

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

12 CSR 10-2.010 Income Tax of Current or Former Spouses

PURPOSE: This rule sets forth the method to be used by married persons filing joint federal income tax returns in allocating capital losses between the spouses for Missouri income tax purposes and explains the proper method of determining and reporting the taxable portion of Social Security benefits in cases where both spouses have income and how the combined Missouri adjusted gross income is computed on a combined return for purposes of computing each spouse's separate income tax liability.

(1) Estimated tax of spouses. Where a combined declaration of estimated tax has been made for the tax year, the estimated tax payments for that tax year may be divided in any amount between husband or wife as they together elect on a combined Missouri return or separate Missouri returns. Where one (1) or both spouses (or former spouses) file, or are required to file, separate Missouri returns and they have not together elected how to divide one (1) or more of such estimated tax payments (for example, when no returns are filed or when inconsistent estimated payment amounts are reported on separate Missouri returns), those specific estimated tax payments for the tax year shall be divided as follows, regardless of the name of the payor or bank account from which the amount was paid:

(A) Each spouse (or former spouse) shall divide his or her actual Missouri individual income tax for the tax year for which the estimated tax was paid by the sum of the actual Missouri individual income taxes of both spouses (or former spouses) for that tax year; and

(B) The result of this division shall be multiplied by the total of the estimated tax payments in question.

(2) Losses. This general rule is to be used in arriving at each spouse's portion of their joint federal adjusted gross income to be used on their combined Missouri income tax return in situations involving losses from sale or exchange of capital assets. If the losses from the sale or exchange of capital assets exceed the net gains from the sales, then, subject to the limitation provided for in *Internal Revenue Code* (IRC) Section 1211, allocate the excess to the spouse responsible for the excess. (For examples 1-3 below, the Section 1211 limitation is \$3,000.) 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.

(A) Example No. 1: Assume the following facts on the joint federal income tax return for 2024:

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000
Gain (loss)	(\$2,000)	(\$3,000)	(\$5,000)

Section 1211 limitation	(\$3,000)
Federal adjusted gross income (FAGI)	\$12,000

Missouri Answer: The amount of the excess is \$5,000 but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to \$3,000. Since both spouses are responsible for the excess, then allocate the \$3,000 on a pro rata basis, that is— Spouse 1 ($2/5 \times 3,000$) and Spouse 2 ($3/5 \times 3,000$). Each spouse’s portion of FAGI is therefore—

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000
Section 1211 deduction	(\$1,200)	(\$1,800)	
FAGI	\$8,800	\$3,200	\$12,000

(B) Example No. 2: Assume the following facts on the joint federal income tax return for 2024:

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000
Short-term gain (loss)	(\$200)	(\$300)	(\$500)
Long-term gain (loss)	(\$8,000)	(\$3,000)	(\$5,000)
Section 1211 limitation			(\$3,000)
FAGI			\$12,000

Missouri Answer: The amount of the excess is \$5,500 but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to \$3,000. The \$5,500 excess includes \$5,200 for Spouse 1 and \$300 for Spouse 2. Since both spouses are responsible for the excess, then allocate the \$3,000 on a pro rata basis, that is, Spouse 1 ($5,200/5,500 \times 3,000$) and Spouse 2 ($300/5,500 \times 3,000$).

Each spouse’s portion of FAGI is therefore—

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000
Section 1211 deduction	(\$2,850)	(\$150)	
FAGI	\$7,150	\$4,850	\$12,000

(C) Example No. 3: Assume the following facts on the joint federal income tax return for 2024:

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000

Short-term gain (loss)	\$1,000	(\$1,000)	\$0
Long-term gain (loss)	(\$8,000)	\$3,000	(\$5,000)
Section 1211 limitation			(\$3,000)
FAGI			\$12,000

Missouri Answer: Since there are no net short-term losses, all of the IRC Section 1211 limitation of \$3,000 should be allocated from excess long-term losses. Since Spouse 1 is responsible for the excess, the entire amount of the limitation is allocated to Spouse 1.

Each spouse's portion of FAGI is therefore—

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000
Section 1211 deduction	(\$3,000)	\$0	
FAGI	\$7,000	\$5,000	\$12,000

(3) Social Security benefits. For spouses who file a joint federal income tax return for the tax year, Social Security benefits that are included in federal adjusted gross income (AGI) must be allocated between spouses on the Missouri combined individual income tax return using the Form MO-1040 for the appropriate tax year. They must be allocated between spouses based on the proportionate share of gross Social Security benefits received by each spouse, multiplied by the portion of the benefits included in federal adjusted gross income.

(A) Example: A husband receives eight thousand dollars (\$8,000) in Social Security benefits and the wife receives two thousand dollars (\$2,000), for total gross benefit of ten thousand dollars (\$10,000). The husband's proportionate share is eighty percent (80%) and the wife's is twenty percent (20%). If four thousand dollars (\$4,000) in benefits were included in federal adjusted gross income, then the husband's allocated portion on the Missouri return would be three thousand two hundred dollars (\$3,200) and the wife's portion would be eight hundred dollars (\$800). This is arrived at by multiplying four thousand dollars by eighty percent ($\$4,000 \times 80\%$) for the husband and four thousand dollars by twenty percent ($\$4,000 \times 20\%$) for the wife. These amounts must be used in calculating the Missouri AGI of the husband and wife.

(4) Missouri adjusted gross incomes of spouses. In general, if a married couple files a combined Missouri income tax return, the combined Missouri adjusted gross income equals the sum of each spouse's separate Missouri adjusted gross income. The spouse's separate Missouri adjusted gross income is based on that spouse's portion of joint federal adjusted gross income as determined under instructions published by the Department of Revenue for the tax year. Each spouse's portion of joint federal adjusted gross income is then adjusted by the state addition and subtraction modifications under, for example, sections 143.121.2, 143.121.3, and 135.647.2, RSMo, to arrive at the spouse's separate Missouri adjusted gross income.

(A) Examples.

1. A married couple reported federal adjusted gross income of thirty-nine thousand dollars (\$39,000) on their joint federal income tax return. On their combined Missouri income tax return, one (1) spouse reported separate federal adjusted gross income of thirty-eight thousand dollars (\$38,000), and the other spouse reported separate federal adjusted gross income of one thousand dollars (\$1,000) and a five thousand dollar (\$5,000) subtraction for interest from exempt U.S. government obligations. The combined Missouri adjusted gross income equals thirty-four thousand dollars (\$34,000) (thirty-eight thousand dollars (\$38,000) plus negative four thousand dollars (-\$4,000)).

2. A married couple reported federal adjusted gross income of thirty-nine thousand dollars (\$39,000) on their joint federal income tax return. On their combined Missouri income tax return, one (1) spouse reported separate federal adjusted gross income of thirty-eight thousand dollars (\$38,000), and the other spouse reported separate federal adjusted gross income of one thousand dollars (\$1,000) and a five thousand dollar (\$5,000) subtraction for a contribution to a Missouri Savings for Tuition (MOST) account. The combined Missouri adjusted gross income equals thirty-four thousand dollars (\$34,000) (thirty-eight thousand dollars (\$38,000) plus negative four thousand dollars (-\$4,000)).

(5) Coordination with 12 CSR 10-2.710. Where the spouses' joint federal adjusted gross income as determined under federal income tax law is negative or zero (\$0), then, for purposes of Missouri income tax, each spouse shall begin his or her calculation of separate Missouri adjusted gross income with a portion of federal adjusted gross income equal to zero (\$0). Where the spouses' joint federal adjusted gross income is positive, yet one spouse would have a negative portion of joint federal adjusted gross income as determined under instructions published by the Department of Revenue for the tax year, then—

(A) Such spouse (the spouse who would otherwise have a negative portion of joint federal adjusted gross income) shall begin his or her calculation of separate Missouri adjusted gross income with a portion of federal adjusted gross income equal to zero (\$0); and

(B) The other spouse shall begin his or her calculation of separate Missouri adjusted gross income as though his or her portion of the federal adjusted gross income equaled the entire joint federal adjusted gross income determined under federal income tax law. Example: A married couple reported federal adjusted gross income of thirty-two thousand dollars (\$32,000) on their joint federal income tax return. When filing their combined Missouri income tax return, the wife computed a share of federal adjusted gross income in the amount of thirty-eight thousand dollars (\$38,000), while the husband computed a share of federal adjusted gross income equal to negative six thousand dollars (-\$6,000). On their combined Missouri income tax return, wife should begin her calculation of separate Missouri adjusted gross income with a federal adjusted gross income figure of thirty-two thousand dollars (\$32,000) while husband should begin his calculation of

separate Missouri adjusted gross income with a federal adjusted gross income figure of \$0.

(6) Notwithstanding any provision of this rule to the contrary, nothing in this rule shall be interpreted or construed as incorporating by reference any rule, regulation, standard, or guideline of a federal agency.

*AUTHORITY: sections 143.181 and 143.961, RSMo 2016, and section 135.647, RSMo Supp. 2025. * This rule was previously filed as Income Tax Release 73-11, Jan. 29, 1974, effective Feb. 8, 1974. Amended: Filed Oct. 2, 2018, effective April 30, 2019. Amended: Filed July 17, 2023, effective Feb. 29, 2024. Amended: Filed Nov. 6, 2025, effective April 30, 2026.*

**Original authority: 135.647, RSMo 2007, amended 2013, 2014, 2018; 143.181, RSMo 1972, amended 1983, 2003; and 143.961, RSMo 1972.*