



SALT Alert!



SALT Alert! 2018-08: Missouri Reduces Corporate Tax Rates, Enacts Mandatory Single-Sales Factor Apportionment and Market-Based Sourcing, and Other Significant Tax Changes

Only hours before resigning on June 1, 2018, former Missouri Governor Eric Greitens signed 77 bills, including [Senate Bill 884](#), which adopts significant corporate tax changes. The changes are mostly effective for tax years beginning in 2020. These changes include a corporate tax rate reduction from 6.25 percent to 4 percent, and mandatory single-sales factor apportionment and market-based sourcing. Also, for returns filed on or after August 28, 2018, Missouri now eliminates all transactions between affiliated group members electing to file a Missouri consolidated return.

Corporate Tax Changes in Senate Bill 884

Rate Reduction

For all tax years beginning on or after January 1, 2020, the corporate income tax rate is reduced from 6.25 percent to 4.0 percent.

Mandatory Single-Receipts Factor Apportionment and Market-Based Sourcing

Currently, most multistate businesses elect to apportion using one of three methods: an equally-weighted three-factor formula (Method One, the Multistate Tax Compact formula), a single-sales factor formula unique to Missouri (Method Two), or a modified single-sales factor formula (Method Two A).

For tax years beginning on or after January 1, 2020, all taxpayers, other than certain special industries, must use a single-receipts factor formula to apportion their income to Missouri. This includes certified "investment funds services corporations" and S Corporations, which currently use a special formula. Senate Bill 884 keeps intact special apportionment methods for transportation companies, railroads, companies operating interstate bridges, and telephone and telegraph companies.

The sourcing rules under the new single-receipts factor formula are largely consistent with those under the existing Method Two A, with several notable changes. First, the new method refers to "receipts" rather than "sales." "Receipts" means all gross receipts of the taxpayer that are not allocated and that are received from transactions and activity in the regular course of the taxpayer's trade or business. Receipts from hedging transactions and the maturity,

redemption, sale, exchange, loan or other disposition of cash or securities are specifically excluded from the definition of “receipts.”

Second, the definition of apportionable income under Senate Bill 884 is revised to follow a modified UDITPA definition including all income that is apportionable under the U.S. Constitution that is not otherwise allocated under Missouri law. The bill provides extensive rules for allocating nonapportionable rents and royalties from real or tangible personal property, capital gains, interest, dividends, patent or copyright royalties, and other types of nonapportionable income.

Under Senate Bill 884’s sourcing rules (consistent with the Method Two A rules), receipts from the sale of tangible personal property are in Missouri if the property is received in the state by the purchaser. In the case of the delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Also, consistent with Method Two A, Senate Bill 884 imposes no throwback rule for receipts from sales of tangible personal property.

Receipts, other than those from the sale of tangible personal property, will be in Missouri if the taxpayer’s market for the sale is in Missouri. Specific rules determine when a taxpayer’s market for a sale will be considered in Missouri. For example:

- In the case of a sale, rental, lease, or license of real property, if and to the extent the real property is located in Missouri.
- In the case of a rental, lease, or license of tangible personal property, if and to the extent the property is located in Missouri.
- In the case of a sale of a service, if and to the extent the ultimate beneficiary of the service is located in Missouri. The sale will not be considered to be in Missouri if the ultimate beneficiary of the service rendered by the corporation or the corporation’s designee is located outside Missouri.
- In the case of a rental, lease or license of intangible property, if and to the extent the intangible property is used in Missouri (intangible property utilized in marketing a good or service to a customer is used in Missouri if that good or service is purchased by a Missouri consumer). Franchise fees or royalties received for the rent, lease, license, or use of a trade name, trademark, service mark, or franchise system or that provide a right to conduct business activity in a specific geographic area are “used in this state” to the extent the franchise is located in Missouri.
- In the case of a sale of intangible property if and to the extent the intangible property is used in Missouri (where the property sold is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the intangible property is used in Missouri if the geographic area includes all or a part of Missouri). Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property are treated as receipts from the rental, lease, or licensing of the intangible property. Any sale of intangible property not described in the statute is excluded from the numerator and denominator of the receipts factor.
- If the state or states of assignment for receipts, other than those from the sale of tangible personal property, cannot be determined under the statutory rules, then the state or states of assignment will be reasonably approximated.

Alternative Apportionment

Senate Bill 884 also addresses alternative apportionment. In addition to its general authority to require use of an alternative apportionment method, the director may establish rules for taxpayers engaged in particular industries or taxpayers that have engaged in particular transactions. These rules must be applied uniformly. In addition, the law clarifies the burden of proof in asserting alternative apportionment. The party seeking to use an alternative

method, whether the director or the taxpayer, must prove by a preponderance of the evidence that the statutory provisions do not fairly represent the extent of the taxpayer's business activity in Missouri and that the chosen alternative is reasonable. If the director requires use of an alternative method, she cannot impose civil or criminal penalties with reference to any tax due that is attributable to the corporation's reasonable reliance on the statutory allocation and apportionment provisions. A corporation that receives permission to use a different, reasonable method shall not have that permission revoked unless there has been a material change in circumstances of the corporation materially misrepresented the facts upon which the director allowed use of the alternative method.

Consolidated Return Changes

For returns filed on or after August 28, 2018, all transactions between affiliated group members filing a Missouri consolidated return are eliminated. Given the near-term effective date, Missouri consolidated taxpayers should carefully consider their approach to preparing and filing their 2017 returns. Senate Bill 884 also removes the requirement that 50 percent or more of the group's income be derived from Missouri sources to elect consolidation. This change is effectively administrative, as the 50 percent Missouri-source income requirement was struck down in *General Motors Corp. v. Dir. of Rev.*, 981 S.W.2d 561 (Mo. 1998).

Additional Tax Bills Signed

- HB 1858: Requires Department of Revenue to report on special taxing districts
- SB 573: Allows personal income tax deductions for certain military personnel
- SB 590: Modifies the Historic Preservation Tax Credit
- SB 629: Modifies provisions relating to tax increment financing

Pending Legislation

While former Governor Greitens signed dozens of bills in his last hours in office, dozens of bills remain unsigned including several tax bills. Notably, House Bill 2540 remains unsigned, which would adopt numerous individual income tax changes, including tax rate reductions. New Governor Mike Parson has until mid-July to sign or veto these pending bills. If he takes no action during the constitutionally-prescribed 45 day period, the pending bills automatically become Missouri law.

Contacts

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