR CITY OF ST. LOUIS) _____	
	SUBSCRIBED AND SWORN BEFORE ME, THIS		
	DAY OF _____	19_____	<b>USE RUBBER STAMP IN CLEAR AREA BELOW.</b>
	NOTARY PUBLIC SIGNATURE _____	MY COMMISSION EXPIRES _____	
NOTARY PUBLIC NAME (TYPED OR PRINTED) _____			

MO 860-2078 (7-88)



MISSOURI DEPARTMENT OF REVENUE  
CENTRAL PROCESSING BUREAU  
P.O. BOX 3300  
JEFFERSON CITY, MISSOURI 65105-3300  
**TRANSIENT EMPLOYER SURETY BOND**

FORM  
**2981**  
(REV. 8-88)

**REQUIREMENTS FOR COMPLETING FORM**

1. Issued by licensed insurance co.
2. Signed by Attorney-In Fact
3. Signed by applicant
4. Must bear insurance company seal
5. Must have effective date
6. Must be accompanied by a valid Power of Attorney letter

BOND NUMBER

**KNOW ALL MEN BY THESE PRESENTS:**

That I/We \_\_\_\_\_, OWNER'S NAME \_\_\_\_\_, BUSINESS NAME \_\_\_\_\_

of \_\_\_\_\_ County, State of \_\_\_\_\_

as principal, and \_\_\_\_\_  
a corporation duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds required or authorized by the laws of the State of Missouri, as surety, are held and firmly bound unto the STATE OF MISSOURI In the penal sum of \_\_\_\_\_

DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, to be paid to the State of Missouri, or to the Director of Revenue of the State of Missouri, for which sums of money, well and truly to be paid, we bind ourselves, our heirs, successors, assigns, executors, and administrators, jointly and severally, firmly by these presents.

**THE CONDITIONS OF THE FOREGOING OBLIGATION IS SUCH THAT,**

WHEREAS, the said principal has applied for, or has obtained a Missouri Employer Withholding Identification Number to deduct and withhold taxable wages and will be subject to the Missouri Withholding Tax Law; the Workers' Compensation Law, the Employment Security Law; and all amendments lawfully adopted in relation thereto.

NOW THEREFORE, if said principal shall well and truly comply with all the provisions of said laws and any amendments thereto, and in particular pay all taxes, claims, interest and penalties promptly when due, then this obligation shall be null and void; otherwise to remain in full force and effect.

If said principal is delinquent the Missouri Department of Revenue will notify said surety. Surety than has thirty (30) days in which to make payment or contact Missouri Department of Revenue stating reasons payment has not been made.

The said principal authorizes the release of confidential tax information to said surety as long as this obligation remains in force and effect; releasing personnel from the Department of Revenue and Department of Labor and Industrial Relations from any and all liability for any disclosures to said surety of confidential tax information resulting from release of subject information under Section 32.057, 287.380, 288.250 and supplement thereto.

This obligation shall remain in force and effect until the transient employer ceases to engage in activity within the state or until the Director of Revenue releases said principal from the bonding requirement as set forth by Section 285.230 RSMo., Supp. 1988. The surety may cancel the bond and be released of further liability hereunder by delivering sixty (60) days written notice to the Director of Revenue. Such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of sixty (60) day period.

IN WITNESS WHEREOF, we have duly executed the foregoing obligation this \_\_\_\_\_

day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_. To be effective on the \_\_\_\_\_

day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_. \_\_\_\_\_

SURETY	ATTEST:	(SEAL)
NAME AND TITLE		
SURETY'S STREET ADDRESS OR P.O. BOX		
CITY, STATE, ZIP CODE		
SIGNATURE OF OWNER, PARTNER OR CORPORATE OFFICER OF BUSINESS		

MO 860-2076 (8-88)

## ACKNOWLEDGEMENT BY PRINCIPAL - FORM 2981

PAGE 2

## INDIVIDUAL

NOTARY PUBLIC EMBOSSEER SEAL		STATE OF MISSOURI	COUNTY (OR CITY OF ST. LOUIS)	ON THIS DAY OF	BEFORE ME
		NAME OF NOTARY (PRINT OR TYPE)		A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED	
		NAME OF INDIVIDUAL (PRINT OR TYPE)		KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN	
		TYPE OF DOCUMENT	AND ACKNOWLEDGES TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN STATED		
		NOTARY PUBLIC SIGNATURE			
		MY COMMISSION EXPIRES	USE RUBBER STAMP HERE ►		

## PARTNERSHIP

NOTARY PUBLIC EMBOSSEER SEAL		STATE OF MISSOURI	COUNTY (OR CITY OF ST. LOUIS)	ON THIS DAY OF	BEFORE ME
		NAME OF NOTARY (PRINT OR TYPE)		A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED	
		NAME OF INDIVIDUAL (PRINT OR TYPE)		KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN	
		TYPE OF DOCUMENT	AND ACKNOWLEDGES TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN STATED		
		NOTARY PUBLIC SIGNATURE			
		MY COMMISSION EXPIRES	USE RUBBER STAMP HERE ►		

## CORPORATION

NOTARY PUBLIC EMBOSSEER SEAL		STATE OF MISSOURI	COUNTY (OR CITY OF ST. LOUIS)	ON THIS DAY OF	BEFORE ME
		NAME OF NOTARY (PRINT OR TYPE)		A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED	
		NAME OF INDIVIDUAL (PRINT OR TYPE)		KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN	
		TYPE OF DOCUMENT	AND ACKNOWLEDGES TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN STATED		
		NOTARY PUBLIC SIGNATURE			
		MY COMMISSION EXPIRES	USE RUBBER STAMP HERE ►		

MO 860-2076 (8-88)



MISSOURI DEPARTMENT OF REVENUE  
CENTRAL PROCESSING BUREAU  
CENTRAL REGISTRATION SECTION  
P.O. BOX 3300, JEFFERSON CITY, MO 65105-3300  
**TRANSIENT EMPLOYER IRREVOCABLE  
LETTER OF CREDIT**

FORM  
**2980**  
(REV. 7-88)

**REQUIREMENTS FOR COMPLETING FORM**

1. Issued by any state or Federal financial institution
2. Signed by bank official
3. Signed by applicant
4. Must be notarized
5. Authorization for Release of Confidential Information must be completed (See reverse side of this form)

AMOUNT (U.S. CURRENCY) \$	LETTER OF CREDIT NUMBER	DATE OF ISSUANCE
AT THE REQUEST OF (OWNER'S NAME)		
DOING BUSINESS AS		
OF (COUNTY)	STATE OF	

We hereby issue our irrevocable letter of credit, in favor of the state of Missouri in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) available by your demand for payment.

Demands under this irrevocable letter of credit must be accompanied by a statement of delinquent taxes or claims, penalties and interest due under the provisions of the Missouri Employer Withholding Tax Law; the Workers' Compensation Law; the Missouri Employment Security Law and all amendments thereto; and marked "drawn against irrevocable letter of credit number \_\_\_\_\_".

This obligation shall be deemed automatically renewed on an annual basis for a period of not less than one (1) year from the date of this letter. This credit will expire in full and finally 2 years from the date of issuance. The issuing banking institution may cancel the letter of credit and be released of future liability hereunder by delivering sixty (60) days prior written notice to the Department of Revenue at the address shown above. Cancellation shall not affect any liability incurred and accrued hereunder prior to the termination of the sixty (60) day period.

Upon receipt of said notification the Missouri Department of Revenue may make one demand for payment, for the unused balance of this irrevocable letter of credit, mentioning thereon our letter of credit number \_\_\_\_\_ accompanied by its signed statement that the agreement is still outstanding and that the proceeds of the payment will be retained and used in lieu of the letter of credit with any unused portion to be returned to the taxpayer.

We hereby engage with you that demands made in conformity with the terms of this credit will be duly honored on presentation.

In witness whereof, we have duly executed the foregoing this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

ISSUING BANK INSTITUTION	ADDRESS		CITY, STATE, ZIP CODE		
BANK ROUTING TRANSIT NUMBER	BY: SIGNATURE AND TITLE OF BANK OFFICIAL				
<b>NOTARY PUBLIC</b>					
NOTARY PUBLIC EMBOSSE SEAL	STATE OF MISSOURI	COUNTY (OR CITY OF ST. LOUIS)	ON THIS DAY OF	19 _____ BEFORE ME	
	NAME OF NOTARY (PRINT OR TYPE)			A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED	
	NAME OF INDIVIDUAL (PRINT OR TYPE)			KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN	
	TYPE OF DOCUMENT		AND ACKNOWLEDGE TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN STATED		
	NOTARY PUBLIC SIGNATURE				
	MY COMMISSION EXPIRES		USE RUBBER STAMP HERE		



MISSOURI DEPARTMENT OF REVENUE  
**AUTHORIZATION FOR RELEASE  
OF CONFIDENTIAL INFORMATION**

FORM  
**2980**  
(REV. 7-88)

I hereby authorize release of confidential information to \_\_\_\_\_ for (BANKING INSTITUTION) the purpose of making demand for payment on letter of credit number \_\_\_\_\_ as long as the obligation remains in force and effect. Release of this information to the named banking institution does not give the banking institution authority to request information other than information concerning the delinquent periods or claims for which a demand for payment is being made. I also release personnel from the Department of Revenue and Department of Labor and Industrial Relations from any and all liability for any disclosure to this banking institution of confidential information resulting from release of subject information under Section 032.057, 287,380, 288.250 and supplemental thereto.

In witness whereof I, (WE), have duly executed the foregoing this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

OWNER		TITLE
OWNER/OFFICER SIGNATURE		
<b>NOTARY PUBLIC</b>		
NOTARY PUBLIC EMBOSSEUR SEAL	STATE OF MISSOURI	
	SUBSCRIBED AND SWORN BEFORE ME, THIS	
DAY OF 19		COUNTY (OR CITY OF ST. LOUIS)  <b>USE RUBBER STAMP IN CLEAR AREA BELOW.</b>
NOTARY PUBLIC SIGNATURE	MY COMMISSION EXPIRES	
NOTARY PUBLIC NAME (TYPED OR PRINTED)		

MO 860-2077 (7-88)

**12 CSR 10-2.020 Difference in Basis on December 31, 1972**

*PURPOSE: This rule serves as a guideline in the determination of the amount of individual, corporate or other taxpayer's allowable modification upon the sale or other disposition of property having a higher adjusted basis for Missouri income tax purposes than for federal income tax purposes on December 31, 1972.*

*Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.*

(1) If a taxpayer's federal adjusted gross income (FAGI) includes any gain from a sale or other disposition of property having a higher adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax purposes on December 31, 1972, a modification must be made to adjust for this difference in basis. This modification applies only if and to the extent that the gain is included in the FAGI of the taxpayer.

(2) Computing the Modification for Difference in Basis. This modification is made by subtracting from FAGI the portion of the gain included in the adjusted gross income which is not in excess of the amount by which Missouri basis exceeds federal basis at December 31, 1972. If the gain is a long-term capital gain for federal tax purposes, only fifty percent (50%) of that portion of the gain is to be deducted.

(3) Gain on Sale of Residence. A gain on the sale of a residence of a Missouri taxpayer illustrates the modification provided in this section. Under Internal Revenue Code (IRC) section 1034, a taxpayer's gain on the sale of his/her principal residence is not recognized, in whole or in part, under certain circumstances. The nonrecognized gain reduces the basis of the subsequent residence for federal tax purposes. For taxable years prior to the application of sections 143.011–143.996, RSMo, no adjustment to Missouri basis was applicable, as any gain on the sale of a residence was fully recognized at the time of sale for Missouri tax purposes. When the taxpayer's residence had a higher basis for Missouri tax purposes than for federal tax purposes on December 31, 1972, the gain, to the extent

included in FAGI, will be a modification under section 143.121-3(b), RSMo.

(4) As an example, assume that the taxpayer purchased his/her present residence for \$50,000. The adjusted basis for federal tax purposes on December 31, 1972 was \$40,000 (\$50,000 less a \$10,000 gain not recognized under IRC section 1034 on the sale of his/her old residence and subsequent purchase of his/her present residence). The adjusted basis for Missouri tax purposes on December 31, 1972 was \$50,000. S/he sells his/her residence in 1973 for \$66,000 and does not purchase another home. The gain on the sale is fully recognized for federal tax purposes and is taxed as a long-term capital gain in 1973. There are no other capital gains or losses to report in that year. The taxpayer also has \$30,000 of other FAGI in 1973 and there are no other Missouri modifications. Missouri adjusted gross income (MAGI) would be computed as follows:

Missouri adjusted basis	\$50,000
Federal adjusted basis	\$40,000
Difference in basis	<u>\$10,000(A)</u>

Sales price	\$66,000
Federal adjusted basis	\$40,000
Net long-term capital gain	<u>\$26,000(B)</u>
50% deduction (IRC Section 1202)	<u>\$13,000</u>

Net long-term capital gain after IRC Section 1202 deduction	\$13,000
Other income	<u>\$30,000</u>
FAGI	<u>\$43,000(C)</u>
Modification under section 143.121-3(b), RSMo (1/2 of lesser of (A) or (B) but not more than (C))	<u>(\$ 5,000)</u>
MAGI	<u>\$38,000</u>

(5) This example illustrates the principle of the last sentence of section (1) of this rule. An individual sells a nondepreciable capital asset which s/he held over six (6) months for \$100,000. The adjusted basis of this property for federal tax purposes was \$50,000 on December 31, 1972 and for Missouri tax purposes was \$70,000. In the same year, the taxpayer also has \$67,000 of short-term capital losses and \$40,000 of other FAGI. There are no other Missouri modifications. His/her MAGI would be computed as follows:

Missouri adjusted basis	\$ 70,000
Federal adjusted basis	\$ 50,000
Difference in basis	<u>\$ 20,000(A)</u>

Sales price	\$100,000
Federal adjusted basis	\$ 50,000
Long-term capital gain	<u>\$ 50,000</u>
Short-term capital losses	<u>(\$ 67,000)</u>
Net short-term capital loss	<u>(\$ 17,000)(B)</u>

Deduction for net capital loss limited to (IRC Section 1211)	<u>(\$ 1,000)</u>
Other income	<u>\$ 40,000</u>
FAGI	<u>\$ 39,000(C)</u>
Modification under section 143.121-3(b), RSMo (1/2 of lesser (A) or (B) but not more than (C))	<u>\$ 0</u>
MAGI	<u>\$ 39,000</u>

(6) As a further example, assume that a corporation sells a depreciable asset for \$100,000 in 1973. The adjusted basis of this property for federal tax purposes was \$80,000 on December 31, 1972 and for Missouri tax purposes was \$108,000. Due to the federal depreciation recapture rules, all of the gain is reportable as ordinary income in 1973 and there are no other gains or losses to report for that year. Other federal taxable income for 1973 is \$50,000 and there are no other Missouri modifications. Missouri taxable income would be computed as follows:

Missouri adjusted basis	\$108,000
Federal adjusted basis	\$ 80,000
Difference in basis	<u>\$ 28,000(A)</u>

Sales price	\$100,000
Federal adjusted basis	\$ 80,000
Ordinary gain	<u>\$ 20,000(B)</u>
Other income	<u>\$ 50,000</u>
Federal taxable income	<u>\$ 70,000(C)</u>
Modification under section 143.121-3(b), RSMo (lesser of (A) or (B) but not more than (C))	<u>(\$ 20,000)</u>
Missouri taxable income	<u>\$ 50,000</u>

(7) Property Acquired After December 31, 1972. Where a taxpayer realized a gain on the sale of property which was acquired after December 31, 1972 in a manner that the basis of that property is determined solely by reference to its cost to the taxpayer, no modification is allowed. The property necessarily has the same basis for both Missouri and federal tax purposes.

(8) Where a taxpayer owns property which has a higher Missouri basis than federal basis on December 31, 1972 and the property is subsequently exchanged for other property, the basis of which is determined by reference to the basis of the property disposed of, the difference in basis on December 31, 1972

shall be carried forward to, and be associated with, the property received in the exchange, for purposes of determining the modification provided in this section.

(9) Where a taxpayer receives property which had a higher Missouri basis than federal basis on December 31, 1972, in a manner that the basis of the property in the hands of the transferor carries over to the transferee (for example, by gift—see IRC Section 1015); the difference in basis on December 31, 1972 shall be carried forward to, and be associated with, the property in the hands of the transferee, for purposes of determining the modification provided in this section.

(10) Separate Computation Required. Where two (2) or more assets are sold at a gain during the same taxable year, and the adjusted basis of each for Missouri tax purposes on December 31, 1972 was higher than its federal adjusted basis, the amount of the modification provided by this section shall be computed separately for each asset sold.

(11) Modification Not Allowed in Certain Cases. No modification is to be made where property was disposed of at a loss during the taxable year even though there was a difference between the Missouri and federal basis on December 31, 1972. No modification, adjustment or allowance under this section or any other section is to be made with respect to any federal capital loss carry-over.

(12) Installment Sales. In the case of an installment sale of an asset which on December 31, 1972 had a Missouri basis higher than its federal basis, the amount of the modification for any taxable year will be that proportion of the total amount of the modification as the amount received in that year bears to the total selling price from the sale.

(A) Example: Assume the same facts as in section (4) of this rule, except that the residence was sold on the installment basis, the taxpayer receiving \$11,000 per year for six (6) years beginning in 1973. The Missouri modification for each of the six (6) years would be computed as follows:

$$\begin{aligned} \$5,000 \times \frac{\$11,000}{\$66,000} &= \$833 \end{aligned}$$

(13) Tax Return and Recordkeeping Requirements. Any modification permitted under this rule shall be fully explained and computations set forth in a statement attached to each Missouri tax return in which the modification is made. Taxpayer shall retain records as may be necessary to establish a difference in adjusted basis on December 31, 1972 and a modification under section 143.121-3(b), RSMo, if and when the property is sold.

*AUTHORITY: section 143.961, RSMo (1986).\* Regulation 1.121-3(b) was originally filed March 15, 1974, effective March 25, 1974.*

\*Original authority 1972.

## 12 CSR 10-2.025 Adjustment to Avoid Double Taxation

*PURPOSE: This rule serves as a guideline in the determination of the amount of a taxpayer's allowable modification with respect to any item of income or gain which was properly included in taxable income and taxed under the Missouri income tax law in effect prior to January 1, 1973.*

*Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.*

(1) General Rule. There shall be subtracted from federal adjusted gross income (FAGI), to the extent included in the adjusted gross income (AGI), any amount necessary to prevent the taxation under sections 143.011—143.996, RSMo of any item of income or gain properly included in the taxable income and taxed under the Missouri income tax law in effect prior to January 1, 1973. This modification applies to the income of a taxpayer even though the right to receive the income may have been acquired by reason of the death of a decedent or from an estate or trust.

(2) Annuity. An annuitant is permitted to deduct from FAGI the amount, if any, by which the total annuity payments previously taxed for Missouri tax purposes exceed the total annuity payments previously taxed for federal tax purposes. The reduction of FAGI representing the excess amount previously taxed by Missouri is limited during the taxable year to the amount of the income included in FAGI. The modification for each annuity must be computed separately.

(A) Example: A calendar year taxpayer paid \$20,000 for an annuity and began drawing \$2,000 a year from that annuity in 1968 when s/he was seventy (70) years old. Assuming his/her life expectancy at that time was 12.1 years, his/her expected return

would be \$24,200 and s/he would be taxed on 17.356% of his/her annuity for federal tax purposes. For Missouri tax purposes for all taxable years prior to January 1, 1973, s/he would be taxed on three percent (3%) of the amount paid for the annuity contract (\$600). The modification required under section 143.121-3(c), RSMo would be computed as follows:

Year	Federal Taxable Amount	Missouri Modification	Net Amount Included in Missouri AGI
1968	\$347.12		\$600.00
1969	\$347.12		\$600.00
1970	\$347.12		\$600.00
1971	\$347.12		\$600.00
1972	\$347.12		\$600.00
1973	\$347.12	\$347.12	0
1974	\$347.12	\$347.12	0
1975	\$347.12	\$347.12	0
1976	\$347.12	\$223.04	\$124.08
1977 and later	\$347.12	0	\$347.12

(3) Modification for Income From Keogh (Self-Employed) Retirement Plan. A Keogh Act Retirement Plan qualified under Internal Revenue Code (IRC) Section 401 provides for a tax deduction for a self-employed individual for contributions to a qualified pension or profit-sharing plan. An owner-employee can contribute for him/herself each year a portion of his/her earned income for that year. For the years 1963—1967, only one-half (1/2) of a contribution on behalf of an owner-employee was deductible for federal tax purposes. Income earned on the contributions is not taxed until withdrawn from the retirement fund, at which time it is taxed as ordinary income. Under the Missouri income tax law in effect prior to January 1, 1973, contributions to a qualified retirement plan by a self-employed individual on his/her own behalf were not allowed as a deduction. A self-employed taxpayer receiving payments from a Keogh retirement plan is permitted to deduct from FAGI, to the extent included in the AGI, an amount equal to the difference between the sum of the contributions which were deductible for federal tax purposes and the sum of the contributions which were deductible for Missouri tax purposes.

(A) Example: A taxpayer contributed \$2,500 to a Keogh plan every year from 1963—1977 and receives the first of ten (10) equal annual payments of \$7,000 in 1978. The modification required under section 143.121-3(c), RSMo would be computed as follows:

Years	Summary of Contributions		
	Contributions	Federal Allowable Deductions	Missouri Allowable Deductions
1963—1967	\$12,500	\$ 6,250	0
1968—1972	\$12,500	\$12,500	0
1973—1977	\$12,500	\$12,500	\$12,500
	\$37,500	\$31,250	\$12,500

The difference between allowable federal deductions (\$31,250) and allowable Missouri deductions (\$12,500) is \$18,750. This is the maximum amount which can be deducted as modifications for Missouri tax purposes.

#### Summary of Payments Received

	Total Received	Portion Taxable	Missouri Modification	Net Amount Included in Missouri AGI
1978	\$ 7,000	\$ 6,375	\$ 6,375	0
1979	\$ 7,000	\$ 6,375	\$ 6,375	0
1980	\$ 7,000	\$ 6,375	\$ 6,000	\$ 375
1981	\$ 7,000	\$ 6,375	0	\$ 6,375
1982—				
1987	\$42,000	\$38,250	0	\$38,250
	\$70,000	\$63,750	\$18,750	\$45,000

(4) Modification for Installment Sales. Where property which had a higher adjusted basis for Missouri tax purposes was sold on the installment basis prior to the effective date of sections 143.011—143.996, RSMo and the installment method of reporting the gain was properly used for both federal and Missouri tax purposes, a modification under section 143.121-3(c), RSMo is necessary to prevent the double taxation of that portion of the gain that does not exceed the difference in basis. The amount of the modification shall be limited to that portion of the modification as the amount received in the current year is to the total selling price.

(5) Tax Return Information Required. Any modification permitted under this section shall be fully explained and computations set forth in a statement attached to each Missouri tax return in which the modification is made. The taxpayer shall retain records as may be necessary to establish the amount of the modification.

*AUTHORITY:* section 143.961, RSMo (1986).\* Regulation 1.121-3(c) was originally filed March 15, 1974, effective March 25, 1974.

\*Original authority 1972.

#### 12 CSR 10-2.030 Subsequent Change of Accounting Period

*PURPOSE:* This rule serves as a guideline in the determination of the amount of an individual taxpayer's allowable personal and dependency exemptions where a short taxable period income tax return is required due to a change in the taxpayer's taxable year for federal income tax purposes.

(1) If a taxpayer's taxable year is changed for federal income tax purposes, the Missouri

taxable year will automatically be changed. No application for change of accounting period for Missouri income tax purposes will be required. If a short taxable period for federal income tax purposes results from a change in the taxpayer's accounting period, the taxpayer also shall file a Missouri income tax return for that short taxable period, attaching a copy of one (1) of the items indicating federal permission. Missouri taxable income shall be computed on the basis of the period for which the return is made and in accordance with the rules applicable to the determination of Missouri taxable income generally, except that the amount of allowable personal and dependency exemptions shall be reduced to the amount which bears the same ratio to the full amount for those exemptions as the number of months in the period bears to twelve (12) months.

(2) Example: A resident individual has been filing his/her federal and Missouri income tax returns on the basis of a fiscal year ending September 30. S/he changes to a calendar year basis and files a federal income tax return for the short taxable period October 1 to December 31. S/he is entitled to one (1) personal exemption. His/her federal adjusted gross income (FAGI) for the short taxable period is as follows:

Salary	\$3,000
United States bond interest	\$ 40
Savings bank interest	\$ 60
FAGI	<u>\$3,100</u>

His/her Missouri taxable income (before federal income tax deduction) is as follows:

FAGI	\$3,100
Less modification for United States bond interest	\$ (40)
Missouri adjusted gross income	\$3,060
Federal itemized deduction (no federal standard deduction is allowable for short-period returns; no Missouri modifications applicable)	<u>(\$250)</u>

Personal exemption (\$1200 × 3/12)	<u>(\$300)</u>
Missouri taxable income (before federal income tax deduction)	\$2,510

*AUTHORITY:* section 143.961, RSMo (1986).\* Regulation 1.271-2 was originally filed March 8, 1974, effective March 18, 1974.

\*Original authority 1972.

#### 12 CSR 10-2.035 Conformity of Missouri With Federal Accounting Methods

*PURPOSE:* The rule provides that a taxpayer must employ the same method of accounting for Missouri income tax purposes as is used for federal income tax purposes.

(1) A taxpayer must employ the same method of accounting in determining Missouri taxable income as is used for federal income tax purposes. The term method of accounting refers not only to the overall method of accounting (such as cash or accrual) but also to the accounting treatment of particular items of income, gain, loss or deduction, such as depreciation, bad debts, inventory valuation, research and experimental expenditures.

(2) If the taxpayer is allowed or is required to change an accounting method for federal income tax purposes, a similar change in the accounting method for Missouri income tax purposes will automatically be made. No application for change of accounting method for Missouri income tax purposes shall be required.

*AUTHORITY:* section 143.961, RSMo (1986).\* Regulations 1.281-1 and 1.281-2 were originally filed March 8, 1974, effective March 18, 1974.

\*Original authority 1972.

*Armco Steel Corporation v. State Tax Commission*, 580 SW2d 242 (Mo. banc 1979). Appellant filed a consolidated federal tax return for 1969, making certain intercorporate payments to its subsidiaries for their tax losses incurred. Appellant then claimed as a deduction on its Missouri tax return the amount of federal tax that would have been paid if the appellant had filed as a separate entity. For deduction purposes on Missouri income tax returns, United States income taxes "assessed" are those that are actually paid. And, although the director of revenue is to "follow as nearly as practicable the rules and regulations prescribed by the United States government on income tax assessments and collection," the director cannot interpret the statute in accordance with the federal regulations if to do so will change the substantive rules of the Missouri statute.

## 12 CSR 10-2.040 Transitional Adjustments in Accounting Methods

**PURPOSE:** This rule serves as a guideline in the determination of any adjustments that are required for Missouri income tax purposes resulting from a change in the taxpayer's accounting method for the first taxable period to which sections 143.011—143.996, RSMo apply which are necessary to prevent duplication or omission of income or deduction items.

**Editor's Note:** The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) General Rule. The taxpayer's method of accounting must be the same for Missouri tax purposes as for federal tax purposes (see 12 CSR 10-2.035). If, for the first taxable period to which sections 143.011—143.996, RSMo apply, accounting methods required are different from the methods used in the previous taxable period for Missouri tax purposes, transitional adjustments will be required when necessary to prevent substantial amounts from being duplicated or omitted. The adjustments shall be made over a period not to exceed five (5) years. The adjustments required shall take into account inventories, accounts receivable, accounts payable and any other item(s) determined to be necessary to prevent duplication or omission of income or deduction items. Sections (2)—(17) of this rule discuss certain typical transitional adjustments which should be considered illustrative for corporate taxpayers and are not intended to be a complete listing of all the adjustments that may be required nor all taxpayers that may be affected.

(2) Change From Cash to Accrual Method. If a taxpayer is required to change from a cash to an accrual method of accounting, a transitional adjustment (subject to the provisions of sections (6)—(12) of this rule) would be made for the net amount of the adjustments referred to in section (1) of this rule. For example, a calendar year taxpayer must add the accounts receivable and inventory as of January 1, 1973 and deduct accounts payable as of that date. It also must add items of accrued income and deferred expense and deduct deferred income and accrued expense items as of December 31, 1972.

(3) Change to Reserve for Bad Debts Method. For Missouri tax purposes, for taxable years prior to the application of sections 143.011—143.996, RSMo, taxpayers were allowed a bad debt deduction only for those receivables ascertained to be worthless and charged off during the taxable year. For federal tax purposes, taxpayers properly electing under *Internal Revenue Code* (IRC) Section 166 are allowed a deduction for a reasonable addition to a reserve for bad debts in lieu of any deduction for debts which become worthless within the taxable year. A taxpayer utilizing the reserve for bad debts method for federal tax purposes will be required to use that method for Missouri tax purposes for taxable years under sections 143.011—143.996, RSMo. A transitional adjustment (subject to the provisions of sections (6)—(12) of this rule) would be made for the amount of the balance in the reserve for bad debts deducted for federal tax purposes on the beginning date of the first taxable year to which sections 143.011—143.996, RSMo apply. The adjustment shall only be allowed under section 143.301, RSMo if the reserve for bad debts method was used for federal tax purposes and the specific charge off method was used for Missouri tax purposes prior to the application of sections 143.011—143.996, RSMo.

(4) Change to Installment Method for Dealers. For taxable years prior to the application of sections 143.011—143.996, RSMo, installment reporting for dealers was not permitted for Missouri tax purposes. Dealers qualifying under IRC Section 453 are allowed to use the installment method for federal tax purposes. A dealer using the installment method for federal tax purposes will be required to use that method for Missouri tax purposes for taxable years under sections 143.011—143.996, RSMo. A transitional adjustment (subject to the provisions of sections (6)—(12) of this rule) would be made for the amount of the gross profit arising from the sales made before, but not collected by, the beginning date of the first taxable year to which sections 143.011—143.996, RSMo apply. The adjustment shall only be allowed under section 143.301, RSMo if the dealer used the installment sales reporting method for federal tax purposes and did not use that method for Missouri tax purposes prior to the application of sections 143.011—143.996, RSMo.

(A) Example: A taxpayer is a dealer on a calendar-year basis using the installment method allowed under IRC Section 453 for federal tax purposes. On December 31, 1972 the gross profit on sales made prior to January 1, 1973, but not collected before January 1, 1973, was \$8,000. This amount shall be the transitional adjustment (subject to

the provisions of sections (6)—(12) of this rule) required to arrive at Missouri taxable income.

(5) Changes in Depreciation Methods, Lives, and the like. If a taxpayer has computed depreciation differently for Missouri and federal tax purposes, no adjustments shall be made under this section. For example, where a taxpayer has used the double declining balance method of depreciation for federal purposes and the straight-line method for Missouri purposes, there will be no adjustment for past depreciation differences and the amount of the depreciation deduction for Missouri tax purposes will be the same as that deducted for federal tax purposes. This principle also applies in the case where the taxpayer has previously used different useful lives or rates for federal and Missouri tax purposes. Where the adjusted basis of depreciable property is different for Federal and Missouri tax purposes on December 31, 1972, no adjustment shall be made for the difference in basis and the depreciation deduction for Missouri tax purposes after that will necessarily be the same as that deducted for federal tax purposes.

(A) Example: If a taxpayer reinvested proceeds from an involuntary conversion in replacement property in 1969 and elected to reduce the basis of the property for federal tax purposes, the adjusted basis for Missouri tax purposes would then be higher. In that case, no adjustment shall be made to the federal depreciation deduction under this rule (see 12 CSR 10-2.020, however, for the modification of gain, if any, from the sale or other disposition of property having a higher adjusted basis for Missouri tax purposes at December 31, 1972).

(6) Reporting Transitional Adjustment in Accounting Methods. The taxpayer shall attach Missouri Form 301 to each Missouri income tax return for which an adjustment under section 143.301, RSMo is claimed.

(7) If the adjustments which increase Missouri taxable income exceed the adjustments which decrease Missouri taxable income, the excess shall be referred to as a net Missouri increase. If the adjustments which decrease Missouri taxable income exceed the adjustments which increase Missouri taxable income, the excess shall be referred to as a net Missouri decrease.

(8) Treatment of a Net Missouri Increase. A net Missouri increase shall be a positive adjustment to arrive at Missouri taxable income, as defined in sections 143.111 and 143.181, RSMo—with respect to individuals; section 143.431, RSMo—with respect to corporations; and section 143.311, RSMo—with

respect to estates and trusts, during the period specified in section (10) of this rule. In the case of estates and trusts, the allocation of the net Missouri increase between the estate or trust and its beneficiaries shall be determined under sections 143.311—143.391, RSMo.

(9) Treatment of a Net Missouri Decrease. A net Missouri decrease shall be a negative adjustment to arrive at Missouri taxable income, as defined in sections 143.111 and 143.181, RSMo—with respect to individuals; section 143.431, RSMo—with respect to corporations; and section 143.311, RSMo—with respect to estates and trusts, during the period specified in section (10) of this rule and as further modified in section (11) of this rule. In the case of estates and trusts, the allocation of the net Missouri decrease between the estate or trust and its beneficiaries shall be determined under sections 143.311—143.391, RSMo.

(10) Periods During Which Net Missouri Increase or Decrease is to be Reported. An adjustment for a net Missouri increase or net Missouri decrease shall be reported for Missouri purposes over the first five (5) taxable periods under sections 143.011—143.996, RSMo as provided in this rule. The adjustment in each period referred to in the preceding sentence shall be the greater of \$5,000 or one-fifth (1/5) of the net Missouri increase or net Missouri decrease. The accumulated adjustment utilized over the first five (5) taxable periods under sections 143.011—143.996, RSMo shall never exceed the amount determined under section (7) of this rule.

(11) An adjustment for a net Missouri decrease in any taxable period shall not exceed the Missouri taxable income for the period determined without regard to this adjustment. The excess of the adjustment resulting from this limitation shall be referred to as an unused net Missouri decrease. An unused net Missouri decrease may be carried forward and added to the portion, if any, of the net Missouri decrease applicable to the succeeding year as determined under section (10) of this rule. In any year, if the combined amounts are in excess of the Missouri taxable income for that year then the excess, in turn, shall become an unused net Missouri decrease for that year. In no case shall an unused net Missouri decrease be deducted after the end of the fifth taxable period under sections 143.011—143.996, RSMo.

(12) In any year in which the taxpayer utilizes an unused net Missouri decrease, a schedule shall be attached to Missouri Form 301 setting forth a complete explanation of the utilization.

(13) Example 1: A calendar year taxpayer has adjustments arising under section 143.301, RSMo which will increase Missouri taxable income by \$6,000 and decrease Missouri taxable income by \$4,000. The taxpayer has a net Missouri increase of \$2,000, all of which will be utilized in 1973 as a positive adjustment in arriving at Missouri taxable income.

(14) Example 2: A calendar year taxpayer has adjustments arising under section 143.301, RSMo which will increase Missouri taxable income by \$28,000 and decrease Missouri taxable income by \$8,000. The taxpayer has federal taxable income which includes United States government bond interest as follows:

Year	Federal Taxable Income	U.S. Gov't Bond Interest	Missouri Taxable Income Before Section 143.301, RSMo Adjustment
1973	\$ 2,000	\$4,000	(\$2,000)
1974	\$10,000	\$4,000	\$6,000
1975	\$ 2,000	\$8,000	(\$6,000)
1976	\$ 6,000	\$4,000	\$2,000
1977	\$ 8,000	\$4,000	\$4,000

Taxpayer has a net Missouri increase of \$20,000 which will be utilized as follows:

	1973	1974	1975	1976	1977
Missouri Taxable Income Before Section 143.301, RSMo					
Adjustment	(\$2,000)	\$ 6,000	(\$6,000)	\$2,000	\$4,000
Net Missouri Increase	\$5,000	\$ 5,000	\$5,000	\$5,000	0
Missouri Taxable Income	\$3,000	\$11,000	None	\$7,000	\$4,000

(15) Example 3: A calendar year taxpayer has adjustments arising under section 143.301, RSMo which will increase Missouri taxable income by \$8,000 and decrease Missouri taxable income by \$21,000. Taxpayer has a net Missouri decrease of \$13,000. Taxpayer has Missouri taxable income, before this adjustment, of \$6,000 in 1973, \$12,000 in 1974 and \$20,000 in 1975. The net Missouri decrease will be utilized as follows:

	1973	1974	1975
Missouri Taxable Income Before Section 143.301, RSMo Adjustment			
	\$6,000	\$12,000	\$20,000
Net Missouri Decrease	(\$5,000)	(\$ 5,000)	(\$ 3,000)
Missouri Taxable Income	\$1,000	\$ 7,000	\$17,000

(16) Example 4: A calendar year taxpayer has a net Missouri decrease of \$4,000. Taxpayer has Missouri taxable income, before this adjustment, of \$1,000 in 1973, none in 1974 and \$4,000 in 1975. The net Missouri decrease will be utilized as follows:

	1973	1974	1975
Missouri Taxable Income Before Section 143.301, RSMo Adjustment	\$1,000	0	\$4,000
Adjustment Under This Section: Net Missouri Decrease		(\$1,000)*	
Carry Forward of Unused Net Missouri Decrease			(\$3,000)
Missouri Taxable Income	0	0	\$1,000

\*Limited to amount of Missouri taxable income before this adjustment, resulting in \$3,000 of unused net Missouri decrease carried forward and utilized in 1975.

(17) Example 5: A calendar year taxpayer has a net Missouri decrease of \$40,000. Taxpayer has Missouri taxable income, before this adjustment, of \$1,000 in 1973, none in 1974, \$8,000 in 1975, \$50,000 in 1976 and \$5,000 in 1977. The net Missouri decrease will be utilized as follows:

	1973	1974	1975	1976	1977
Missouri Taxable Income Before Section 143.301, RSMo					
Adjustment	\$1,000	0	\$8,000	\$50,000	\$5,000
Adjustment Under This Section: Net Mis-souri Decrease		(\$1,000)		(\$8,000)	(\$8,000)
Carry Forward of Unused Net Mis-souri Decrease					(\$15,000)
Missouri Taxable Income	0	0	0	\$27,000	0

Unused Net  
Missouri De-  
crease for Year

\$7,000	\$ 8,000	0	0	0
---------	----------	---	---	---

Cumulative  
Unused Net Missouri  
Decrease

\$7,000	\$15,000	\$15,000	0	0*
---------	----------	----------	---	----

\*\$3,000 of the net Missouri decrease expired in 1977 and can never be deducted.

(18) Any net Missouri increase or decrease, as defined in section (7) of this rule, of a partnership, estate or trust shall be treated as a net Missouri increase or decrease of the entity on the last day of the first taxable year that the entity is subject to sections 143.011 and 143.996, RSMo.

*AUTHORITY: section 143.301, RSMo (1986).\* Regulation 1.301 was originally filed April 3, 1974, effective April 13, 1974.*

*\*Original authority 1972.*

## 12 CSR 10-2.045 Missouri Consolidated Income Tax Returns

**PURPOSE:** This rule sets forth the requirements for the filing of Missouri consolidated income tax returns by affiliated groups or corporations.

**Editor's Note:** The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Authority for Regulation. This rule is promulgated under the general regulatory powers granted to the director of revenue and the specific authority set forth in section 143.431.3(5), RSMo relating to Missouri consolidated income tax returns.

(2) Applicability of Regulation. Except as provided in subsection (2)(A) of this rule, this rule shall apply only with respect to taxable years of an affiliated group which began on or after January 1, 1973.

(A) If the common parent has a taxable period which includes parts of each of the years 1972 and 1973, this rule shall apply with respect to the determination of tax and taxable income of the affiliated group for the 1972-73 taxable period, provided that the affiliated group has elected to determine its tax and taxable income for that period pursuant to the provisions of sections 143.011—143.996, RSMo and the election has been filed with the director of revenue on or before the due date (including extensions of time) for the filing of the separate Missouri return of the common parent for its 1972-73 taxable period.

(3) Affiliated group. The term affiliated group means those members of an affiliated group of corporations as defined by *Internal Revenue Code* (IRC) Section 1504 and the applicable treasury regulations which participate or are required to participate in the filing of a federal consolidated income tax return for the taxable year.

(4) Missouri consolidated return year. The term Missouri consolidated return year means a taxable year for which a Missouri consolidated return is filed or required to be filed by an affiliated group under this rule.

(5) New member. The term new member shall mean a corporation which is a member

of an affiliated group during the current Missouri consolidated return year but which was not a member of the group for the immediately preceding Missouri consolidated return year.

(6) Multistate Tax Compact. The term Multistate Tax Compact shall mean the Multistate Tax Compact as enacted into law in Missouri as section 32.200, RSMo.

(7) IRC Section. The term IRC section shall mean the pertinent provision of the *Internal Revenue Code* for the taxable year.

(8) Treas. Reg. Section. The term Treas. Reg. Section shall mean the pertinent provisions of the regulation promulgated by the United States Treasury for the taxable year.

(9) Sections 143.011—143.996, RSMo. The term sections 143.011—143.996, RSMo shall mean the Missouri Income Tax Law which became effective on January 1, 1973 and applies with respect to taxable periods beginning on or after January 1, 1973. To the extent that sections 143.011—143.996, RSMo, by virtue of section 143.009, RSMo, are made applicable to other taxable periods, the term sections 143.011—143.996, RSMo also shall refer to those other taxable periods.

(10) Director of revenue. The term director of revenue, except as otherwise specifically provided in this rule, shall mean the director of revenue or his/her duly authorized agent or designee.

(11) Computing Missouri consolidated taxable income from all sources. The Missouri consolidated taxable income (all sources) of an affiliated group shall be its federal consolidated taxable income for the taxable year, adjusted to reflect the modifications provided in section 143.121, RSMo and the applicable modifications provided in section 143.141, RSMo. There shall be subtracted the federal income tax deduction provided in section 143.171, RSMo. There shall be subtracted, to the extent included in federal consolidated taxable income, corporate dividends from sources within Missouri.

(12) Computing Missouri consolidated taxable income from Missouri sources. The Missouri consolidated taxable income (Missouri sources) of an affiliated group shall be so much of its Missouri consolidated taxable income (all sources) as is derived from sources within Missouri pursuant to the interstate division of income rules set forth in section (21) of this rule. If only part of the Missouri consolidated taxable income (all sources) is derived from sources within Missouri, the Missouri consolidated taxable

income (Missouri sources) shall only reflect the effect of the following listed deductions to the extent applicable to Missouri:

(A) The deduction for federal income tax provided in section 143.171, RSMo; and

(B) The effect on Missouri consolidated taxable income (all sources) of the deduction for consolidated net operating loss allowed by IRC Section 172 and the applicable Treas. Reg. issued under IRC Section 1502.

(13) Extent Applicable to Missouri. The extent applicable to Missouri, referred to in section (12) of this rule, shall be determined by multiplying the amount that would otherwise affect Missouri consolidated taxable income (all sources) by the ratio of Missouri consolidated taxable income (Missouri sources) for the year divided by the Missouri consolidated taxable income (all sources) for the year. For the purpose of the preceding sentence, Missouri consolidated taxable income shall not reflect the deductions listed in subsections (12)(A) and (B) of this rule.

(14) Qualifying for Privilege to File Consolidated Return. An affiliated group (other than one which is required to file a Missouri consolidated return for the year) shall be qualified to file a Missouri consolidated return if—

(A) It files a federal consolidated return for the taxable year;

(B) The interstate division of income percentage of the affiliated group for the year, determined under section (21) of this rule, is fifty percent (50%) or more;

(C) Each corporation which has been a member of the affiliated group during any part of the taxable year for which the Missouri consolidated return is to be filed consents to this rule in the manner provided in sections (27)—(29) of this rule; and

(D) The affiliated group is not disqualified from filing a Missouri consolidated return for the year under section (19) of this rule.

(15) Election to File. If an affiliated group qualified to file a Missouri consolidated return wishes to elect to file a Missouri consolidated return, the election must be exercised by the filing of a Missouri consolidated return on or before the due date (including extensions of time) for the filing of the common parent's separate Missouri return.

(16) Election Irrevocable. The exercise of an election to file a Missouri consolidated return is irrevocable and may not be withdrawn after the due date (including extensions of time) for the filing of the common parent's separate Missouri return.

(17) Transitional Rule. For the special transitional rule with respect to taxable years ending before the filing of the first Missouri consolidated income tax regulation with the

Office of the Missouri Secretary of State, see section (44) of this rule.

(18) Continued Filing Requirement. Except as provided in sections (35)—(38) of this rule, an affiliated group which filed (or was required to file) a Missouri consolidated return for the immediately preceding taxable year is required to file a Missouri consolidated return for the current taxable year without regard to whether it derived fifty percent (50%) or more of its Missouri consolidated taxable income (all sources) for the current year from sources within Missouri.

(19) Disqualification to File. If an affiliated group filed (or was required to file) a Missouri consolidated return for the immediately preceding taxable year and, by virtue of sections (35)—(38) of this rule, it does not file or is not permitted to file a Missouri consolidated return for the current taxable year, then it shall not be qualified to file a Missouri consolidated return for a period of five (5) years after its last preceding Missouri consolidated return year.

(20) Filing Consolidated Return is Special Circumstances. Notwithstanding that an affiliated group may be disqualified to file a Missouri consolidated return for the current taxable year under section (19) of this rule, the director of revenue him/herself, subject to the terms and conditions as s/he may prescribe, may permit the affiliated group to file a Missouri consolidated return for the current taxable year. Application for permission shall be directed to the personal attention of the director of revenue him/herself, shall be made in writing and shall set forth in detail the factual and legal arguments which the director of revenue is being requested to consider. No application for permission shall be deemed to be granted until the affiliated group receives written permission bearing the signature of the director of revenue him/herself.

(21) Interstate Division of Income Rules for First Missouri Consolidated Return Year. In the determination of that portion of the Missouri consolidated taxable income (all sources) as is derived from sources within Missouri, the affiliated group shall select in its first Missouri consolidated return year, one (1) of the applicable interstate division of income methods set forth in the following subsection:

(A) Method Under Section 143.451.2., RSMo. If each member of the affiliated group, if filing separate Missouri returns, would qualify to determine that portion of its Missouri taxable income as is derived from sources within Missouri by application of the interstate division of income methods set

forth in section 143.451.2., RSMo, then the affiliated group, as a whole, shall use either—

1. The single factor sales (business transactions) method provided in section 143.451.2., RSMo; or
2. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue;

(B) Method Under Section 143.451.4.—143.451.6., RSMo. If each member of the affiliated group, if filing separate Missouri returns, would qualify to determine that portion of its Missouri taxable income as is derived from sources within Missouri by application of the interstate division of income methods, set forth in section 143.451.4—143.451.6., RSMo (and each member uses the same method), then the affiliated group, as a whole, shall use either—

1. The applicable method set forth in section 143.451.4.—143.451.6., RSMo; or
2. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue;

(C) Method Under Section 143.461, RSMo. If each member of the affiliated group, if filing separate Missouri returns, would qualify to determine that portion of its Missouri taxable income as is derived from sources within Missouri by application of the elective division of income method approved under section 143.461, RSMo (and each member uses the same approved method) then the affiliated group, as a whole, shall use either—

1. The elective division of income method approved under section 143.461, RSMo; or

2. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue;

(D) Members to Which Different Interstate Division of Income Methods Apply—General Rule. If the affiliated group is composed of a membership such that if separate Missouri returns were filed by each member, the same interstate division of income method under section 143.451.2., RSMo (relating to general business corporations), 143.451.4., RSMo (relating to railroads, and the like), 143.451.5., RSMo (relating to interstate bridges), 143.451.6., RSMo (relating to telephone or telegraph companies) or 143.461, RSMo (other approved methods) would not apply to each member, then the affiliated group, as a whole, shall determine that portion of its Missouri consolidated taxable

income (all sources) as is derived from sources within Missouri by application of—

1. The uniform method for division of income provided in the Multistate Tax Compact and the corresponding rules of the Missouri Department of Revenue; or

2. The percentage obtained by the method set forth in subsection (21)(E) of this rule; and

(E) Members to Which Different Interstate Divisions of Income Methods Apply—Special Rule. If an affiliated group is of a type described in subsection (21)(D) of this rule and it elects to use the interstate division of income method referred to in paragraph (21)(D)2. of this rule, it shall arrive at an interstate division of income percentage in the following manner:

1. Each member shall determine its own federal taxable income (loss) for the year, computed as though a separate federal income tax return had been filed by each member for the year. For the purposes of this paragraph, the separate federal taxable income (loss) of each member shall not reflect the deduction for net operating loss allowable by IRC Section 172 and shall not reflect dividend income from sources within Missouri;

2. Each member shall adjust its own separate federal taxable income (loss) so determined to reflect the modifications provided in sections 143.121 and 143.141, RSMo applicable to those members. If, as a result of the computation contained in this paragraph (21)(E)2., a member has a separate Missouri taxable loss for the year, that member, for purposes of subsection (21)(E), shall be considered to have had a positive Missouri taxable income for the year in an amount equal to the loss;

3. The amount determined pursuant to paragraphs (21)(E)1. and 2., for the purposes of subsection (21)(E), shall be considered the separate Missouri taxable income (all sources) of each member for the year;

4. Each member shall determine that portion of its own separate Missouri taxable income (all sources) as is derived from sources within Missouri by application of whichever interstate division of income method under section 143.451 or 143.461, RSMo is applicable to each member; and

5. The combined amounts of the Missouri taxable income (Missouri sources) of each member, so determined, shall be divided by the combined amounts of the Missouri taxable income (all sources) of each member, so determined, to arrive at a percentage and the percentage thus obtained shall be deemed to be that percentage of the Missouri consolidated taxable income (all sources) as is derived from sources within Missouri.

(22) Intercompany Transactions. For the purposes of determining the amount of sales or business transactions under the interstate division of income methods provided in sections 143.451.2. and 143.461, RSMo and in the Multistate Tax Compact, the term sales and business transactions shall include all intercompany sales (business transactions) as defined in Treas. Reg. Section 1.1502—13.

(23) Subsequent Missouri Consolidated Return Years. In the determination of Missouri consolidated taxable income (Missouri sources) for its second and succeeding Missouri consolidated return years, the affiliated group shall use the same interstate division of income method as it used in its first year, unless the group is permitted to change its method pursuant to section (24) of this rule.

(24) Change of Interstate Division of Income Method. An affiliated group, upon written application to the director of revenue, may change its interstate division of income method if, by use of the new method, the interstate division of income percentage for the year of change, determined under section (21) of this rule, is fifty percent (50%) or more and the interstate division of income percentage, determined under section (21) of this rule, for each of the two (2) preceding Missouri consolidated return years would have been fifty percent (50%) or more.

(A) The application shall be submitted on or before the due date (including extensions of time) for the filing of the Missouri consolidated return for the year of change. The application shall be directed to the personal attention of the director of revenue him/herself, shall be made in writing and shall set forth in detail all factual data in support of the requirements set forth in section (24). No application for permission shall be deemed to be granted until the affiliated group receives written permission bearing the signature of the director of revenue him/herself.

(25) Computation of Tax Liability. The Missouri income tax liability of an affiliated group for a Missouri consolidated return year shall be determined by adding together—

(A) The tax imposed by section 143.071, RSMo on the Missouri consolidated taxable income (Missouri sources) for each year;

(B) The additions to tax imposed by section 143.741, RSMo; and

(C) The additions to tax and penalties imposed by section 143.751, RSMo.

(26) Liability For Tax. The common parent corporation and each subsidiary which was a member of the affiliated group during any part of the Missouri consolidated return year shall be jointly and severally liable for the tax

computed in accordance with this rule, together with the interest on the tax, computed in accordance with section 143.731, RSMo. No agreement entered into by one (1) or more members of the affiliated group with any other member of the group or with any other person in any case shall have the effect of reducing the liability prescribed.

(27) Consent to This Rule. The consent of a corporation referred to in subsection (14)(C) of this rule shall be made by the corporation joining in the making of a Missouri consolidated return for the year. Each subsidiary member of an affiliated group, with respect to the first Missouri consolidated return year in which it is a member of the affiliated group, shall execute a Missouri Form 22 (Authorization and Consent of Subsidiary Corporation to be Included in a Missouri Consolidated Income Tax Return). The willful failure of a subsidiary member of an affiliated group to execute a Missouri Form 22 shall be deemed to constitute a request by the affiliated group to discontinue, for good cause, the filing of a Missouri consolidated return with respect to the year of the failure and all Missouri consolidated return years after that. The affiliated group, however, shall continue to be subject to section (18) of this rule unless and until the director of revenue grants written permission to the affiliated group to discontinue the filing of Missouri consolidated returns.

(28) Consent Under Facts and Circumstances. If a subsidiary member of an affiliated group fails to execute a Missouri Form 22, the director of revenue may determine, under the facts and circumstances, that the member has joined in the making of the Missouri consolidated return of the affiliated group.

(29) Failure to Consent Due to Mistake. If any member of an affiliated group has failed to join in the making of a Missouri consolidated return and the common parent establishes to the satisfaction of the director of revenue that the failure was due to a mistake of law or fact, or to inadvertence, then the member shall be allowed to file a Missouri Form 22 and join in the making of the Missouri consolidated return.

(30) Consolidated Return Made by Common Parent. The Missouri consolidated return shall be made by the common parent on Missouri Form 20 and shall be filed by the common parent.

(31) Attachments to Missouri Form 20. In addition to those matters required of all corporations, an affiliated group shall be required to submit the following items:

(A) A Missouri Form 22 must be executed by each subsidiary member of an affiliated group and must be attached to the Missouri Form 20 for the first Missouri consolidated return year;

(B) For the second and succeeding Missouri consolidated return years, a Missouri Form 22 must be filed by each member of an affiliated group which is a new member for the year; and

(C) The affiliated group shall attach to its Missouri Form MS a detailed schedule which the interstate division of income data of each member of the affiliated group is set forth.

(32) Common Parent as Agent for All Other Members. The common parent, for all purposes other than the making of the consent required by subsection (14)(C) of this rule, shall be the sole agent for each subsidiary member in the affiliated group, duly authorized to act in its own name in all matters relating to the Missouri tax liability for the Missouri consolidated return year. No subsidiary member shall have authority to act for or to represent itself in any matter. For example, all correspondence will be carried on directly with the common parent; the common parent shall file for all extensions of time, including extensions of time for payment of Missouri tax; notices of deficiencies will be mailed to the common parent and the mailing only to the common parent shall be considered as a mailing to each subsidiary member in the affiliated group; notice and demand for payment of taxes will be given only to the common parent and the notice and demand will be considered as a notice and demand to each subsidiary member; the common parent will file petitions and conduct proceedings before the director of revenue and the State Tax Commission; and any petition shall be considered as also having been filed by each subsidiary. The common parent will file claims for refund or credit and any refund will be made directly to and in the name of the common parent and will discharge any liability of Missouri in respect to that refund to any subsidiary member; and the common parent in its name will execute closing agreements and all other documents and any agreement or any other documents so executed shall be considered as having also been given or executed by each subsidiary member. Notwithstanding the provisions of this section, any notice of deficiency, in respect to the tax for a Missouri consolidated return year, will name each corporation which was a member of the affiliated group during any part of the period (but a failure to include the name of any member will not affect the validity of the notice of deficiency as to the other members); any notice and demand for payment will name each corporation which was a member of the affiliated

group during any part of the period (but a failure to include the name of any member will not effect the validity of the notice and demand as to the other members); and any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which the collection is to be made. The provisions of this section shall apply whether or not a Missouri consolidated return is made for any subsequent year and whether or not one (1) or more subsidiaries have become or have ceased to become members of the affiliated group at any time. Notwithstanding the provisions of this section, the director of revenue, upon notifying the common parent, may deal directly with any subsidiary member of the affiliated group with respect to its liability, in which event that member shall have full authority to act for itself.

(33) Notification of Deficiency to Corporation Which Has Ceased to be a Member of an Affiliated Group. If a subsidiary has ceased to be a member of an affiliated group and if the subsidiary files written notice of the cessation with the director of revenue, then the director of revenue, upon written request of that subsidiary, will furnish it with a copy of any notice of deficiency with respect to the tax for a Missouri consolidated return year for which it was a member and a copy of any notice and demand for payment of the deficiency. The filing of the written notification and request by a subsidiary corporation shall not have the effect of limiting the scope of the agency of the common parent provided in section (32) of this rule and a failure by the director of revenue to comply with the written request shall not have the effect of limiting the liability of the corporation provided in section (26) of this rule.

(34) Effect of Dissolution of Common Parent. If a common parent contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall notify the director of revenue of that fact and designate, subject to the approval of the director of revenue, another member of the affiliated group to act as agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If the notice thus required is not given by the common parent, or the designation is not approved by the director of revenue, the remaining members of the affiliated group, subject to the approval of the director of revenue, may designate another member of the group to act as the agent and notice of that designation shall be given to the director of revenue. Until a notice in writing designating a new agent has been approved by the direc-

tor of revenue, any notice of deficiency or other communication mailed to the common parent shall be considered as having been properly mailed to the agent of the affiliated group; or if the director of revenue has reason to believe that the existence of the common parent has terminated, if s/he deems it advisable, s/he may deal directly with any member of the affiliated group with respect to its Missouri consolidated tax liability.

(35) Automatic Termination of Right to File Missouri Consolidated Return. The right of an affiliated group to file a Missouri consolidated return for the taxable year shall be dependent upon that group filing a federal consolidated return for the same year. Upon the discontinuance of the filing of a federal consolidated return, the filing of a Missouri consolidated return shall similarly be discontinued.

(36) Permission to Discontinue Filing Missouri Consolidated Return—Substantial Change in Law or Regulation. Upon timely written application to the director of revenue, an affiliated group may discontinue the filing of a Missouri consolidated return for the taxable year (or may withdraw a Missouri consolidated return previously filed for the taxable year) if the net result of all amendments to sections 143.011—143.996, RSMo and the corresponding rules with effective dates commencing within the taxable year has a substantial adverse effect on the Missouri consolidated tax liability of the affiliated group for that year relative to what the aggregate Missouri tax liability would be if the members of the affiliated group filed separate Missouri returns for the year.

(A) *Prima Facie* Substantial Change. The difference between the Missouri consolidated tax liability, taking into account the changes in the law or regulations effective for the year and the aggregate Missouri tax liability of the members of the affiliated group computed as if each member filed a separate Missouri return for the year, also taking into account the changes in the law or regulations effective for the year (postlaw difference) shall be compared with the difference between the Missouri consolidated tax liability of the affiliated group for the taxable year, without regard to the changes in the law or regulations, and the aggregate Missouri tax liability of the members of the affiliated group computed as if separate Missouri returns had been filed by the members for the year, also without regard to the changes in the law or regulations (prelaw difference). If the postlaw difference is one hundred fifteen percent (115%) greater than the prelaw difference and that difference is at least five thousand

dollars (\$5,000), a substantial adverse change shall be deemed to have occurred.

(B) Timely Application. Any application to discontinue the filing of Missouri consolidated returns on account of section (36) shall be made in writing to the director of revenue on or before the later of—

1. The due date (including extensions of time) for the filing of the Missouri consolidated return for the taxable year; or

2. Ninety (90) days after the effective date of the Missouri law or Missouri Department of Revenue regulation on account of which a substantial change is alleged to have occurred.

(37) Permission to Discontinue Filing Missouri Consolidated Returns For Good Cause. Upon the timely written application by the affiliated group and upon showing of good cause for the action, the director of revenue may permit the affiliated group to discontinue the filing of Missouri consolidated returns upon the terms and conditions as s/he may prescribe.

(A) Fifty Percent (50%) Rule as Good Cause. For purposes of section (37), good cause shall be deemed to exist if the interstate division of income percentage of the affiliated group, determined under section (21) of this rule, is less than fifty percent (50%) for the Missouri consolidated return year with respect to which permission to discontinue filing is requested and for each of the three (3) preceding years.

(B) Timely Application. Any application for permission to discontinue the filing of a Missouri consolidated return on account of section (37) shall be made to the director of revenue on or before the due date (including extensions of time) for the filing of the Missouri consolidated return for the year.

(38) Revocation of Right to File Missouri Consolidated Return. The director of revenue, upon finding that the filing of Missouri consolidated returns by the affiliated group does not clearly reflect the Missouri taxable income derived from sources within Missouri and for the purpose of preventing avoidance of Missouri tax liability, may terminate the right of an affiliated group to continue the filing of Missouri consolidated returns or, in the alternative, s/he may distribute, apportion or allocate items of income, deductions, credits or allowances between or among the members of the affiliated group so that the portion of the Missouri consolidated taxable income (all sources) as is derived from sources within Missouri is clearly reflected. The procedure outlined in sections 143.611—143.691, RSMo inclusive, shall be applicable to actions of the director of revenue under section (38).

(39) Estimated Tax on Consolidated Basis. Beginning with its third Missouri consolidated return year, an affiliated group shall file its declaration of estimated tax on a consolidated basis for that year and for each subsequent Missouri consolidated return year. The group shall be treated as a single corporation for purposes of sections 143.531 and 143.541, RSMo (relating to the declaration and payment of estimated tax). If separate Missouri returns are filed by the members for a taxable year, the amount of any estimated tax payments made with respect to a Missouri consolidated declaration of estimated tax for that year shall be credited against the separate Missouri tax liabilities of the members in any manner designated by the common parent which is satisfactory to the director of revenue. The consolidated declaration of estimated tax shall be filed and payment shall be made by the common parent.

(40) Estimated Tax on Separate Basis. For each taxable year preceding the third Missouri consolidated return year, each member of the affiliated group shall be treated as a separate corporation for the purposes of sections 143.531 and 143.541, RSMo. For the first two (2) Missouri consolidated return years, the amount of any estimated tax payments made for the year by the members of the affiliated group shall be credited against the Missouri consolidated tax liability of the affiliated group for that year. A statement shall be attached to the declaration setting forth the name, address and federal employer identification number of each member of the affiliated group as well as the amount of declaration of estimated tax payments by each member together with the date of each payment.

(41) Additions to Tax For Failure to Pay Estimated Tax on Consolidated Basis. If the affiliated group is required to file a Missouri consolidated declaration of estimated tax under section (39) of this rule, then, if the group—

(A) Files a Missouri consolidated return for the taxable year with the term tax shown on the return, for the purposes of section 143.761.4(1), RSMo, the tax shall be shown on the Missouri consolidated return for the preceding taxable year, and the term facts shown on the return, for purposes of section 143.761.4(4), RSMo, the facts shall be shown on the Missouri consolidated return for the preceding taxable year; or

(B) Does not file a Missouri consolidated return for the taxable year, the term amount, if any, of the installment paid by any member, for the purposes of section 143.761.2(2), RSMo, an amount shall be apportioned to that member in a manner designated by the common parent which is satisfactory to the

director of revenue. For the purposes of section 143.761.4(1), RSMo, the tax shown on the return for any member shall be the portion of the tax shown on the Missouri consolidated return for the preceding year allocated to that member in a manner designated by the common parent which is satisfactory to the director of revenue. For purposes of section 143.761.4(4), RSMo, the facts shown on the return shall be the facts shown on the Missouri consolidated return for the preceding year and the tax computed under that section shall be allocated to the members in a manner designated by the common parent which is satisfactory to the director of revenue.

(42) Additions to Tax For Failure to Pay Estimated Tax on Separate Basis. If the members of an affiliated group are treated as separate corporations for the taxable year under section (40) of this rule and the affiliated group files a Missouri consolidated return for the year, then, for the purposes of section 143.761.2(1), RSMo, the tax shown on the return for any member shall be the portion of the tax shown on the Missouri consolidated return allocable to that member in a manner designated by the common parent which is satisfactory to the director of revenue.

(43) Applicability of Other Laws. Any matter in the determination of which the provisions of this rule are not applicable shall be determined in accordance with sections 143.011—143.996, RSMo and corresponding rules.

(44) Transitional Rules. The rules set forth in this section only shall apply during the transition period. For the purposes of this section, the term transition period shall mean a period of time beginning with the effective date of sections 143.011—143.996, RSMo and ending on the ninety-first day after the first Missouri consolidated income tax regulation (1.431-3) is filed with the secretary of state of Missouri.

(A) A Missouri consolidated return which has been filed with the director of revenue but did not have attached to it a Missouri Form 22 for each subsidiary member of the affiliated group shall be a valid Missouri consolidated return only if properly executed Missouri Forms 22 are filed for each member during the transition period.

(B) A Missouri consolidated income tax return which has been filed with the director of revenue may be withdrawn by the affiliated group during the transition period and separate Missouri returns shall be filed in lieu of the consolidated return by each member which is subject to Missouri income taxation.

(C) Any qualified affiliated group (other than an affiliated group which has a taxable

year containing parts of the years 1972 and 1973) may file a Missouri consolidated return during the transition period and any payments of tax made by the members of the affiliated group on their separate Missouri returns for the year shall be credited against the Missouri consolidated income tax liability of the affiliated group in the same manner as if they constituted payments of declaration of estimated tax with respect to the first Missouri consolidated return year.

*AUTHORITY:* section 143.431.3(5), RSMo (1986). \*Regulation 1.431-3 was first filed July 21, 1975, effective July 31, 1975.

\*Original authority 1972.

## 12 CSR 10-2.050 Elective Division of Income

*PURPOSE:* This rule sets forth the fundamental requirements for a petition by a corporate taxpayer for permission to use a special method of allocating income to Missouri.

(1) Authority for Rule. This rule is being issued under the general regulatory powers granted to the director of revenue in section 143.961, RSMo which became effective on January 1, 1973.

(2) Applicability and Scope of Rule. This rule is intended as an interpretive guideline in the application of section 143.461, RSMo and it sets forth the fundamental requirements for a petition for permission to use a special method of allocation under section 143.461.2., RSMo. This rule applies to all taxable years beginning on or after January 1, 1973, and it also applies with respect to all fiscal year taxable periods which contained parts of each of the years 1972 and 1973 for those corporate taxpayers which had properly elected to determine their tax and taxable income under the provisions of sections 143.011—143.996, RSMo. Chapter 143, RSMo and the corresponding regulations shall continue in force and effect with respect to all other taxable years.

(3) Definitions. As used in this rule—

(A) The term director, except as specifically otherwise provided in this rule, shall mean the director of revenue or his/her duly authorized agent or designee; and

(B) The term Missouri taxable income from all sources shall mean so much of the federal taxable income of the corporation for the taxable year increased or decreased, as the case may be, by the modifications provided for in sections 143.121 and 143.141,

RSMo. There shall be subtracted, to the extent included in federal taxable income, corporate dividends from sources within Missouri and there also shall be subtracted the federal income tax deduction provided for in section 143.171.1., RSMo. The amount of dividends deducted shall depend on the apportionment method selected. If single factor apportionment is selected, the corporation shall deduct dividends based on whether they are Missouri source dividends or non-Missouri source dividends. This also applies to special methods selected.

1. If the three (3)-factor apportionment method is selected, the dividend deduction shall be based on the apportionment percentage calculated before taking into account any allowable nonbusiness income. Business dividends, as defined by the Multistate Tax Compact, are to be multiplied by the apportionment factor in order to calculate the deduction. Also, a corporation with a commercial domicile in Missouri can deduct any nonbusiness dividends as defined by the compact.

2. The director of revenue may adopt procedures for verifying the actual amount of dividends deducted and may prescribe what documents are necessary for verification.

(4) Required Use of Statutory Methods. A corporate taxpayer shall determine income applicable to this state for the taxable year by either—a) multiplying the total Missouri taxable income from all sources for the taxable year by the fraction determined under section 143.451, RSMo, or b) allocating and apportioning the total Missouri taxable income from all sources for the year in the manner determined under section 32.200 article IV. 1.—17., RSMo and by subtracting from the amount so determined, its deduction, if any, for a prior year's federal income tax under section 143.171.2., RSMo. The preceding sentence shall not apply to those corporations which have received written permission from the director of revenue him/herself to—a) use another method of allocation pursuant to section 143.461, RSMo for the taxable year, or b) use another method of allocation and apportionment pursuant to section 32.200 article IV.18., RSMo if the other approved method is applicable to the taxpayer year and the corporate taxpayer actually uses the other approved method for the taxable year. A corporate taxpayer which uses an authorized method of determining income applicable to this state for the taxable year shall not be entitled to subsequently change to another method with respect to that same taxable year.

(5) Request for Permission to Use Other Method. A corporation may make a written

petition to the director for permission to determine income applicable to this state for the taxable year by use of its own allocation method if the books and records of the taxpayer are kept in a manner as to show such other method of allocation between this state and other states involved, of income from transactions partly within and partly without this state, including gross income and deductions applicable to gross income, and the method does show the income applicable to this state, including gross income and deductions applicable to gross income.

(6) Petition for Use of Other Approved Method. A petition for permission to use a method of allocation disclosed in the taxpayer's books and records shall be typewritten, delivered to the director of revenue in Jefferson City, Missouri at least sixty (60) days before the end of the taxable year with respect to which the permission is sought, shall be made on the best information, knowledge and belief of the petitioner and shall be subscribed under a declaration that it is made under penalties of perjury. The petition shall contain the name, federal identification number and address of the principal place of business of the petitioner; the address of each location at which the taxpayer conducts business and the nature of the business conducted at each location; the place(s) at which the books and records of the taxpayer are located; the beginning and ending dates of the first taxable year with respect to which permission to use another method is sought; a detailed explanation of the allocation method disclosed in the corporation's books and records; a clear demonstration of the application of the method by showing each item of income and expense for the taxable year immediately preceding the taxable year with respect to which permission is sought, the states to which income and expense are allocated, and the amounts of each item of income and expense allocated to each state; and other data and information which the corporate taxpayer would urge upon the director in his/her consideration of the petition.

(7) Granting of Permission to Use Other Approved Method. If, upon the basis of the facts contained in the petition, other facts which may come to the attention of the director of revenue and all hearings, if any, held with respect to the petition, the director of revenue shall find that the allocation method disclosed in the books and records of the corporate taxpayer does show the income applicable to this state including gross income and deductions applicable to gross income, the director of revenue him/herself or his/her specifically designated representative shall

send written notification over his/her personal signature to the corporation at least thirty (30) days prior to the last day on which the corporation's return for that taxable year is required to be filed (determined with regard to extensions of time for filing) that it may use that method as long as the method shows the income applicable to this state, including gross income and deductions applicable to gross income. No permission shall be deemed to have been granted unless it is granted by the director of revenue him/herself or his/her specifically designated representative in writing over his/her personal signature. The mere use or continued use by the corporate taxpayer of a special method without specific disapproval by the director of revenue or his/her specifically designated representative shall not constitute the granting of permission. A corporate taxpayer which does not receive explicit written permission from the director of revenue him/herself or his/her specifically designated representative as provided shall be required to determine income applicable to this state under section (4) of this rule.

(8) Revocation of Prior Approved Method. A corporation having previously received explicit written permission from the director of revenue him/herself of his/her specifically designated representative to use a special method of allocation shall cease using that method whenever that method ceases to show income applicable to this state, including gross income and deductions applicable to gross income and shall further cease using that method whenever the director of revenue him/herself or his/her specifically designated representative finds and notifies the corporation in writing on or before ninety (90) days before the end of the taxable year that the method does not so show. The revocation of a prior approved method shall not preclude the taxpayer from petitioning to the director of revenue, as prescribed, for permission to use some other method of allocation determined under its books and records.

(9) Failure to Timely Acquire Permission for Other Approved Method or to Continue Use of a Prior Approved Method. The failure, after a prior approved method has been revoked, to timely submit a petition for permission to use another method or the failure to make a return on a basis which has been approved by the director of revenue and which stands unrevoked shall constitute an election by the taxpayer to determine income applicable to this state by use of the method provided for in section (4) of this rule. A corporation may use a method which had been approved by the director of revenue for the taxable year only if the prior approved

method was applicable to the immediately preceding taxable year and the corporate taxpayer used that other approved method in the immediately preceding taxable year.

(10) Information Required to be Submitted With Missouri Income Tax Return. For each taxable year with respect to which a corporation files a Missouri income tax return determining income applicable to this state by use of a special method approved by the director of revenue, there shall be submitted with the return for that taxable year the following items: a copy of the written notice bearing the signature of the director of revenue him/herself where permission to use the other approved method was granted and a statement indicating whether or not there has been a material change in the business operations or accounting procedures from those in existence in the first taxable year with respect to which the permission was originally granted. The failure, refusal or inability of a corporation to submit the items mentioned in the preceding sentence shall constitute an election by the corporation to determine income applicable to this state by use of the methods described in section (4) of this rule.

*AUTHORITY:* section 143.961, RSMo (1986).\* Regulation 1.461 was originally filed on Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed April 4, 1984, effective July 12, 1984. Amended: Filed Aug. 14, 1990, effective Feb. 14, 1991.

\*Original authority 1972.

*In re Kansas City Star Co., 142 SW2d 1029 (1940). Trial court did not err by rejecting offered finding that state auditor had promulgated a rule during the years 1934, 1935 and 1936 declaring the total net income of manufacturing and business companies subject to income tax unless they had a branch house or capital investment outside the state. This rule had been promulgated under former Missouri St. Ann. section 10115, but subsequently overturned by Supreme Court.*

## 12 CSR 10-2.055 Failure to File Tax Returns

*PURPOSE:* This rule sets forth the circumstances under which an additional tax will be imposed against an individual, corporation or other taxpayer for failing to file income tax returns on time.

(1) Applicability and Scope of Rule. This rule is intended as an interpretive guideline in the application of section 143.741, RSMo and is applicable only with respect to taxable periods beginning after December 31, 1972. This rule applies to the failure to file income tax returns, amended income tax returns and employer withholding returns which are required to be filed. It does not apply to the failure to file a declaration of estimated tax.

(2) Determination of Addition to Tax. Section 143.741.1., RSMo imposes an addition to the tax at the rate of five percent (5%) per month, or fraction of a month, up to a maximum of twenty-five percent (25%) in the aggregate, for the failure by a taxpayer to file any required return by the date prescribed for its filing unless the failure is due to reasonable cause and not due to willful neglect. The date prescribed for filing includes any approved extensions of time for filing.

(3) Determination of Percentage. If the date prescribed for filing a return is the last day of a calendar month, each succeeding calendar month or fraction of a month during which the failure to file the return continues shall constitute a month. For example, if a return due on March 31 is filed any time between April 1 and April 30, the rate would be five percent (5%); if filed any time between May 1 and May 31, the rate would be ten percent (10%); and so on, up to an aggregate of twenty-five percent (25%). If the date prescribed for filing a return is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding to the last day in the succeeding calendar month and each successive period shall constitute a month. If, in the month of February, there is no date corresponding to the date prescribed for filing the return, the period from the date in January through the last day of February shall constitute a month. For example, if a return due on January 30 is filed any time between January 31 and February 28 (29 if a leap year) the rate would be five percent (5%); if filed any time between March 1 and March 30, the rate would be ten percent (10%); if filed between March 31 and April 30, the rate would be fifteen percent (15%); and so on, up to an aggregate of twenty-five percent (25%). The fact that the date prescribed for filing the return or the corresponding date in any succeeding month falls on a Saturday, Sunday or legal holiday is immaterial in determining the number of months for which the addition to tax applies.

(4) Determination of Amount Upon Which the Addition to Tax Will be Applied. The amount upon which the addition to tax under section 143.741.1., RSMo is to be applied

shall be determined by subtracting from the amount required to be shown as tax on the return, the amount of the tax which is paid on or before the last date prescribed for payment and the amount of any credit which may be claimed against the tax.

(5) The application of the addition to tax under section 143.741.1., RSMo is illustrated by the following examples:

(A) Assume an individual calendar year taxpayer files his/her 1991 income tax return on July 20, 1992, and the failure to file on or before the prescribed date (April 15, 1992) is not due to reasonable cause. The total tax liability for the year was \$1,000 of which \$600 had been paid by withholding from wages and \$400 was paid when the return was filed. In this case, there will be imposed an addition to tax under section 143.741.1., RSMo of \$80, determined as follows:

1. Total tax liability for the year	\$1,000
2. Less taxes timely paid	\$ 600
3. Net amount due	<u>\$ 400</u>

Twenty percent of line 3. (5% per month for 3 months from April 15 through July 15 and 5% for fraction part of the month from July 15 through July 20) \$ 80

(B) Assume the same facts as in subsection (5)(A) of this rule except that the \$400 was paid on May 1, 1992. In this case there is imposed an addition to tax under section 143.741.1., RSMo of \$80, determined in the same manner as in subsection (5)(A) of this rule. Note that the tax liability for the year is only reduced by the amount of the tax paid on or before the last date prescribed for payment (April 15, 1992);

(C) Assume an employer is required to withhold and remit taxes on a monthly filing frequency. The employer withholds taxes from its employees' wages in January in the amount of \$200. The employer remits \$50 of the amount withheld on February 15 and the remaining \$150 on March 15. The employer does not file monthly returns for January until June 1. The failure to file the return on or before the prescribed date (February 15) is not due to reasonable cause. In this case there will be imposed an addition to tax under section 143.741.1., RSMo of \$30, determined as follows:

1. Amount required to be shown on January's return	\$200
2. Less amounts timely paid (see section 143.221, RSMo)	\$ 50
3. Net amount due	\$150
4. Twenty percent of line 3. (5% per month for four months from February 15 through June 1)	\$ 30

(D) Assume the same facts as in subsection (5)(C) of this rule except that January's return is filed on February 15. In this case, there is no addition to tax under section 143.741.1., RSMo since the monthly withholding return was filed on or before the last date prescribed for its filing (February 15). However, an addition to tax under section 143.751.3., RSMo would be imposed.

(6) Addition to Tax Not Imposed—Reasonable Cause. A taxpayer who wishes to avoid the addition to tax for failure to file a return by the date prescribed for its filing must submit a written statement showing all facts relied upon in support of the contention that the failure to file was on account of reasonable cause. The statement shall contain a written declaration that it is made under penalties of perjury and may be submitted to the director of revenue with the return. The mere absence of willful neglect is not sufficient reason for avoiding imposition of the addition to tax for failure to file a return. There must be an affirmative showing of reasonable cause for the failure and the burden of proof is upon the taxpayer to establish the reasonable cause. If the taxpayer can show delinquency was due to a reasonable cause and not to willful neglect, the addition to tax will not be imposed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. This rule prescribes no specific standards of reasonable cause for failure to file the return on time, but the following examples will provide guidelines as to what might constitute reasonable cause:

(A) Death or serious illness of the taxpayer or the death or serious illness of an immediate member of the taxpayer's family. In the case of a corporation, estate, trust, and the like, the death or serious illness must have been of an individual having sole authority to execute the return or of a member of that individual's immediate family;

(B) Unavoidable absence of the taxpayer. In the case of a corporation, estate, trust, and the like, the absence must have been of an individual having sole authority to execute the return;

(C) Destruction by fire or other casualty of the taxpayer's place of business or business records; or

(D) The taxpayer's ability to file the return has been materially impaired by civil disturbances.

**AUTHORITY:** section 143.961, RSMo (1986).\* Regulation 1.741 was originally filed Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed Sept. 1, 1993, effective April 9, 1994.

\*Original authority 1972.

*United States v. Boyle, 105 S. Ct. 687 (1985). The issue in this case was whether the taxpayer had proved reasonable cause for the late filing of a federal estate tax return under Internal Revenue Code 6651(a)(1). The language in this section is very similar to the language contained in section 143.741, RSMo and other Missouri revenue penalty statutes. To show reasonable cause, the Supreme Court said the taxpayer must "demonstrate that he exercised 'ordinary business care and prudence' but nevertheless was 'unable to file the return within the prescribed time;"*

*Estate of Clifford Bockelman v. Director of Revenue, Case No. RV-83-3510 (A.H.C. 5/14/86). The personal representative's attorney had told her that they did not need to worry about the Missouri estate tax return until such time as all federal estate tax matters had been completed. The Administrative Hearing Commission determined that the personal representative had exercised ordinary business care and prudence and thus the failure to file Missouri estate tax return in a timely fashion was due to reasonable cause and not willful neglect.*

*Estate of Orpha T. Neusteter v. Director of Revenue, Case No. RV-86-2063 (A.H.C. 11/6/87). The personal representative had not established the daily volume of mail handled by his office nor a record of timely filings over a period of time. These facts, the commission stated, were essential. In addition, the commission noted that the personal representative had nine months to file and the taxpayer in Armco had fifteen days. Based on this, the personal representative did not establish that his failure to file was due to reasonable cause and not willful neglect. Therefore, the additions were properly imposed by the department.*

## 12 CSR 10-2.060 Failure to Pay Tax

**PURPOSE:** This rule clarifies the circumstances under which an additional tax will be imposed for failing to pay tax on time.

(1) Applicability and Scope of Rule. This rule is intended as an interpretive guideline in the application of section 143.751, RSMo and shall apply only with respect to taxable periods beginning after December 31, 1972.

(2) Deficiency. The term deficiency shall mean the amount by which the actual Missouri income tax liability of the taxpayer for the taxable year exceeds the total amount of Missouri income tax payments made by the taxpayer for the taxable year on or before the last date prescribed for the payment of the tax (determined with regard to extensions of time for paying the tax but without regard to extensions of time for filing the tax return).

(3) Addition to Tax for Negligence or Disregard of Rules. If any part of a deficiency is due to negligence or intentional disregard of the rules (but without intent to defraud) there shall be added to the tax an amount equal to five percent (5%) of the entire amount of the deficiency. If the amount of a taxpayer's federal taxable income reported on the federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service (IRS) or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, and the taxpayer does not report the change or correction in federal taxable income within ninety (90) days after the final determination of the change, correction or renegotiation, there shall be added to the tax an amount equal to five percent (5%) of the entire amount of deficiency for failure to report the change and to pay the additional tax within that ninety (90)-day period. If the taxpayer does report the change, correction or renegotiation and pays the additional tax within the ninety (90)-day period, the director of revenue will not ordinarily impose the five percent (5%) addition to tax unless the IRS or other competent authority imposed a similar addition to tax. This general rule, however, does not preclude the director from imposing an addition to tax in those instances if it is deemed necessary.

(4) Examples: The application of the addition to tax under section 143.751.1., RSMo may be illustrated in the following examples:

(A) Assume that an individual calendar year taxpayer files his/her 1991 income tax return with the Department of Revenue on April 18, 1992 showing a total tax liability of \$1,000 with a total amount paid before April 15, 1992 of \$600 and a balance due of \$400 which taxpayer pays with the return. Further assume that the failure to pay the \$400 on or before the last date prescribed for its payment is due to negligence or intentional disregard of rules. In this case, there is an addition to tax of \$20 ( $5\% \times \$400$ ); and

(B) Assume the same facts as in subsection (4)(A) of this rule except that \$10 of the \$400 deficiency is due to negligence or intentional disregard with the \$390 being due to reasonable cause. In this case, there is an addition to tax of \$20 ( $5\% \times \$400$ ). Note that if any part of the deficiency is due to negligence or intentional disregard of the rules, then the addition to tax is imposed on the entire amount of the deficiency.

(5) Avoiding the Addition to Tax Under Section 143.751.1., RSMo. The addition to tax for failure to pay taxes on time will not be imposed if no part of the deficiency is due to negligence or intentional disregard of rules. In the absence of fraud, no part of the deficiency will be considered to be due to negligence or intentional disregard if the amount of the tax paid on or before the due date of the return (determined without regard to extensions of time for filing the return) is at least ninety percent (90%) of the total amount of the tax shown on the Missouri income tax return; and if the balance of the tax due is paid on or before the due date of the return, determined with regard to any extensions of time for filing the return. The taxpayer may avoid the addition to tax for failure to pay income taxes on time by making an affirmative showing that the failure to pay was not due to negligence or intentional disregard of rules in that the taxpayer exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless unable to pay the tax on or before the last date prescribed by law. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of the tax liability, consideration will be given to the amount and the nature of the taxpayer's expenditures in light of the income the taxpayer, at the time of those expenditures, could reasonably expect to receive prior to the date prescribed for the payment of the tax. As an example, a taxpayer incurring lavish or extravagant living expenses in such an amount that the remainder of his/her assets and anticipated income will be insufficient to pay the tax has not exercised ordinary business care and prudence in providing for the payment of the tax liability. The taxpayer must make an affirmative showing of all the facts relating to his/her failure to pay the tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. The addition to tax under section 143.751.1., RSMo will not be assessed when the director of revenue makes a determination on the basis of the taxpayer's written statement that no part of the deficiency was due to negligence or intentional disregard of rules. The mere absence of negligence or intentional disregard with respect to

some part of the deficiency is insufficient and the taxpayer must show that no part of the deficiency was due to negligence or intentional disregard of rules.

(6) Additions to Tax Under Section 143.751.1., RSMo Not Applicable—When. The five percent (5%) addition to tax provided for in section 143.751.1., RSMo will not apply when the provisions of section 143.751.2., RSMo (relating to addition to tax for fraud) or section 143.751.4., RSMo (relating to penalties for willful failure to remit withholding taxes) apply to the same deficiency.

(7) Addition to Tax For Fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the entire amount of the deficiency. For example, assume an individual calendar year taxpayer files his/her 1991 income tax return on April 18, 1992 showing a total tax liability of \$1,000 with a total amount paid before April 15, 1992 of \$600 and a balance due of \$400 which the taxpayer pays with the return. Further assume that the taxpayer had reasonable cause for failure to pay the \$400 on or before the last date prescribed for its payment. Further assume that the taxpayer fraudulently claimed charitable contributions on his/her income tax return by understating his/her income tax liability by \$6. In this case, an addition to tax of \$203 will be imposed under section 143.751.2., RSMo computed as follows:  $50\% \times \$406 = \$203$ . Note that if any part of a deficiency is due to fraud, then the addition to tax of fifty percent (50%) applies with respect to the entire amount of the deficiency.

(8) Taxpayer Fraudulent Intent—Penalty. Any person who, with fraudulent intent, shall fail to pay any tax or to make, render, sign or certify any return or to supply any information within the time required by law shall be liable for a penalty of not more than \$1,000 in addition to any tax, addition to tax, other penalty or interest which is required to be imposed, assessed and collected by the director of revenue.

(9) Failure of Employer to Remit Taxes Withheld From Employees—Addition to Tax. If an employer, without intent to evade or defeat the tax or its payment, fails to make a return and pay to the director of revenue any taxes withheld by him/her from the wages of his/her employees on or before the date prescribed for payment, s/he shall be liable for those taxes and shall pay the same together with interest and an addition to tax of five percent (5%). This addition to tax is imposed without regard to whether or not extenuating circumstances disclose a reasonable cause or

lack of willful neglect for the nonpayment. For example, assume an employer withholds taxes from its employees' wages in the month of January of \$800. Also assume that the taxpayer pays the taxes (less the employer compensation under section 143.261, RSMo) on February 17 and that the employer has reasonable cause for failure to pay the taxes on or before the last date prescribed for its payment (February 15). In this case, an addition to tax of \$40 will be imposed under section 143.751.3., RSMo computed as follows:  $5\% \times \$800 = \$40$ . Note that the employer compensation is not allowed unless the withholding taxes are paid on or before the last date prescribed for their payment.

(10) Employer's Willful Failure to Collect, Truthfully Account For or Pay Over Employee Taxes. If any person willfully fails to collect, truthfully account for, pay over or willfully attempt, in any manner, to evade or defeat the tax or its payment, that person shall be liable for a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over in addition to any tax, interest, addition to tax or other penalty provided for by law.

(11) Employer Fraudulent Intent—Penalty. If any person, with fraudulent intent, shall fail to pay, or to deduct or withhold and pay, any tax or to make, render, sign or certify any return or to supply any information within the time required by law, that person shall be liable to a penalty of not more than \$1,000 in addition to any other amounts required to be imposed, assessed and collected by the director of revenue.

*AUTHORITY:* section 143.961, RSMo (1986).\* Regulation 1.751 was first filed Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed Sept. 1, 1993, effective April 9, 1994.

\*Original authority 1972.

## 12 CSR 10-2.065 Failure to Pay Estimated Tax

*PURPOSE:* This rule sets forth guidelines in the determination of whether an individual, corporate or other taxpayer is subject to an additional tax for failure to pay estimated tax.

(1) Authority For Rule. This rule is being issued under the general regulatory powers granted to the director of revenue in section 143.961, RSMo which became effective on January 1, 1973.

(2) Applicability and Scope of Rule. This rule is intended as an interpretive guideline in the application of section 143.761, RSMo and is applicable only with respect to taxable years beginning after December 31, 1972. Chapter 143, RSMo and the corresponding rules shall continue in force with respect to taxable years beginning before January 1, 1973.

(3) Definitions. As used in this rule—

(A) The term director shall mean the director of revenue or his/her duly authorized agent or designee; and

(B) The term farmer shall mean an individual having an estimated Missouri adjusted gross income (MAGI) from farming for the taxable year which is at least two-thirds (2/3) of his/her total estimated MAGI taxable in this state for the taxable year. The term does not include a fisherman or a corporation.

(4) General rule section 143.761.1., RSMo imposes an addition to tax in the case of any underpayment of estimated tax by an individual or a corporation (with certain exceptions described in section 143.761.4., RSMo). This addition to tax is in addition to any applicable civil or criminal penalties and is imposed without regard to whether or not extenuating circumstances disclose a reasonable cause or lack of willful neglect for the underpayment. There are no provisions for the payment of interest with respect to any underpayment of estimated tax.

(5) Amount and Period of Underpayment. The amount of the underpayment for any installment date is the excess of—

(A) Eighty percent (80%) (66 2/3% in the case of a farmer) of the tax shown on the return for the taxable year or, if no return was filed, eighty percent (80%) (66 2/3% in the case of a farmer) of the tax for the year, divided by the number of installment dates prescribed for the taxable year, over; and

(B) The amount, if any, of the installment paid on or before the last day prescribed for its payment.

(6) The amount of the addition is determined at the rate set forth in section (8) of this rule upon the underpayment of any installment of estimated tax for the year from the date the installment is required to be paid until the fifteenth day of the fourth month following the close of the taxable year, or the date the underpayment is paid, whichever is earlier. For the purposes of determining the period of underpayment, the date prescribed for the payment of any installment of estimated tax shall be determined without regard to any extension of time; and a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under subsection (5)(A) of this

rule for the installment date, shall be considered a payment of any previous underpayment.

(7) In determining the amount of the installment paid on or before the last day prescribed for payment of the installment, the estimated tax shall be computed without any reduction for the amount which the taxpayer estimates as his/her credit for taxes withheld at the source on wages, and the amount of that credit shall be deemed a payment of estimated tax. An equal part of the amount of the credit shall be considered paid on each installment date for the taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In the latter case, all amounts withheld shall be considered as payments of estimated tax on the dates the amounts were actually withheld.

(8) The rate of additions to tax for underpayment of estimated tax is six percent (6%) a year for the underpayment prior to January 1, 1983. Beginning January 1, 1983, the rate of additions to tax is the same as established by the director of revenue under authority of section 32.065, RSMo and 12 CSR 10-41.010 Annual Adjusted Rate of Interest.

(9) Statement Relating to Underpayment. If there has been an underpayment of estimated tax as of any installment date prescribed for its payment and the taxpayer believes that one (1) or more of the exceptions described in section 143.761.4., RSMo precludes the imposition of the addition to the tax, Missouri Form 30 should be attached to the income tax return for the taxable year showing the applicability of an exception. There is no rule which precludes a taxpayer from making computations under each of the four (4) exceptions at each estimated tax installment date, and then bringing all payments as of that date up to whatever amount will avoid imposition of an addition to tax, using whatever exception would require the smallest amount to be paid. If this is done, however, the slightest error in computation, so that the taxpayer fails by as little as one dollar (\$1) to satisfy at least one (1) of the exceptions, will result in the imposition of the additions to tax on the total amount of the underpayment and not on the amount by which the taxpayer fails to come within one (1) of the four (4) exceptions.

(10) Examples: The following examples illustrate the application of the provisions for the imposition of the additions to tax for any underpayment of estimated tax prior to January 1, 1983 (see section (8) for rate of additions to tax after December 31, 1982), in the case of an individual whose taxable year is the calendar year:

(A) An individual taxpayer files his/her return for calendar year 1974 on April 15, 1975 showing a total tax liability of \$2,000. Taxpayer has paid a total of \$1,000 of estimated tax in four (4) equal installments of \$250 on each of the four (4) installment dates prescribed for the year. No other payments were made before the date the return was filed. Since the amount of each installment paid by the last date prescribed for its payment is less than one-quarter (1/4) of eighty percent (80%) of the tax shown on the return, an underpayment exists and the addition to the tax is applicable with respect to the underpayment existing as of each installment date and is computed as follows:

1. Amount of tax shown on return	\$2,000
2. 80% of item 1.	\$1,600
3. One-fourth of item 2.	\$ 400
4. Amount of each installment paid	\$ 250
5. Amount of underpayment for each installment date	\$ 150
6. Addition to the tax—	
A. First installment—	$\$150 \times 6\% \times 365 \text{ days} / 365 \text{ days}$
B. Second installment—	$\$150 \times 6\% \times 304 \text{ days} / 365 \text{ days}$
C. Third installment—	$\$150 \times 6\% \times 212 \text{ days} / 365 \text{ days}$
D. Fourth installment—	$\$150 \times 6\% \times 90 \text{ days} / 365 \text{ days}$

Note that the addition to tax are computed using the actual number of days that the underpayment continues. In the case of a corporate taxpayer whose fourth estimated tax payment would have been required to be filed on December 15, 1974, the calculation for the fourth installment period would be  $\$150 \times 6\% \times 121 \text{ days} / 365 \text{ days}$ ;

(B) Assume the same facts as in subsection (10)(A) of this rule except that the individual taxpayer (who is not a farmer) files his/her calendar year 1974 Missouri income tax return on February 28, 1975 and pays the balance due on that date. In this case, February 28, 1975 would be the last date the underpayment continues and the calculation dates would be as follows:

1. First installment—	$\$150 \times 6\% \times 319 \text{ days} / 365 \text{ days}$
2. Second installment—	$\$150 \times 6\% \times 258 \text{ days} / 365 \text{ days}$
3. Third installment—	$\$150 \times 6\% \times 166 \text{ days} / 365 \text{ days}$
and	
4. Fourth installment—	$\$150 \times 6\% \times 44 \text{ days} / 365 \text{ days}$

(C) An individual taxpayer filed a declaration of estimated tax for the taxable year indicating an estimated liability of \$8,000.

Taxpayer made four (4) timely installment payments of \$2,000 each during the year. Taxpayer's actual tax, as shown on the income tax return for the year, amounts to \$10,000. In this case, there is no underpayment since each installment was at least equal to one-quarter (1/4) of eighty percent (80%) of the installment which would have been payable on the basis of his/her final tax for the year ( $1/4 \times \$10,000 \times 80\% = \$2,000$ );

(D) Assume that a taxpayer whose final tax liability is \$700, made the following installments during the year:

1. First installment—\$100;
2. Second installment—\$190;
3. Third installment—\$100; and
4. Fourth installment—\$140. Since each installment, based upon a final tax liability of \$700, should have been at least \$140 ( $\$700 \times 80\% \times 1/4$ ), there is an underpayment for the first and third installments and an overpayment for the second installment. In this case, \$40 of the \$50 overpayment of the second installment is carried back to the first installment and cuts off the six percent (6%) addition to tax for that installment as of the payment date for the second installment. The remaining \$10 of the overpayment carries over to the third installment to reduce the underpayment for the installment to \$30. In this example, the addition to the tax is computed as follows:

- A. First installment—  
 $\$40 \times 6\% \times 61 \text{ days}/365 \text{ days}$ ;
- B. Second installment—  
no underpayment exists;
- C. Third installment— $\$30 \times 6\% \times 212 \text{ days}/365 \text{ days}$ ; and
- D. Fourth installment—no underpayment exists;

(E) Assume the same facts as in subsection (10)(D) of this rule except that the second installment was paid in the amount of \$160. The \$20 overpayment of the second installment would be carried back to the first installment but would not stop the underpayment period of the first installment for the entire amount of that installment. In this example, the addition to tax is computed as follows:

1. First installment—  
 $\$20 \times 6\% \times 61 \text{ days}/365 \text{ days}$ ;  
 $\$20 \times 6\% \times 365 \text{ days}/365 \text{ days}$ ;
2. Second installment—no underpayment exists;
3. Third installment—  
 $\$40 \times 6\% \times 212 \text{ days}/365 \text{ days}$ ;
- and
4. Fourth installment—  
no underpayment exists; and

(F) Taxpayer, a farmer, files an income tax return on February 15 of the succeeding year paying the total tax liability of \$5,000 on that date. In this case, there is no underpayment of estimated tax since the filing of the return

and payment of the tax on or before February 28 of the succeeding year is considered as the taxpayer's declaration of estimated tax which was required to be filed by January 15 of the succeeding taxable year under section 143.521.6., RSMo. In the event that the taxpayer in this example had filed his/her declaration of estimated tax on or before January 15 of the succeeding year, s/he would have been required to pay sixty-six and two-thirds (66 2/3%) of his/her total tax liability for the year on that date.

(11) Exceptions to Imposition of Additions to Tax in the Case of Individuals and Corporations. The addition to the tax under section 143.761, RSMo will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax equals or exceeds the least of the following amounts:

(A) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were the tax shown on the return for the preceding taxable year, but only if the preceding taxable year was a year of twelve (12) months and a return showing a liability for tax was filed for that year;

(B) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to eighty percent (80%) (66 2/3% in the case of a farmer) of the tax computed by placing on an annualized basis the taxable income for the calendar months in the taxable year preceding that date. The taxable income shall be placed on an annualized basis by—

1. Multiplying by twelve (12) (or the number of months in the taxable year if less than twelve (12)) the taxable income (computed without the standard deduction and without the deduction for personal and dependency exemptions), or the adjusted gross income if the standard deduction is to be used, for the calendar months;

2. Dividing the resulting amount by the number of those calendar months;

3. Deducting from that amount the standard deduction, if applicable, the deductions for personal and dependency exemptions determined as of the date prescribed for payment and the deduction for federal income tax liability; and

4. Multiplying, in the case of a corporate taxpayer, the amount determined in paragraph (11)(B)3. of this rule by the applicable percentage determined under section 143.451, RSMo as of the last day of the month preceding the date prescribed for payment;

(C) An amount equal to ninety percent (90%) of the tax computed, at the rate applicable to the taxable year, on the basis of the actual taxable income for the calendar months in the taxable year preceding the date prescribed for payment; or

(D) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a tax determined on the basis of the tax rates and the taxpayer's status with respect to personal and dependency exemptions for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to that year, in the case of a taxpayer required to file a return for the preceding taxable year.

(12) Examples: The following examples illustrate the application of the exceptions to the imposition of the addition to tax for an underpayment of estimated tax for a calendar year taxpayer. In cases of a calendar year corporate taxpayer, the fourth installment is due on December 15 of the taxable year rather than January 15 of the succeeding year in the case of individuals:

(A) An individual taxpayer files his/her 1974 calendar year Missouri income tax return on April 15, 1975 showing a total tax liability of \$5,000. Taxpayer had filed a declaration of estimated tax on April 15, 1974 showing an estimated tax of \$3,000 which was paid in four (4) equal installments of \$750 each on April 15, June 15 and September 15, 1974, and January 15, 1975. The balance of \$2,000 was paid with the return. Taxpayer has an underpayment or each installment period of \$250 ( $\$5,000 \times 80\% \times 1/4 = \$1,000$ ). The 1973 calendar year return of the taxpayer showed a liability of \$2,500. Since the total amount of estimated tax paid by each installment date equaled or exceeded the amount that would have been required to be paid on or before each of the installment dates if the estimated tax were the tax shown on the return for the preceding year, the exception described in subsection (11)(A) of this rule applies and no addition to tax for underpayment of estimated tax will be imposed;

(B) Assume the same facts as in subsection (12)(A) of this rule except that the four (4) timely paid estimated tax installments are made in the following amounts:

1. First installment—\$500;
2. Second installment—\$500;
3. Third installment—\$750; and
4. Fourth installment—\$750. Even though the total amount of estimated tax payments equals or exceeds the total tax shown on the taxpayer's return for the preceding year (\$2,500), each installment must stand by itself in determining the applicability of the

exceptions to the additions to tax. The exception in subsection (11)(A) of this rule would only apply as of the fourth installment in this example since that is the only date as of which the total amount paid equaled the amount that would have been required to have been paid computed as follows:

	Amount Required For Exception	Amount Paid
25% of tax	\$ 625	\$ 500
50% of tax	\$1,250	\$1,000
75% of tax	\$1,875	\$1,750
100% of tax	\$2,500	\$2,500

The same requirement that each installment must stand on its own applies to each of the four (4) exceptions to the addition to tax permitted by section 143.761.4., RSMo;

(C) Assume that a married taxpayer with two (2) dependent children files a combined return with his/her spouse for calendar year 1974. Taxpayer receives a monthly income from self-employment of \$1,500 (\$18,000 annually) and neither taxpayer nor his/her spouse have any other income for 1974. The following procedure will be followed in annualizing taxpayer's income:

1. Self-employment income during January, February and March	\$ 4,500
2. Annualized income-line 1.	
× 12/3	\$18,000
3. Less: standard deduction	\$ 2,000
Exemptions	\$ 3,200
Estimated federal income tax	<u>\$ 2,500</u>
4. Annualized taxable income	<u>\$10,300</u>
5. Estimated annual income tax	\$ 393

If the taxpayer's payment of estimated tax for the first installment equaled or exceeded \$78.60 ( $\$393 \times 80\% \times 1/4$ ), the exception in subsection (11)(B) of this rule would apply and no addition to tax would be imposed for the first installment. The same procedure would be followed for each installment period to determine if the exception in subsection (11)(B) of this rule applies, except that the required installment amount would be multiplied by 2/4 of 80% and 3/4 of 80% respectively for the second and third installments. This exception does not apply to individuals with respect to the fourth installment due January 15 of the succeeding taxable year since the taxable income for the preceding calendar year had been determined on December 31 of the taxable year;

(D) Assume a calendar year corporation has a federal taxable income from all sources for the period January through May of \$5,000 and that it has no positive or negative modifications for the period under sections 143.121 and 143.141, RSMo. Further assume that its allocation factor for the period is fifty percent (50%). The following procedure would be followed in determining whether the exception in subsection (11)(B) of this rule would apply to its required second installment payment due on June 15:

1. Net income all sources January through May	\$ 5,000
2. Annualized income-line 1.	
12/5	\$12,000
3. Less estimated federal tax	<u>\$ 2,640</u>
4. Annualized Missouri taxable income all sources	\$ 9,360
5. Annualized Missouri taxable income at 50%	<u>\$ 4,680</u>
6. Estimated Missouri income tax	\$ 234

If the taxpayer's estimated tax payments paid on or before June 15 total at least \$93.60 ( $\$234 \times 80\% \times 2/4$ ), the exception in subsection (11)(B) of this rule would apply and no addition to tax would be imposed with respect to the second installment;

(E) Assume that a married taxpayer who files a combined return for calendar year 1974 with his/her spouse, has two (2) dependent children and receives a monthly salary of \$1,500 on which \$28 a month is withheld by his/her employer. During November and December of 1974, the taxpayer receives \$3,400 of income not subject to withholding. S/he makes no estimated tax payments until January 15, 1975 at which time s/he pays \$100. S/he uses the standard deduction in preparing his/her income tax return. There is no addition to tax for underpayment. Applying the ninety percent (90%) test of the exception in subsection (11)(C) of this rule, his/her status as of each payment date is—

Status Date	Income	Tax if For Full Year*		
		90% of Tax	Withheld and Paid	
4-15	\$ 4,500	0	0	\$ 84
6-15	\$ 7,500	\$ 49	\$ 44.10	\$140
9-15	\$12,000	\$155	\$139.50	\$244
1-15	\$21,400	\$545	\$490.50	\$436

\*The tax for the full year shown in the column was computed on the basis of the taxpayer filing a federal income tax return for the year and claiming the standard deduction in the computation of his/her federal income

tax deduction for Missouri income tax purposes.

Since the total amount in the fifth column is larger than the amount in the fourth column on each of the first three (3) installment dates, there is no addition to the tax for underpayment, by reason of the exception in subsection (11)(C) of this rule. Also, there is no underpayment of the fourth installment, by reason of the exception in subsection (11)(B) of this rule (80% of \$545 = \$436). Note that the exception in subsection (11)(C) does not apply to individuals with respect to the fourth installment;

(F) Taxpayer, a married man with one (1) child and a dependent parent, files a combined Missouri income tax return for 1974 with his spouse showing a total taxable income of \$9,000 and a tax liability of \$315. The taxpayer's 1973 income tax return showed a total taxable income of \$7,500 and a total tax liability of \$238 with exemptions claimed for only the taxpayer and his spouse. Assume that the taxpayer paid four (4) timely estimated tax payments of \$50 each for 1974. The exception is subsection (11)(A) of this rule would not apply as the 1974 estimated tax payments of \$200 do not equal or exceed the prior year's tax of \$238. Under the exception in subsection (11)(D) of this rule, what would have been due on the 1973 return, computed with regard to the 1974 exemptions (totaling \$3,200 instead of \$2,400) would have been \$199 which is less than the \$200 paid; therefore the exception in subsection (11)(D) of this rule applies and no addition to the tax will be imposed; and

(G) The X Corporation was incorporated and began doing business on April 1, 1973 and filed its first Missouri income tax return for the period April 1, 1973 through December 31, 1973 showing a Missouri taxable income of \$1,000 and a tax liability of \$50. X Corporation pays four (4) timely estimated tax payments for 1974 in the amount of \$25 each. On its calendar year 1974 Missouri income tax return, Corporation X shows a Missouri taxable income of \$100,000 and a tax liability of \$5,000. In this example, the exception in subsection (11)(A) of this rule would not apply since the preceding year's tax return did not cover a period of twelve (12) months. The exception in subsection (11)(D) of this rule does apply since taxpayer's estimated tax payments exceed that which would have been due on the 1974 return if it had been calculated at the 1974 rates but based on the facts shown on the 1973 return.

(13) Determination of Taxable Income for Installment Periods. In determining the applicability of the exceptions in section

143.761.4(2) and (3), RSMo, there must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment dated as of which the determination is made. For example, if a taxpayer distributes year-end bonuses to its employees, but does not determine the amount of the bonuses until the next to the last month of the taxable year, it may not deduct any portion of the year-end bonuses in determining the taxable income for any installment period other than the final installment period for the taxable year. If a taxpayer on an accrual method of accounting wishes to use either of the exceptions in section 143.761.4(2) or (3), RSMo, s/he must establish the amount of income and deductions for each applicable installment period. If income is derived from business in which the production, purchase or sale of merchandise is an income-producing factor requiring the use of inventories, the taxpayer will be unable to determine accurately the amount of the taxable income for the applicable period unless there can be established, with reasonable accuracy, the cost of goods sold for the applicable installment period. The cost of goods sold for the period shall be considered, unless a more exact determination is available, as that part of the cost of goods sold during the entire taxable year as the gross receipts from the sales for the installment period is to the gross receipts from the sales for the entire taxable year.

(14) Members of Partnerships. In determining a partner's taxable income for the months in his/her taxable year which precede the month in which the installment date occurs, each partner shall take into account all items for any partnership taxable year ending with or within his/her taxable year to the extent that those items are attributable to months in the partnership taxable year which precede the month in which the installment date occurs together with any guaranteed payments from the partnership to the extent that the guaranteed payments are includable in his/her taxable income for those months. The provisions of this section may be illustrated by the following examples:

(A) A, who is an individual calendar year taxpayer, is a member of a partnership whose taxable year ends on January 31. A must take into account, in the determination of his/her taxable income for the installment due on April 15, 1974, all of his/her distributive share of partnership items and the amount of any guaranteed payments made to him/her which were deductible by the partnership in the partnership taxable year beginning on February 1, 1973 and ending on January 31, 1974; and

(B) Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30. A must take into account in the determination of his/her taxable income for the installment due on April 15, 1974 his/her distributive share of partnership items for the period July 1, 1973—March 31, 1974; and for the installment due on June 15, 1974, s/he must take into account the amounts for the period July 1, 1973—May 31, 1974; and for the installment due on September 15, 1974, s/he must take into account the amounts for the entire partnership taxable year of July 1, 1973—June 30, 1974 (the date on which the partnership taxable year ends).

(15) Beneficiaries of Estates and Trusts. In determining the applicability of the exceptions in subsections (11)(A) and (B) of this rule as of any installment date, the beneficiary of an estate or trust must take into account his/her distributable share of income from the estate or trust for the applicable period (whether or not actually distributed) if the trust or estate is required to distribute income to him/her currently. If the estate or trust is not required to distribute income currently, only the amounts actually distributed to the beneficiary during the period must be taken into account. If the taxable year of the beneficiary and the taxable year of the estate or trust are different, there shall be taken into account the beneficiary's distributable share of income, or the amount actually distributed to him/her, as the case may be, during the months in the taxable year of the estate or trust ending within the taxable year of the beneficiary which precedes the month in which the installment date occurs. This rule is similar to the rule that applies for a member of a partnership when a partner and a partnership of which s/he is a member have different taxable years.

*AUTHORITY: section 143.961, RSMo (1986). Regulation 1.761 was originally filed Dec. 22, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 5, 1982, effective Feb. 11, 1983.*

\*Original authority 1972.

#### 12 CSR 10-2.067 Failure to Pay Estimated Tax for Tax Years Ending After December 31, 1983

*PURPOSE: This rule clarifies the requirement for filing declaration of estimated income tax by individuals and corporations and the determination of the amount of the installments required to be paid by the appropriate due dates.*

(1) Authority for Rule. This rule is being issued under the general regulatory powers granted to the director of revenue in section 143.961, RSMo which became effective on January 1, 1973.

(2) Applicability and Scope of Rule. This rule is applicable only with respect to taxable years ending after December 31, 1983 and is intended as an interpretive guideline in the application of Chapter 143, RSMo.

(3) Definitions. As used in this rule—

(A) The term director shall mean the director of revenue or his/her duly authorized agent or designee;

(B) The term farmer shall mean an individual having an estimated Missouri adjusted gross income (MAGI) from farming for the taxable year which is at least two-thirds (2/3) of his/her total estimated MAGI taxable in this state for the taxable year. The term does not include a fisherman or a corporation;

(C) The term large corporation shall mean that the corporation (or any predecessor corporation) in any of the three (3) preceding taxable years had a federal taxable income of at least one (1) million dollars and had a Missouri taxable income of at least one hundred thousand dollars (\$100,000); and

(D) The term other corporation shall mean any corporation not defined in subsection (3)(C).

(4) General Rule. Section 143.761.1., RSMo imposes an addition to tax in the case of any underpayment of estimated tax by an individual or a corporation (with certain exceptions described in section 143.761.4., RSMo). This addition to tax is in addition to any applicable civil or criminal penalties and is imposed without regard to whether or not extenuating circumstances disclosed a reasonable cause or lack of willful neglect for the underpayment. There are no provision for the payment of interest with respect to any underpayment of estimated tax.

(5) Amount and Period of Underpayment. The amount of the underpayment for any installment date is the excess of—

(A) Ninety percent (90%) in the case of corporations, eighty percent (80%) in the case of individuals, sixty-six and two-thirds percent (66 2/3%) in the case of a farmer) of the tax shown on the return for the taxable year, or if no return was filed, ninety percent (90%) in the case of corporations, eighty percent (80%) in the case of individuals, sixty-six and two-thirds percent (66 2/3%) in the case of a farmer of the tax for the year, divided by the number of installment dates prescribed for the taxable year, over; and

(B) The amount, if any, of the installment paid on or before the last day prescribed for its payment.

(6) The amount of the addition is determined at the rate set forth in section (8) of this rule upon the underpayment of any installment of estimated tax for the year from the date the installment is required to be paid until the fifteenth day of the fourth month following tax underpayment is paid, whichever is earlier. For the purpose of determining the period of underpayment, the date prescribed for the payment of any installment of estimated tax shall be determined without regard to any extension of time; and a payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under subsection (5)(A) of this rule for the installment date, shall be considered a payment of any previous underpayment.

(7) In determining the amount of the installment paid on or before the last day prescribed for payment of the installment, the estimated tax shall be computed without any reduction for the amount which the taxpayer estimates as his/her credit for taxes withheld at the source on wages, and the amount of that credit shall be deemed a payment of estimated tax. An equal part of the amount of the credit shall be considered paid on each installment date for the taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In the latter case, all amounts withheld shall be considered as payments of estimated tax on the dates the amounts were actually withheld.

(8) Beginning January 1, 1983, the rate of additions to tax is the same as established by the director of revenue under authority of section 32.065, RSMo and 12 CSR 10-41.010 Annual Adjusted Rate of Interest.

(9) Statement Relating to Underpayment. If there has been an underpayment of estimated tax as of any installment date prescribed for its payment and the taxpayer believes that one (1) or more of the exceptions described in section 143.761.4., RSMo precludes the imposition of the addition to the tax, the appropriate Missouri form should be attached to the income tax return for the taxable year showing the applicability of an exception. Any error in computation of the estimate will result in the imposition of the additions to tax on the total amount of the underpayment and not on the amount by which the taxpayer fails to come within one (1) of the five (5) exceptions.

(10) Exceptions to Imposition of Additions to Tax. Exceptions shown in subsections

(10)(A)—(D) apply to individuals. Exceptions shown in subsections (10)(A)—(E) apply to all corporations except large corporations as defined in subsection (3)(C) of this rule. Only the exceptions shown in subsections (10)(B), (C) and (E) apply to large corporations. The addition to the tax under section 143.761, RSMo will not be imposed for any underpayment of any installment of estimated tax, if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax equals or exceeds the least of the following amounts:

(A) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were the tax shown on the return for the preceding taxable year was a year of twelve (12) months and a return showing a liability for tax was filed for that year;

(B) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to ninety percent (90%) in the case of other corporations, eighty percent (80%) in the case of individuals, (sixty-six and two-thirds percent (66 2/3%) in the case of a farmer) of the tax computed by placing on an annualized basis the taxable income for the calendar months in the taxable year preceding that date. The taxable income shall be placed on an annualized basis by—

1. Multiplying by twelve (12) (or the number of months in the taxable year if less than twelve (12)) the taxable income (computed without the standard deduction and without the deduction for personal and dependency exemptions) or the AGI if the standard deduction is to be used for the calendar months;

2. Dividing the resulting amount by the number of those calendar months;

3. Deducting from that amount the standard deduction, if applicable, the deductions for personal and dependency exemptions determined as of the date prescribed for payment and the deduction for federal income tax liability; and

4. Multiplying, in the case of a corporation other than a large corporate taxpayer, the amount determined in paragraph (10)(B)3. of this rule by the applicable percentage determined under section 143.451 or 32.300, RSMo as of the last day of the month preceding the date prescribed for payment;

- (C) An amount equal to ninety percent (90%) of the tax computed, at the rate applicable to the taxable year, on the basis of the actual taxable income for the calendar months in the taxable year preceding the date prescribed for payment;

- (D) The amount which would have been required to be paid on or before the date pre-

scribed for payment if the estimated tax were an amount equal to a tax determined on the basis of the tax rates and the taxpayer's status with respect to personal and dependency exemptions for the taxable year, but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to that year, in case of a taxpayer required to file a return for the preceding taxable year;

(E) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to ninety percent (90%) of the tax computed by placing on an annualized basis the taxable income for the calendar months in the taxable year preceding that date. The taxable income shall be placed on an annualized basis by—

1. Multiplying by twelve (12) the taxable income;

2. Dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9 or 11) as the case may be; and

3. Using the calculations in paragraphs (10)(E)1. and 2. as follows:

- A. For the first three (3) months of the taxable year, in the case of an installment required to be paid in the fourth month;

- B. For the first three (3) months or for the first five (5) months of the taxable year, in the case of an installment required to be paid in the sixth month;

- C. For the first six (6) months or for the first eight (8) months of the taxable year, in the case of an installment required to be paid in the ninth month; and

- D. For the first nine (9) months or for the first eleven (11) months of the taxable year, in the case of the installment required to be paid in the twelfth month;

(F) For example, illustrating the application of the provisions for imposition of addition to tax for any underpayment of estimated tax in the case of an individual, see the examples set out in 12 CSR 10-2.065(10); and

(G) Taxpayer, a farmer, files an income tax return on February 15 of the succeeding year paying his/her total tax liability of five thousand dollars (\$5,000) on that date. In this case, there is no underpayment of estimated tax since the filing of the return and payment of the tax on or before February 28 of the succeeding year is considered as the taxpayer's declaration of estimated tax which was required to be filed by January 15 of the succeeding taxable year under section 143.521.6., RSMo. In the event that the taxpayer in this example had filed his/her declaration of estimated tax on or before January 15 of the succeeding year, s/he would have been required to pay sixty-six and two-thirds percent (66 2/3%) of his/her total tax liability for the year on that date.

(11) Example: The following example illustrates the application of the new exception to the imposition of the addition to tax for an underpayment of estimated tax for a calendar year large corporation:

(A) The Y Corporation is a large corporation meeting all requirements in subsection (3)(C). Assume in the first three (3) months of the taxable year its federal taxable income from all sources was two (2) million dollars and that it had no positive or negative modifications for the period under sections 143.121 and 143.141, RSMo. Further assume that its apportionment factor for the period is fifty percent (50%). The following procedure would be followed in determining whether the exception in subsection (10)(E) of this rule would apply to its required first installment payment due in the fourth month:

1. Net income all sources January through March	\$ 2,000,000;
2. Annualized income— line 1. $\times$ 12/3	\$ 8,000,000;
3. Less estimated federal tax	\$ 3,659,750;
4. Annualized Missouri taxable income all sources	\$ 4,340,250;
5. Annualized Missouri taxable income at 50%	\$ 2,170,125;

and

6. Estimated Missouri tax at 100%	\$108,506.25.
--------------------------------------	---------------

If the large corporation estimated tax payments paid on or before the date due for the first installment is at least \$24,413.82 (\$108,506.25  $\times$  90%  $\times$  1/4) no addition to tax would be imposed with respect to the first installment.

(12) Statutory Changes Require Amended Installment. Taxpayers required to make a declaration of estimated tax shall make a recalculation of the installment due when there is a change in statute which affects the estimated liability and installments for their taxable period. Example: Assume Z Corporation had a state income tax estimated tax for their fiscal year beginning July 1, 1983 and ending June 30, 1984 based upon a Missouri taxable income of \$2,000,000 with a tax of \$100,000. To avoid additions to tax, the exception provided in section 143.761.4(2), RSMo of eighty percent (80%) was used. Effective January 1, 1984, House Bill No. 10, First Extraordinary Session, 82nd General Assembly, increased the eighty percent (80%) to ninety percent (90%) for corporations. The taxpayer had paid two (2) installments of \$20,000 each prior to the change in statute. The calculation to determine the amount of the third and fourth installment would be as follows:

(A) Missouri taxable income	\$2,000,000;
(B) Missouri tax (5% rate)	\$ 100,000;
(C) Estimated tax after change of statute $90\% \times \$100,000$	\$ 90,000;
(D) Amount required to be paid through 3 installments $(\$90,000 \div 4 \times 3)$	\$ 67,500;
(E) Amount paid first 2 installments $(\$20,000 \times 2)$	\$ 40,000;
(F) Amount of 3rd installment (line (D) minus (E))	\$ 27,500;

and

(G) Amount of 4th installment (line (C) $\times$ 1/4)	\$ 22,500.
--	------------

If the corporations estimated tax payment equals ninety percent (90%) of the amount due for the three (3) installments no additions to tax would be imposed with respect to the third installment. This same calculation method would apply to a calendar year situation when the statute was changed and applied during their taxable period.

(13) Determination of Taxable Income for Installment Periods. In determining the applicability of the exceptions in section 143.761.4(2) or (3), RSMo, there must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment date as of which the determination is made. For example, if a taxpayer distributes year-end bonuses to its employees but does not determine the amount of the bonuses until the next to the last month of the taxable year, it may not deduct any portion of the year-end bonuses in determining the taxable income for any installment period other than the final installment period for the taxable year. If a taxpayer on an accrual method of accounting wishes to use either of the exceptions in section 143.761.4(2) or (3), RSMo, s/he must establish the amount of income and deductions for each applicable installment period. If income is derived from business in which the production, purchase or sale of merchandise is an income-producing factor requiring the use of inventories, the taxpayer will be unable to determine accurately the amount of the taxable income for the applicable period unless there can be established, with reasonable accuracy, the cost of goods sold for the applicable installment period. The cost of goods sold for the period shall be considered, unless a more exact determination is available, as that part of the cost of goods sold during the entire taxable year as the gross receipts from the sales for the installment period is to the gross receipts from the sale for the entire taxable year.

(14) Members of Partnerships. In determining a partner's taxable income for the months in his/her taxable year which precede the month in which the installment date occurs, each partner shall take into account all items for any partnership taxable year ending with or within this taxable year to the extent that those items are attributable to months in the partnership taxable year which preceded the month in which the installment date occurs together with any guaranteed payments from the partnership to the extent that the guaranteed payments are includable in his/her taxable income for those months. The provisions of this section may be illustrated by the following examples:

(A) A, who is an individual calendar year taxpayer, is a member of a partnership whose taxable year ends on January 31. A must take into account, in the determination of his/her taxable income for the installment due on April 15, 1984, all of his/her distributive share of partnership items and the amount of any guaranteed payments made to him/her which were deductible by the partnership in the partnership taxable year beginning on February 1, 1983 and ending on January 31, 1984; and

(B) Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30. A must take into account, in the determination of his/her taxable income for the installment due on April 15, 1984, his/her distributive share of partnership items for the period July 1, 1983 through March 31, 1984; and for the installment due on June 15, 1984 s/he must take into account the amounts for the period July 1, 1983 through May 31, 1984; and for the installment due on September 15, 1984, s/he must take into account the amounts for the entire partnership taxable year of July 1, 1983 through June 30, 1984 (the date on which the partnership taxable year ends).

(15) Beneficiaries of Estates and Trusts. In determining the applicability of the exceptions in subsections (10)(A) and (B) of this rule as of any installment date, the beneficiary of an estate or trust must take into account his/her distributable share of income from the estate or trust for the applicable period (whether or not actually distributed) if the trust or estate is required to distribute income to him/her currently. If the estate or trust is not required to distribute income currently, only the amounts actually distributed to the beneficiary during the period must be taken into account. If the taxable year of the beneficiary and the taxable year of the estate or trust are different, there shall be taken into account the beneficiary's distributable share of income, or the amount actually distributed to him/her, as the case may be, during the months in the taxable year of the estate or

trust ending within the taxable year of the beneficiary which precedes the month in which the installment date occurs. This rule is similar to the rule that applies for a member of a partnership when a partner and a partnership of which s/he is a member have different taxable years.

*AUTHORITY:* section 143.961, RSMo (1986).\* *Original rule filed Dec. 30, 1983, effective April 12, 1984.*

\*Original authority 1972.

## 12 CSR 10-2.070 Interest on Overpayments

*PURPOSE:* This rule sets forth the circumstances under which a taxpayer who has paid too much tax will receive interest on the amount of the tax refund.

(1) Authority for Rule. This rule is being issued under the general regulatory powers granted to the director of revenue and the specific authority set forth in section 143.811, RSMo.

(2) Applicability and Scope of Rule. This rule shall apply to those instances in which an overpayment of the taxes imposed by sections 143.011—143.996, RSMo has occurred and shall apply only with respect to taxable periods beginning on or after January 1, 1973. It is intended to serve as an interpretive guideline in the application of section 143.811.1., 2., 4. and 5., RSMo as affected by sections 143.601 and 143.801, RSMo.

(3) The term sections 143.011—143.996, RSMo shall mean the Missouri Income Tax Law, which became effective on January 1, 1973.

(4) As used in this rule, the term director shall mean the director of revenue or his/her duly authorized agent or designee.

(5) Subject to the limitations provided in this rule, interest shall be allowed and paid upon any overpayment with respect to the taxpayer's liability for taxes, computed on a daily basis at the rate provided by statute, from the dates of the overpayment to the date shown on the refund check that is issued by the treasurer of Missouri. If the taxpayer elects to have all or a part of the overpayment shown on the return applied to the taxpayer's estimated tax for a succeeding year, the portion of the overpayment that is credited to the estimated tax for the succeeding year or any installment shall be considered to be refunded to the taxpayer on the date that the original return was filed and no interest shall be allowed on the

portion of the overpayment so credited or applied.

(6) Time Return Filed. For purposes of this rule, a return filed before the last day prescribed for the filing of the return shall be considered as filed on the last day (determined without regard to any extensions of time for filing the return). For returns filed after the fifteenth day of the fourth month following the close of the taxpayer's taxable year, the time filed shall be the actual time filed.

(7) Time Tax Paid. For purposes of this rule, payment of any portion of the tax made before the fifteenth day of the fourth month following the close of the taxpayer's taxable year shall be considered as paid on the fifteenth day of the fourth month. For payments made after the fifteenth day of the fourth month following the close of the taxpayer's taxable year, whether or not a valid extension of time to pay is in effect, the time paid shall be the actual time paid.

(8) Limitations. If any overpayment is refunded within four (4) months after the last date prescribed (or permitted by extension of time) for filing the original return of the tax or within four (4) months after the return was filed, whichever is later, no interest shall be allowed on the overpayment as provided by section 143.811.4., RSMo. Where the taxpayer's return is not complete, delaying the processing by the director and requiring the director to request additional information from the taxpayer, the four (4)-month period referred to in this rule shall begin at such time as the additional requested information is submitted.

(9) Carrybacks of Net Operating Loss and Corporate Capital Loss. Any overpayment resulting from a carryback, including a net operating loss and a corporate capital loss, shall be deemed not to have been made prior to the close of the taxable year in which the loss arises, per section 143.811.5., RSMo. The carryback will be deemed to be an amended federal income tax return under section 143.601, RSMo which requires that any taxpayer filing an amended federal income tax return shall also file, within ninety (90) days after that, an amended return under sections 143.011—143.996, RSMo.

(10) Examples: The amounts used in any of the following examples for additions to tax and interest are for illustrative purposes only and do not necessarily reflect the actual additions to tax and interest that might be due in those situations. For purposes of these examples, current year returns shall mean returns filed, or required to be filed, for the immedi-

ately preceding taxable year for taxes imposed by sections 143.011—143.996, RSMo:

(A) Taxpayer files his/her 1974 calendar year return on January 15, 1975 indicating an overpayment. If the director makes a refund of the overpayment on or before August 15, 1975, no interest shall be allowed on the overpayment. In this example, the return is considered filed on the last day prescribed for the filing (April 15, 1975) and the director has four (4) months in which to make the refund. If the refund is not made by August 15, 1975, interest shall be allowed and paid for the period April 15, 1975 (the date the tax is considered paid) until the date of the refund;

(B) Taxpayer files his/her 1974 calendar year return on June 15, 1975 with a valid sixty (60)-day extension of time to file in effect, indicating an overpayment. All tax payments were made on or before April 15, 1975. If the director makes a refund of the overpayment on or before October 15, 1975, no interest shall be allowed on the overpayment. In this example, even though the tax is considered paid on April 15, 1975, the director has four (4) months in which to make the refund from the date the return is filed. If the refund is not made by October 15, 1975, interest shall be allowed and paid for the period April 15, 1975 until the date of the refund. The result in this example would be the same whether or not a valid extension of time to file or pay the tax had been in effect;

(C) Taxpayer files his/her 1974 calendar year return on June 15, 1975 indicating a balance due of one hundred fifty dollars (\$150) which is paid with the return, there being no valid extension of time to file the return or pay the tax in effect. Upon subsequent review of the return, a mathematical error is discovered overstating the taxpayer's 1974 tax liability by two hundred dollars (\$200). If the director makes a refund of the overpayment on or before October 15, 1975, no interest shall be allowed on the overpayment. If the refund is not made on or before October 15, 1975, interest shall be allowed and paid on the overpayment in the following manner. On the fifty-dollar (\$50) overpayment that would have been shown on the original return, if correctly filed, from April 15, 1975 to the date of the refund; and on the one hundred and fifty dollars (\$150) paid with the original return, from June 15, 1975 (the date the tax was paid) to the date of the refund. The result in this example would be the same whether or not a valid extension of time to file or pay the tax had been in effect; and

(D) Taxpayer, a corporation, files its estimated tax declaration for calendar year 1975 with the director and pays the first two installments payments of five hundred dollars (\$500)

each on April 15, 1975 and June 15, 1975, respectively. Taxpayer incurs a net operating loss for calendar year 1975 and files his/her Missouri income tax return on April 15, 1976, requesting a refund of the resulting overpayment. The taxpayer fails to attach to its Missouri return a copy of the federal form 1120 as required. Upon timely review of the taxpayer's Missouri return, the director requests from the taxpayer a copy of the federal return which is not submitted until December 15, 1976. If the director makes a refund of the overpayment on or before April 15, 1977, no interest shall be allowed on the overpayment. If the refund is made after April 15, 1977, interest shall be allowed and paid from April 15, 1976 to the date of the refund. In this example, the four (4)-month noninterest payment period does not begin until the required information is submitted.

(11) Change in Federal Taxable Income. Section 143.601, RSMo provides that if the amount of the taxpayer's federal taxable income reported on his/her federal income tax return, for any taxable year, is changed or corrected by the United States Internal Revenue Service (IRS) or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report the change or correction in federal taxable income within ninety (90) days after the final determination of the change, correction or renegotiation. Any taxpayer filing an amended federal income tax return also shall file, within ninety (90) days after that, an amended return under sections 143.011—143.996, RSMo and shall provide information as the director may require. The examples under this section do not apply where the federal change is on account of a net operating or a corporate capital loss carryback.

(A) On January 15, 1975, taxpayer's federal taxable income for calendar year 1973 is changed by the United States IRS indicating an overpayment. Taxpayer files an amended return with the director on April 15, 1975 (the ninetieth day) reflecting the federal changes and indicating an overpayment of his/her 1973 income tax liability. Taxpayer filed his/her 1973 income tax return and paid the tax on or before April 15, 1974. In this situation, interest shall be allowed and paid from April 15, 1974 until the date of the refund.

(B) On January 15, 1975, taxpayer's federal taxable income for calendar year 1973 is changed by the United States IRS indicating an overpayment. Taxpayer files an amended return with the director on April 30, 1975 (after the ninetieth day) reflecting the federal change and indicating an overpayment of his/her 1973 income tax liability. Taxpayer filed his/her 1973 income tax return and paid

the tax prior to April 15, 1974. In this situation, interest shall be allowed and paid from April 15, 1974 until April 15, 1975 (the ninetieth day). Note that in this case, failure to file an amended return within the ninety (90)-day period required by section 143.601, RSMo shall cause the interest to cease to accrue after the ninetieth day.

(C) Assume the same fact as in subsection (11)(A) of this rule except taxpayer filed his/her original 1973 income tax return on June 15, 1974, with a valid extension of time to file attached, and all taxes were paid on or before April 15, 1974 until the date of the refund. Note that an extension of time to file has no bearing on the interest payment period if all taxes were paid before April 15, 1974. In this situation, interest shall be allowed and paid from April 15, 1974. If the amended return was filed with the director after the ninetieth day, the interest would cease to accrue on the ninetieth day.

(D) On January 15, 1975, taxpayer's federal taxable income for calendar year 1973 is changed by the United States IRS indicating an overpayment. Taxpayer files an amended return with the director on April 10, 1975 (before the ninetieth day) reflecting the federal change and indicating an overpayment of his/her 1973 income tax liability. Taxpayer filed his/her 1973 income tax return on July 1, 1974 indicating a balance due, indicating additions to tax and interest, and paid the liability on that date. In this situation, interest shall be allowed and paid from July 1, 1974, the date the tax was actually paid, until the date of the refund. If the taxpayer's amended return was not filed on or before the ninetieth day, interest would be allowed and paid only until the ninetieth day (July 1, 1974 through April 15, 1975). Note that interest will be paid not only with respect to the taxes previously paid by the taxpayer but also with respect to the additions to tax and interest previously paid.

(E) On April 15, 1976, taxpayer's federal taxable income for calendar year 1973 is changed by the United States IRS resulting in an overpayment of his/her 1973 tax liability. On April 16, 1977, taxpayer files an amended return with the director, reflecting the federal changes, and also indicating an overpayment. Taxpayer filed his/her original 1973 income tax return on April 15, 1974 and all taxes were paid on that date. In this example, the taxpayer has filed his/her claim for credit or refund within one (1) year from the time the amended return was required to be filed (within one (1) year after ninety (90) days after April 15, 1976). Note that even though the three (3)-year limitation of section 143.801.1., RSMo, and the two (2)-year limitation of section 143.801.2., RSMo have elapsed, section 143.801.4., RSMo allows the claim to be filed within one (1) year.

Interest shall be allowed and paid in this situation from April 15, 1974 until the ninetieth day after April 15, 1976.

(12) Carrybacks—Example 1: In calendar year 1976, taxpayer incurs a net operating loss, or a corporate capital loss, which is allowable as a carryback to calendar year 1973. Taxpayer's original 1973 Missouri income tax return was filed on April 15, 1974, and all tax payments were made prior to that date. Taxpayer files an amended 1973 federal income tax return on January 1, 1977, and an amended 1973 Missouri income tax return on the same day requesting refund of the resulting overpayment for 1973. In this situation, interest shall be allowed and paid from January 1, 1977 to the date of the refund. In this example, the overpayment is deemed not to have been made prior to the close of the taxable year in which the loss arises.

(13) Carrybacks—Example 2: Assume the same facts as in section (12) of this rule except the taxpayer does not file his/her amended Missouri income tax return until April 2, 1977, which is after the ninetieth day after January 1, 1977. In this situation, interest shall be allowed and paid for the period January 1, 1977 until the ninetieth day (March 31, 1977). Note that the failure of the taxpayer to file within the ninety (90)-day period required under section 143.601, RSMo caused the interest to cease to accrue on the ninetieth day.

(14) Amended Returns—Example 1: On January 15, 1975, taxpayer files an amended Missouri income tax return for calendar year 1973 correcting an error or omission on his/her original 1973 return. The original return for 1973 was filed on March 3, 1974 with a balance due that was paid on that date. The amended return indicates an overpayment for 1973. In this situation, interest shall be allowed and paid for the period April 15, 1974 until the date of the refund.

(15) Amended Returns—Example 2: On January 15, 1975, taxpayer files an amended Missouri income tax return for calendar year 1973 correcting an error or omission on the 1973 return. The original return for 1973 was filed on June 15, 1974 (with no valid extension of time to file or pay the tax) indicating a balance due of two hundred dollars (\$200) which was paid on that date. On November 15, 1974, taxpayer was assessed additions to tax and interest of twenty-five dollars (\$25) under sections 143.731 and 143.741, RSMo which s/he remitted on that date. The amended return indicates an overpayment for 1973 of three hundred dollars (\$300). Interest shall be allowed and paid in the following manner: