

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

**PROPOSED AMENDMENT**

**12 CSR 10-2.010 [Capital Loss Allocation Between Spouses, Allocation of Taxable Social Security Benefits Between Spouses, and Computation of an Individual's Missouri Adjusted Gross Income on a Combined Income Tax Return] Income Tax of Current or Former Spouses.** The department is amending all sections and updating our authority.

*PURPOSE: This amendment, among other things, updates the rule to address the division of estimated income tax payments between former spouses who cannot agree on such division, coordinates the division of federal adjusted gross income between spouses in light of another regulation, and clarifies the basis for calculating the separate Missouri adjusted gross incomes of spouses filing a combined Missouri return.*

*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) The following general rules have been issued by the Missouri Department of Revenue and should be used in arriving at Missouri adjusted gross income (MAGI) of each spouse in situations involving losses from sale or exchange of capital assets, but only if the spouses file a joint federal income tax return for the year.]*

**(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 [*: General Rule*]. **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[, *so a loss is reported on federal Form 1040 U.S. Individual Income Tax Return*], 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 [2017] **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 ( $3/5 \times 3,000$ ).

[MAGI] **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)	
[MAGI] <b>FAGI</b>	\$8,800	\$3,200	\$12,000

(B) Example No. 2: Assume the following facts on the joint federal income tax return for [2017] **2024:**

Spouse 1	Spouse 2	Total
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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)
Federal adjusted gross income			\$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 ( $300/5,500 \times 3,000$ ).

*[MAGI]* 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)	
<i>[MAGI]</i> FAGI	\$7,150	\$4,850	\$12,000

(C) Example No. 3: Assume the following facts on the joint federal income tax return for *[2017]* **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.

*[MAGI]* 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	
<i>[MAGI]</i> 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** *[Individual Income Tax Return – Long Form, 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 *[taxable]* **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 *[taxable]* **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) 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 equals the federal adjusted gross income reportable by the spouse had the spouse filed a separate federal return, as adjusted by the modifications under sections 143.121 and 135.647, RSMo.]*

**(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-two thousand dollars (\$32,000) 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 negative six thousand dollars (-\$6,000). The combined Missouri adjusted gross income equals*

*thirty-two thousand dollars (\$32,000) (thirty-eight thousand dollars (\$38,000) plus negative six thousand dollars (-\$6,000)).*

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 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)).

[3.] 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-~~eight~~ **four** thousand dollars ~~[(38,000)]~~**(\$34,000)** (thirty-eight thousand dollars (\$38,000) plus ~~[zero]~~ **negative four thousand dollars (-\$4,000)**) *[because the MOST subtraction is limited to the spouse's Missouri adjusted gross income]*.

(5) *[The form Individual Income Tax Return – Long Form, MO1040 is incorporated by reference and made a part of this rule as published by Missouri Department of Revenue, and available at [www.dor.mo.gov](http://www.dor.mo.gov) or Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO 65101, dated May 3, 2023. This rule does not incorporate any subsequent amendments or additions].* **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) *[The federal form 1040 U.S. Individual Income Tax Return is incorporated by reference and made a part of this rule as published by United States Internal Revenue Service, and available at [www.irs.gov](http://www.irs.gov) or Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO 65101, dated May 3, 2023. This rule does not incorporate any subsequent amendments or additions.]* **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 [143.031, 143.111,] 143.181[,] and 143.961, RSMo 2016, and section 135.647, RSMo Supp. 2023.\* 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.*

*\*Original authority: 135.647, RSMo 2007, amended 2013, 2018; 143.031, RSMo 1973; 143.111, RSMo 1972, amended 1999; 143.181, RSMo 1972, amended 1983, 2003; and 143.961, RSMo 1972.*

*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 West High Street, Room 218, Jefferson City, MO 65105-0475. 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.*