

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

12 CSR 10-2.436 SALT Parity Act Implementation

PURPOSE: This rule explains how a partnership or an S corporation may elect to become an affected business entity under section 143.436, RSMo, the timing of affected business entity tax return filing, how to designate an affected business entity representative for a tax year, the estimated tax obligations and withholding obligations of an affected business entity, and an aspect of the tax credit under the SALT Parity Act.

- (1) For tax years ending on or after December 31, 2022, a partnership or S corporation electing to become an affected business entity for a tax year shall make such election on its affected business entity tax return (Form MO-PTE). A separate election must be made for each tax year.
- (2) An election to become an affected business entity for a tax year shall not be effective if the partnership or S corporation has not successfully designated a person as an affected business entity representative for that tax year at or before the time the partnership or S corporation attempts to make such election. For an election to be effective, the affected business entity tax return (Form MO-PTE) on which the election is made must include the signatures of either—
 - (A) Each member of the electing entity who is a member at the time the affected business entity tax return is filed; or
 - (B) An officer, manager, or member of the electing entity who is authorized to make the election and who attests to having such authorization under penalty of perjury.
- (3) The deadline for making an election to become an affected business entity for a tax year is the filing deadline for the affected business entity tax return (Form MO-PTE). No election can be made after the deadline, including any approved extension.
- (4) If an election to become an affected business entity has been made for a tax year, the election cannot be revoked for that tax year.
- (5) At or before the time that a partnership or S corporation files its affected business entity tax return (Form MO-PTE) on which the election is made, the partnership or S corporation shall designate an affected business entity representative for that tax year. Only one natural person may serve as an affected business entity representative for a tax year.
 - (A) To designate a person as an affected business entity representative, the partnership or S corporation must file with the department a Power of Attorney (Form 2827) designating that person as an appointed representative and giving that person the title of “Affected Business Entity Representative.”
 - (B) The Power of Attorney (Form 2827) must include the signature of an officer, manager, or member of the partnership or S corporation who is authorized to designate an

affected business entity representative and who attests to having such authorization under penalty of perjury. Alternatively, the Power of Attorney (Form 2827) must include the signatures of partners or shareholders who together hold the majority of the voting power of the partnership or S corporation. In lieu of adding signature(s) in the signature box of the Power of Attorney (Form 2827), an attachment shall be included with the filing of the Power of Attorney (Form 2827), containing such signature(s) under the following statement: “Under penalties of perjury, I (we) hereby certify that I (we) am (are) members of, or an officer or manager of, the taxpayer named on this Form 2827, and that I (we together) am (are) authorized to designate an affected business entity representative for the taxpayer.”

(C) As necessary qualifications to be designated as an affected business entity representative for a tax year, a person must have a working email address, telephone number, and physical address at which to receive mail.

(D) The Power of Attorney (Form 2827) must include a current working email address, telephone number, and physical mailing address of the person to be designated as the affected business entity representative. A filing lacking any information required by subsections (B) or (D) of this section will be ineffective to designate a person as an affected business entity representative.

(E) If a Power of Attorney (Form 2827) is filed with the signatures required by subsection (B) above, but the filing lacks one (1) or more items of information required by subsection (D) above, or the person who would otherwise serve as affected business entity representative lacks one (1) of the qualifications required by subsection (C) above, that person shall nevertheless be considered an authorized representative of the partnership or S corporation for purposes of receiving and discussing the partnership or S corporation’s confidential tax information otherwise protected by section 32.057, RSMo. By way of example, the department may communicate with that person to share what items or qualifications were lacking in the attempt to make that person an affected business entity representative.

(F) If a person has already been designated as an affected business entity representative for an affected business entity’s prior tax year, in lieu of the other requirements of this section, that person may be re-designated as an affected business entity representative for a later tax year by the filing of that tax year’s affected business entity tax return (Form MO-PTE) and the checking of a box on that return indicating the affected business entity’s intent to re-designate that representative.

(6) An affected business entity representative may be removed from the role of affected business entity representative for a tax year if the partnership or S corporation designates a new affected business entity representative for that tax year. The removal of an affected business entity representative does not change the binding effect of any prior actions taken by that affected business entity representative.

(7) An affected business entity is not subject to an estimated income tax declaration filing requirement, or an estimated income tax payment requirement. An affected business entity may choose to make an early payment of its anticipated tax liability for a tax year, even if the tax year is not yet complete.

(8) The election to become an affected business entity does not relieve a partnership or S corporation of its withholding obligations under section 143.411.5, RSMo, or section 143.471.6, RSMo, respectively.

(9) The affected business entity's tax under section 143.436, RSMo, is due at the same time the affected business entity's return is due, that is, by the fifteenth day of the fourth month following the end of the partnership or S corporation's tax year. By this same date, the affected business entity shall file an affected business entity tax return (Form MO-PTE) unless a filing extension is approved by the department. If an affected business entity is approved for a filing extension of the affected business entity tax return (Form MO-PTE), the affected business entity is likewise granted an equal extension of time for the payment of the tax due under section 143.436, RSMo. Pursuant to section 143.731.2, RSMo, interest on this tax will continue to accrue regardless of any extension of time for payment.

(10) If a partnership or S corporation has received a federal extension for filing its annual partnership or S corporation federal return, that partnership or S corporation is hereby granted an equal extension of time for filing its affected business entity tax return (Form MO-PTE), except that this extension will be no longer than six (6) months. The partnership or S corporation must attach a copy of the approved federal extension to its affected business entity tax return (Form MOPTE). This section applies only to partnerships or S corporations that have an original affected business entity tax return due date that matches the original due date of their annual partnership or S corporation federal return.

(11) The tax credits granted to a member of an affected business entity by sections 143.436.8 and 143.436.10, RSMo, shall be computed based on the member's direct and indirect pro rata share of the tax actually paid pursuant to section 143.436, RSMo, by any affected business entity of which such member is directly or indirectly a member. If an affected business entity reduces its tax liability under section 143.436, RSMo, by use of tax credits, other than a credit for payment or overpayment of this tax, the affected business entity's tax actually paid will generally be reduced.

AUTHORITY: sections 32.057.2, 136.120, and 143.961, RSMo 2016, and section 143.436, RSMo Supp. 2022. Emergency rule filed Dec. 27, 2022, effective Jan. 11, 2023, expired July 9, 2023. Original rule filed Dec. 27, 2022., effective June 30, 2023.

Original authority: 32.057, RSMo 1979, amended 1980, 1983, 1993, 1994, 1996, 2003, 2004, 2008, 2014; 136.120, RSMo 1945; 143.436, RSMo 2022; and 143.961, RSMo 1972