

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

**PROPOSED AMENDMENT**

**12 CSR 10-2.436 SALT Parity Act Implementation.** The Director of Revenue is adding section (12) and altering sections (2), (5), (7), (9), and (10).

*PURPOSE: Among other changes, this amendment updates the rule to accommodate the August 28, 2024, legislative amendment to section 143.436, RSMo, including provisions regarding opt-out elections.*

(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; **or**

**(C) The designated affected business entity representative of the partnership or S corporation, including but not limited to an affected business entity representative who is re-designated as such on the same Form MO-PTE in the manner described in Section (5)(D) of this rule.**

(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) **or Pass-Through Entity Power of Attorney (Form 2827 PTE)** designating that person as an appointed representative and giving that person the title of “Affected Business Entity Representative.” **The designation must be signed by someone with authority to make such a designation on behalf of the partnership or S corporation.**

(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, **all of which must be provided to the department.***

*[(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)] (C) If a Power of Attorney (Form 2827) or **Pass-Through Entity Power of Attorney (Form 2827 PTE)** is filed *[with the signatures]* as required *[by subsection (B)]* above, **and is executed by someone with authority to do so on behalf of the partnership or S corporation,** but the filing lacks one (1) or more **necessary** 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)] (D) 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. **The affected business entity representative for the prior tax year may check this box, re-designating himself or herself as an affected business entity representative, only if the affected business entity representative has been given authority, by the partnership or S corporation, to do so for the tax year for which the box is checked.***

*(7) An affected business entity is not subject to an estimated income tax declaration filing requirement, or an estimated income tax payment requirement, **with respect to the tax under***

**section 143.436, RSMo.** 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.

(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) **for the same tax year**, 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 MO-PTE). *[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.]*

(12) Any member of an affected business entity may elect not to have tax imposed on the affected business entity under section 143.436, RSMo, with respect to the affected business entity's separately and nonseparately computed items, otherwise subject to tax under section 143.436, RSMo, to the extent such items are allocable to that member. This election is referred to as an "opt-out election", and a member who has timely made this election is referred to as an "opt-out member".

(A) If a member wishes to make an opt-out election for a tax year, the opt-out election shall be filed with the department by the earlier of: the original (un-extended) due date of the Form MO-PTE for that tax year; or the actual filing date of the Form MO-PTE for that tax year. The opt-out member shall also furnish the opt-out election to the partnership or S corporation. The opt-out election must specify the partnership or S corporation to which the opt-out election applies.

(B) Once an opt-out election is filed, it applies to the tax year for which it was first timely filed and for all subsequent tax years. However, an opt-out member may revoke that member's opt-out election. To be effective for a tax year, the revocation must be filed with the department by the filing due date of an opt-out election for that tax year. The member shall also furnish the opt-out election revocation to the partnership or S corporation. The revocation of an opt-out election applies to the tax year for which the revocation was first timely filed, and for all subsequent tax years, until a new opt-out election is filed.

(C) For any tax year to which the opt-out election applies, with respect to the partnership or S corporation to which the opt-out election applies, the opt-out member is ineligible for the tax credits that would otherwise be granted by sections 143.436.8

and 143.436.10, RSMo. In determining the pro rata shares of tax paid under section 143.436, RSMo, for purposes of computing the tax credits allowed by sections 143.436.8 and 143.436.10, RSMo, the pro rata share percentage that would otherwise be attributed to an opt-out member shall be redistributed proportionally among the members who are not opt-out members. For example, if an S corporation has opt-out members with a share percentage of 30%, and a non-opt-out member of an S corporation has a share percentage of 10%, then that non-opt-out member's new credit percentage is 10% divided by 70%, that is, 14%. This subsection shall not be construed to affect an opt-out member's authorization to carry forward and redeem outstanding tax credits that were initially allowed for a tax year to which the opt-out election did not apply.

(D) For any tax year to which the opt-out election applies, with respect to the partnership or S corporation to which the opt-out election applies, such partnership or S corporation shall, when computing the tax under section 143.436, RSMo, remove all opt-out members' allocable items such as income, deductions, or any other relevant items. Addition and subtraction modifications must be determined as though the income, deductions, and other relevant items allocable to the opt-out members did not exist.

*AUTHORITY: sections 32.057.2, 136.120, and 143.961, RSMo 2016, and section 143.436, RSMo Supp. [2022] 2024.*

Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legislative Office, 301 W. High Street, Room 218, Jefferson City, MO 65109-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.