

FORM MO-MS INSTRUCTIONS

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

GENERAL INSTRUCTIONS

Complete the Form MO-MS if taxable corporation income is not 100 percent from Missouri sources. This form must be completed even if Missouri taxable corporation 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. All taxpayers that do not qualify for a Special Method (Methods Three through Seven) must choose Method Two A - Receipts Factor Apportionment.

APPORTIONMENT ELECTION

Missouri statutes provide a number of methods for determining Missouri taxable income from Missouri sources. Choose only the appropriate one of the listed methods and enter the method number on Form MO-1120, Line 9 Method. Once an election has been made, it cannot be changed with respect to the same taxable period.

METHOD TWO A

Receipts Factor Apportionment — [Section 143.455.2, RSMo](#) and [12 CSR 10-2.076](#). See instructions for completing Method Two A.

METHOD THREE

Transportation — [Section 143.455.14, RSMo](#).

METHOD FOUR

Railroad — [Section 143.455.15, RSMo](#).

METHOD FIVE

Interstate Bridge — [Section 143.455.16, RSMo](#).

METHOD SIX

Telephone and Telegraph — [Section 143.455.17, RSMo](#).

METHOD SEVEN

This method can be used only pursuant to a Missouri regulation creating an alternative industry-specific method under [Section 143.455.13\(1\), RSMo](#), (see [12 CSR 10-2.260](#) regarding broadcasters) or with prior approval of a different method from the Missouri Director of Revenue ([Section 143.455.13\(2\), RSMo](#)).

Receipts Factor Apportionment Instructions - Step 1

A taxpayer must have income from business activity taxable by this state and at least one other state to apportion and allocate income. Income from business activity includes apportionable and nonapportionable income. The taxpayer's income will be allocated and apportioned according to Section 143.455. The taxpayer must determine which portion of the taxpayer's federal taxable income constitutes "nonapportionable income." The various items of nonapportionable income are directly allocated to specific states, which may include Missouri. The apportionable income of the taxpayer is divided between states by using the receipts factor. The sum of the items of nonapportionable income directly allocated to this state, plus the amount of apportionable income attributable to this state by the apportionment formula constitutes the amount of the taxpayer's Preliminary Missouri taxable income.

Items of nonapportionable income may be reported on Form MO-MS or Form MO-NAI only to the extent **such items** are included in Form MO-1120, Line 8 (Taxable Income - All Sources). For example, an item of nonapportionable income that was added on Form MO-1120, Line 3, would also be reported on Form MO-MS and Form MO-NAI. If all

or part of an item of nonapportionable income was subtracted on Form MO-1120, Line 5, do not report the amount of nonapportionable income so subtracted on Form MO-MS or Form MO-NAI.

APPORTIONABLE AND NONAPPORTIONABLE INCOME DEFINED

"Apportionable income" means all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state. Apportionable income includes, but is not limited to, income arising from transactions and activity in the regular course of the corporation's trade or business. Apportionable income also includes, but is not limited to, income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the corporation's trade or business. "Nonapportionable income" means all income other than apportionable income. The classification of income by the labels customarily given them, such as interest, dividends, rents, and royalties, is not conclusive in determining whether the income is apportionable or nonapportionable income. Nonapportionable income will be considered only if a detailed Form MO-NAI 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 these taxes: 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, you may **complete** a [Form 4458, Business Activity Questionnaire](#). For Missouri forms access the Department of Revenue's website at [dor.mo.gov](#).

LINES 1, 2, AND 3 - RECEIPTS FACTOR

Complete Part 1, Lines 1 through 3.

The denominator of the receipts factor is generally all gross receipts received by a taxpayer from transactions and activity in the regular course of its trade or business. However, receipts from hedging transactions or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities (e.g. stocks, stock options, bonds) must not be included in either the numerator or denominator of the receipts factor. The numerator of the receipts factor is generally all gross receipts in Missouri from transactions and activity in the regular course of the taxpayer's trade or business.

- **Tangible Personal Property.** Receipts from the sale of tangible personal property are in this state if the property is received in Missouri by the purchaser. Receipts from the rental, lease, or license of tangible personal property are in this state to the extent that the tangible personal property is located in Missouri.
- **Real Property.** Receipts from the sale, rental, lease, or license of real property are in this state to the extent that the real property is located in Missouri.
- **Services.** Receipts from the sale of a service are in this state if and to the extent that the ultimate beneficiary is in Missouri. Generally, the ultimate beneficiary of the service (except for bartering and similar in-kind transactions) is the entity that receives benefit or value from, but does not also receive monetary or credit-based payment in direct connection with, the service at issue (other than refunds, cashback, or discount-equivalents). In the event that the ultimate beneficiary is a corporate or other entity that owns or operates in locations in multiple states, and the extent to which the ultimate beneficiary is located in Missouri cannot reasonably be determined, the extent to which the ultimate beneficiary is located in Missouri may be reasonably approximated as follows:
 - The ratio of the number of Missouri locations, which the ultimate beneficiary owns or operates in, to the number of such locations throughout the United States.
 - If the ratio above cannot reasonably be determined, then the ratio of one to the number of states in which the ultimate beneficiary operates.
 - If the ratio above cannot reasonably be determined, then use fifty percent (50%). A taxpayer will not be subject to an addition to tax for negligence in relying upon this approximation of fifty percent (50%).
- **Rental, Lease, or License of Intangible Property.** Receipts from the rental, lease, or license of intangible property are in this state to the extent that the intangible property is used in Missouri. Intangible property that is rented, leased, or licensed and then used in this state in marketing a good or service to a consumer is used in this state if the marketed good or service is purchased by a consumer in this state. Franchise fees or franchise royalties received for the rent, lease, license, or use of a trade name, trademark, service mark, or franchise system, or the right to conduct business activity in a specific geographic area, are receipts in this state to the extent that the franchise is located in this state.
- **Sale of Intangible Property.** Receipts from the sale of intangible property are in this state to the extent the intangible property is used in Missouri. If the intangible property sold is a contract right, government license, or similar property that authorizes the holder to conduct a business activity in a specific geographic area, such intangible property is used in Missouri if the geographic area includes all or part of Missouri. If receipts from the intangible property sale is contingent on the productivity, use, or disposition of the intangible property, these receipts shall be treated as receipts from the rental, lease, or license of intangible property. All other receipts from a sale of intangible property shall be excluded from both the numerator and the denominator of the receipts factor.

If the state or states to which to assign receipts, other than receipts from the sale of tangible personal property, cannot be determined, the state or states of assignment must be reasonably approximated. Attach a detailed statement explaining the basis of any reasonable approximation of receipts.

LINES 4 THROUGH 12 - ALLOCATION OF NONAPPORTIONABLE INCOME

Complete Lines 4 through 12 if the taxpayer has either nonapportionable income or a net operating loss on Federal Form 1120, Line 29a, or both.

Nonapportionable income will be considered only if a detailed Form MO-NAI is completed and attached. In general, any income arising from transactions and activity in the regular course of the taxpayer's trade or business, or any income arising from property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business, will be apportionable income rather than nonapportionable income.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, are presumed to be apportionable income unless the taxpayer clearly demonstrates on Form MO-NAI that they are nonapportionable income. To the extent one or more of these income items are nonapportionable income, allocate such item(s) 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) 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) Interest and dividends are 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 royalty payor in this state; or (2) if and to the extent that the patent or copyright is utilized by the royalty payor 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.

Note: For allocation purposes, "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

LINE 10 - APPORTIONED NET OPERATING LOSS

Apportion the net operating loss by multiplying it by a ratio. The numerator and the denominator of the ratio are both determined without including the net operating loss deduction. The numerator of the ratio is the Missouri Taxable Income calculated on [Form MO-1120](#), Line 13, with the amount of the net operating loss added back. The denominator of the ratio is the Missouri Taxable Income calculated as though all income, including all corporate dividends and all nonapportionable income, was derived from Missouri sources, with the amount of the net operating loss added back. Attach a detailed schedule showing how you calculated this ratio. Multiply the ratio by the net operating loss from [MO-MS](#), Part 1, Line 5, and enter the result on Form MO-MS, Part 1, Line 10. The ratio must not exceed 100%.

Method Three, Four, Five, or Six Instructions

Enter Missouri miles, total miles, and percentage in the Apportionment Election section on Form MO-MS, Page 1, if applicable. Enter the resulting mileage percentage on Form MO-MS, Part 1, Line 3 and Form MO-1120, Line 9, unless required to complete Form MO-MS, Part 1, Lines 4 through 12 as discussed below. If the mileage percentage on Form MO-MS, Page 1, is inapplicable, attach a detailed explanation of how apportionment and allocation was performed.

If the mileage percentage on Form MO-MS, Page 1, is inapplicable, or if the taxpayer utilizes any net operating loss for this tax year, or if the taxpayer has included in Taxable Income - All Sources (Form MO-1120, Line 8) any item of income to be allocated (as opposed to apportioned), the taxpayer must complete Form MO-MS, Part 1, Lines 4 through 12 and enter the resulting percentage from Form MO-MS, Part 1, Line 12 onto Form MO-1120, Line 9 Percent. When completing Form MO-MS, Part 1, Lines 7 and 9, enter income allocated (as opposed to apportioned) everywhere and income allocated to Missouri, respectively, to the extent they are items included in Taxable Income - All Sources (Form MO-1120, Line 8). Attach a detailed explanation supporting any allocation (as opposed to apportionment) of income.

Method Seven Instructions

This method can only be used with prior approval from the Missouri Director of Revenue or pursuant to a Missouri regulation creating an alternative industry-specific method under [Section 143.455.13\(1\), RSMo](#). At latest sixty days before the close of the tax year to which alternative apportionment is sought to apply, a taxpayer may file a petition for alternative apportionment, following all requirements of 12 CSR 10-2.076 and section 143.455.13(2), RSMo, by emailing the petition to corporate@dor.mo.gov. Attach a detailed explanation of how any allocation and apportionment was performed. Either a letter of approval must be attached to the return or the detailed explanation must identify the Missouri regulation that authorizes the industry-specific method used and explain why the taxpayer qualifies for the industry-specific method. The only industry-specific method currently allowed by Missouri regulation applies to broadcasters under [12 CSR 10-2.260](#). Corporations defined as a broadcaster under 12 CSR 10-2.260 must choose Method Seven.

Complete [Form MO-MS](#), Part 1, Lines 4 through 12 and enter the resulting percentage from Form MO-MS, Part 1, Line 12 onto [Form MO-1120](#), Line 9 Percent. When completing Form MO-MS, Part 1, Line 3, substitute the appropriate apportionment percentage (without taking into account allocation or NOL apportionment) for the Receipts Factor. When completing Form MO-MS, Part 1, Lines 7 and 9, enter income allocated (as opposed to apportioned) everywhere and income allocated to Missouri, respectively, to the extent that item is included in Taxable Income - All Sources (Form MO-1120, Line 8). Include on the detailed explanation attachment support for any allocation (as opposed to apportionment) of income. Unless the approved method or Missouri regulation directs otherwise, the Apportioned NOL entered on Form MO-MS, Part 1, Line 11 must be determined in a manner consistent with [Section 143.455.19, RSMo](#).