

# SCHEDULE MO-MS INSTRUCTIONS

This information is for guidance only and does not state the complete law.

## GENERAL INSTRUCTIONS

Complete the Schedule MO-MS if taxable income is not 100 percent from Missouri sources. This form must be completed even if Missouri taxable income is zero. If the corporation owns a percentage of a partnership(s), the partnership factors must be multiplied by the corporation's percentage of ownership, and then added into the corporation's apportionment factors.

### APPORTIONMENT ELECTION

Missouri Statutes provide eight methods for determining Missouri taxable income from Missouri sources. Choose only **one** of the eight methods and enter the method number on Form MO-1120, Line 10. You may change methods from year to year provided you do not file a consolidated Missouri return (see 12 CSR 10-2.045).

Pursuant to Section 32.200, RSMo, Article IV, 2, financial organizations, personal service corporations, and public utilities cannot elect to use apportionment method one. They will need to elect one of the other available methods.

Once an election has been made, it cannot be changed with respect to the same taxable period.

If the Schedule MO-MS is not completed, the apportionment will be adjusted to 100 percent.

**METHOD ONE** Multistate Allocation and Three Factor Apportionment (Multistate Tax Compact — Section 32.200, RSMo). See instructions for completing Method One.

**METHOD TWO** Business Transaction Single Factor Apportionment - Section 143.451.2(2), RSMo. See instructions for completing Method Two.

**METHOD TWO A** Optional Single Sales Factor Apportionment - Section 143.451.2(3), RSMo. See instructions for completing Method Two A.

**METHOD THREE** Transportation — Section 143.451.3, RSMo. A detailed explanation must be attached.

**METHOD FOUR** Railroad — Section 143.451.4, RSMo. A detailed explanation must be attached.

**METHOD FIVE** Interstate Bridge — Section 143.451.5, RSMo. A detailed explanation must be attached.

**METHOD SIX** Telephone and Telegraph — Section 143.451.6, RSMo. A detailed explanation must be attached.

**METHOD SEVEN** Other Approved Method — This method can only be used with prior approval from the Missouri Director of Revenue. A letter of approval must be attached to the return (Section 143.461.2, RSMo).

## METHOD ONE THREE FACTOR INSTRUCTIONS

A taxpayer must have income from business activity taxable by this state and at least one other state to allocate and apportion income. Income from business activity includes business and nonbusiness income.

The taxpayer's income will be allocated and apportioned in accordance with the Multistate Tax Compact. The first step is to determine which portion of the taxpayer's entire net income constitutes "business income" and which portion constitutes "nonbusiness income." The various items of nonbusiness income are directly allocated to specific states. The business income of the taxpayer is divided between the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income attributable to this state by the apportionment formula constitutes the amount of the taxpayer's partial Missouri taxable income.

### **BUSINESS AND NONBUSINESS INCOME DEFINED**

"Business income" is all income arising from transactions and activities in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. "Nonbusiness income" means all income other than business income (See 12 CSR 10-2.075 for examples). The classification of income by the labels customarily given them, such as interest, dividends, rents, and royalties, is no aid in determining whether that income is business or nonbusiness income.

**Nonbusiness income will be considered only if a detailed Schedule MO-NBI is completed and attached.**

### **TAXABLE IN ANOTHER STATE**

A taxpayer is "taxable in another state" if it meets either one of two tests: (a) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified, namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (b) if another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not that state imposes such a tax on the taxpayer. The first test is applicable only if a taxpayer carries on business activities in another state. If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but: (a) does not actually engage in business activities in that state; or (b) does actually engage in some activity, not sufficient for nexus, and the minimum tax bears no relation to the corporation's activities within such state, the taxpayer is not "taxable" in another state. The second test applies if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. Sections 381-385. If you believe you do not have sufficient nexus and you are not liable for Missouri tax, a Form 4458, Business Activity Questionnaire must be completed. For Missouri forms access the Department of Revenue's web site at <http://dor.mo.gov> or call (800) 877-6881.

Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his or her net income as provided in Section 32.200, RSMo. If a taxpayer has income from business activity as a public utility, but derives the greater percentage of his or her income from activities subject to Section 32.200, Article IV, RSMo, the taxpayer may elect to allocate and apportion his or her entire net income as provided in Section 32.200, RSMo.

## STEP 1

Complete Part 1, Line 1 through Line 4. Enter Line 4 on Form MO-1120, Page 1, Line 10.

### **LINE 1A AND LINE 1B — PROPERTY FACTOR**

The numerator of the property factor includes the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year for the production of business income. The denominator is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the income year for the production of business income.

Property owned by the taxpayer in transit between locations of the taxpayer is considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller, which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices, is included in the numerator according to the state of destination. The value of mobile or movable property, such as construction equipment, trucks or leased electronic equipment, which is located within and without this state, is based upon the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the income year. An automobile assigned to a traveling employee is included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Property owned by the taxpayer is valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. Property rented by the taxpayer is valued at eight times the net annual rental rate. The net annual rental rate is the total annual rental rate paid by the taxpayer, less total annual rental rate received by the taxpayer from subrentals. As a general rule, the average value of property owned by the taxpayer is determined by averaging the values at the beginning and ending of the income year. However, the Missouri Director of Revenue may require averaging by monthly values if such method of averaging is reasonably required to properly reflect the average value of the taxpayer's property for the income year.

### **LINE 2A AND LINE 2B — PAYROLL FACTOR**

The payroll factor includes only compensation that is attributable to the business income subject to apportionment. The compensation of any employee whose activities are connected primarily with nonbusiness income shall be excluded from the factor. The denominator of the payroll factor is the total compensation paid everywhere during the income year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is exempt from taxation (for example, Public Law 86-272) is included in the denominator of the payroll factor. The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. Compensation is paid in this state if any one of the following tests, applied consecutively, is met: (a) the employee's service is performed entirely within this state; (b) the employee's service is performed both within and without this state, but the service performed without the state, is incidental to the employee's service within the state (the word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction); (c) if the employee's services are performed both within and without this state, the employee's compensation is attributed to this state: (1) if the employee's base of operations is in this state; or (2) if there is

no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or (3) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state. The term "base of operation" is the place of more or less permanent nature from which the employee starts his or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers or other persons, or to replenish stock or other material, repair equipment, or perform any other functions necessary to the exercise of his or her trade or profession at some other point or points.

### **LINE 3A AND LINE 3B — SALES FACTOR**

The denominator of the sales factor is generally all gross receipts derived by a taxpayer from transactions and activities in the course of its regular trade or business operations that produce business income as defined.

In the case of a taxpayer whose business activity consists of manufacturing and selling, or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) are included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product. The term "sales" also includes gross receipts derived by a taxpayer from business transactions or activities which are incidental to its principal business activity and which are includable in business income. As applied to a taxpayer engaged in a business activity other than the manufacturing and selling, or purchasing and reselling of property, "sales" includes the gross receipts from the taxpayer's business activity. In the case of cost plus fixed fee contracts, such as the operation of a government owned plant for a fee, gross receipts includes the entire reimbursed cost, plus the fee. "Sales" includes the gross receipts from the rental, lease, or licensing the use of the property, such as patents and copyrights.

The numerator of the sales factor includes the gross receipts from sales which are attributable to this state, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales, regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness. Gross receipts from the sales of tangible personal property (except sales to the United States Government) are in this state if the property is delivered or shipped to a purchaser within this state, regardless of the f.o.b. point or other conditions of sale; or if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Sales to the United States Government: Gross receipts from the sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. Only sales for which the United States Government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the United States Government.

Sales other than sales of tangible personal property are in this state if: (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

**LINE 4 — APPORTIONMENT FACTOR**

Add percentages on Lines 1, 2, and 3, and divide by factors present. **If one or more of the three factors does not exist in the denominator, determine the apportionment factor by dividing by the number of factors present.**

**STOP HERE** if nonbusiness income is not claimed. Enter the percentage from Line 4 on Form MO-1120, Page 1, Line 10.

**STEP 2**

Complete Part 1, Line 5 through Line 14 and enter Line 14 on Form MO-1120, Page 1, Line 10. The classification of income by the labels customarily given them, such as interest, dividends, rents, and royalties, is no aid in determining whether that income is business or nonbusiness income. **Nonbusiness income will be considered only if a detailed Schedule MO-NBI is completed and attached.**

**ALLOCATION OF NONBUSINESS INCOME**

For this purpose, "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

Rents and royalties from real or tangible personal property, capital gains, interest, or patent or copyright royalties, and dividends, **to the extent that they constitute nonbusiness income**, shall be allocated as follows:

- (a) Net rents and royalties from real property located in this state are allocable to this state.
- (b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state; or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of, or taxable in, the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days the property was physically located in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all royalty or rental periods during the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.
- (c) Capital gains and losses from sales of real property located in this state are allocable to this state.
- (d) Capital gains and losses from sales of tangible personal property are allocable to this state if: (1) the property had a situs in this state at the time of the sale; or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.
- (e) Certain capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.
- (f) Certain interest is allocable to this state if the taxpayer's commercial domicile is in this state.
- (g) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or (2) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent

that a patented product is produced in the state. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from patent royalties or copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent or copyright is utilized in the state in which the taxpayer's commercial domicile is located.

- (h) Certain dividends are allocable to this state if the taxpayer's commercial domicile is in this state (see 12 CSR 10-2.075).

## **METHOD TWO SINGLE FACTOR INSTRUCTIONS STEP 1**

Complete Part 2, Line 1 through Line 7. The numerator of the single factor apportionment method is one-half the gross receipts from sales transacted partly within and partly without this state, plus the gross receipts from sales transacted wholly within this state. The denominator is the gross receipts from all sales.

**STOP HERE** if wholly passive investment income from outside Missouri or dividends from a non-Missouri payor are not claimed. Enter the percentage from Line 7 on Form MO-1120, Page 1, Line 10.

## **METHOD TWO A OPTIONAL SINGLE SALES FACTOR INSTRUCTIONS STEP 1**

Complete Part 2, Line 1a, 4a and 7a. The numerator of the optional single sales factor apportionment method is the gross receipts from sales in this state. The sale is considered "in this state" if the purchaser's destination point is in this state. The denominator is the gross receipts from all sales.

**STOP HERE** if wholly passive investment income from outside Missouri or dividends from a non-Missouri payor are not claimed. Enter the percentage from Line 7a on Form MO-1120, Page 1, Line 10.

## **METHOD TWO AND METHOD TWO A SINGLE FACTOR AND OPTIONAL SINGLE SALES FACTOR APPORTIONMENT STEP 2**

Complete Part 2, Line 7 or Line 7a. Enter Line 16 on Form MO-1120, Page 1, Line 10.

**Wholly passive investment income from outside Missouri will be considered only with an attached detailed explanation.**

Missouri corporation income tax is imposed upon Missouri taxable income. Missouri taxable income shall be so much of a corporation's federal taxable income for the taxable year with modification as is derived from sources within Missouri as provided. When a corporation elects single sales and optional single sales factor apportionment, the apportionment and allocation of the listed items is as follows:

**Royalties:** Royalties are included in Missouri taxable income - all sources - and are subject to apportionment by inclusion in the numerator of the apportionment factor; provided however, royalties received from an entity located and operating solely in a foreign country or countries and received from the licensing of trademarks, trade names, or patents may be allocated as wholly passive investment income.

**Interest:** Interest income from loans or investments made by the taxpayer are an important part of the business and are subject to apportionment by inclusion in the numerator of the apportionment factor; provided however, interest income earned on non-operating excess funds invested by the corporation's out-of-state parent company and invested in another state may be allocated as wholly passive investment income. In addition, interest income received from non-Missouri municipal bonds may be allocated as wholly passive investment income.

**Dividends:** Dividends to the extent included in federal taxable income are subtracted in determining Missouri taxable income. Dividends from a Missouri payor are apportioned and then subtracted from apportioned income. Dividends from non-Missouri payors are subtracted on the MO-MS schedule in computation of partial Missouri taxable income - Missouri sources.

**NOTE:** If income is allocated as wholly passive investment income, any related expenses must also be allocated.

### **METHOD THREE, FOUR, FIVE, OR SIX, INSTRUCTIONS**

Enter Missouri miles, total miles, and percentage in the apportionment section on Schedule MO-MS, page 1, if applicable.

### **METHOD SEVEN INSTRUCTIONS**

Method Seven can only be used with prior approval from the Missouri Director of Revenue. **Letter of approval must be attached to the return or the apportionment will be adjusted to 100 percent (Section 143.461.2, RSMo).**