

## Enacted Missouri legislation includes future reduction to corporate income tax rate and apportionment changes

### Overview

Before his resignation on June 1, 2018, Governor Eric Greitens signed Senate Bill 884 (S.B. 884.)<sup>1</sup> Under the Missouri Constitution, S.B. 884 will become effective 90 days after the adjournment of the legislative session on May 30, 2018, which will be August 28, 2018.<sup>2</sup> S.B. 884 includes the following significant modifications to Missouri law:

- Reduction of the corporate income tax rate to 4% for tax years beginning on or after January 1, 2020.
- Replacement of existing apportionment method options with a new single factor method based on receipts for tax years beginning on or after January 1, 2020.
- Elimination of all transactions between members of an affiliated group filing a Missouri consolidated income tax return.

This tax alert summarizes the more significant Missouri tax law changes contained in S.B. 884.

### Reduction of the corporate income tax rate to 4%

For tax years beginning before January 1, 2020, the Missouri taxable income of a corporation is subject to tax at a rate of 6.25%.<sup>3</sup> Effective for tax years beginning on or after January 1, 2020, S.B. 884 reduces the corporate income tax rate to 4%.<sup>4</sup>

### Changes to allocation and apportionment provisions

Prior to the effective date of the allocation and apportionment provisions in S.B. 884, most Missouri taxpayers have the option to select from one of the three following separate apportionment methods - a three-factor equally-weighted method pursuant to the Multistate Tax Compact (MTC), a business transaction single factor method, or a single sales factor method. Note that additional, industry-specific methods applicable to transportation, railroad, interstate bridge, and telephone/telegraph companies also exist.<sup>5</sup>

Effective for tax years beginning on or after January 1, 2020, for entities apportioning income to Missouri, S.B. 884 replaces the existing apportionment method options with a new allocation and apportionment statute, Mo. Rev. Stat. § 143.455, which provides definitions for newly established concepts of "apportionable income" and "non-apportionable income," while also requiring apportionable income for most taxpayers to be apportioned to the state by a new single receipts factor. The industry specific-methods applicable to transportation, railroad, interstate bridge, and telephone/telegraph companies will continue to exist and were retained in Mo. Rev. Stat. § 143.455.<sup>6</sup>

The new allocation and apportionment provisions borrow concepts and specific statutory language that are applied in the context of the MTC three-factor method and the single sales factor method; however, new terms and apportionment concepts are also introduced. The new receipts factor does not contain any "throwback" or "throwout" provisions, and the

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<sup>1</sup> 2018 Regular Session (S.B. 884). A copy of the adopted law is available [here](#).

<sup>2</sup> Missouri Constitution, Article III, Section 29.

<sup>3</sup> S.B. 884, amending Mo. Rev. Stat. § 143.071.2.

<sup>4</sup> S.B. 884, Sec. 58(2).

<sup>5</sup> Mo. Rev. Stat. § 32.200; § 143.451.

<sup>6</sup> S.B. 884, adding Mo. Rev. Stat. § 143.455.

sourcing of certain receipts from services and intangibles utilizes market-based sourcing provisions in the same manner employed currently by the optional single sales factor method.<sup>7</sup>

The new allocation and apportionment statute provides that in the case of certain industries where unusual factual situations produce inequitable results under the allocation and apportionment provisions, the Director of Revenue shall promulgate rules for determining the allocation and apportionment factors for each such industry, but such rules shall be applied uniformly.<sup>8</sup>

Additionally, if the new allocation and apportionment provisions do not fairly represent the extent of the corporation's Missouri income, the corporation may petition for, or the Director may require, an alternative method of allocation and apportionment.<sup>9</sup> The party petitioning for or requiring the alternative method must prove by a preponderance of the evidence that the standard allocation and apportionment provisions do not fairly represent the extent of the corporation's Missouri income and that the alternative method is reasonable.<sup>10</sup> If the Director requires an alternative method, the Director cannot impose any civil or criminal penalty with respect to tax due that is attributable to the corporation's reasonable reliance on the standard allocation and apportionment provisions.<sup>11</sup>

### **Elimination of transactions between members of a Missouri consolidated group**

Under Missouri's current consolidated return regulation, intercompany sales are included in the calculation of the apportionment factor, regardless of which apportionment method is elected.<sup>12</sup> S.B. 884 modifies the Missouri consolidated return provisions such that transactions between members of the Missouri consolidated group are eliminated for apportionment purposes.<sup>13</sup>

### **Additional changes**

This tax alert does not provide a comprehensive summary of all law changes provided in S.B. 884. Additional amendments to Missouri law resulting from the enactment of S.B. 884 include the following:

- Modification of the existing retail sales tax bonding requirements.<sup>14</sup> The Director of Revenue is prohibited from requesting such a bond from retail sales license applicants and is no longer required by law to request such a bond from current licensees (but still has the option to request a bond).
- Income of an S corporation from Missouri sources shall be determined pursuant to the new apportionment and allocation provisions of Mo. Rev. Stat. § 143.455 for tax years beginning on or after January 1, 2020.<sup>15</sup>
- Investment funds service corporations (including S corporations) shall utilize the new apportionment and allocation provisions of Mo. Rev. Stat. § 143.455 for tax years beginning on or after January 1, 2020.<sup>16</sup>
- Elimination of the statutory language requiring an affiliated group of corporations to have 50% or more of its income derived from sources within Missouri in order to make a Missouri consolidated return election.<sup>17</sup> This requirement had previously been ruled invalid and ordered severed from the statute in a 1998 Missouri Supreme Court decision; however, until the enactment of S.B. 884, the provision remained in the statute.
- A provision that when an income bracket is eliminated from the individual income tax table, the top remaining tax rate shall apply to all income in excess of the second highest remaining income bracket.<sup>18</sup>
- Creation of a definition for "net general revenue collected."<sup>19</sup> Current law did not provide a definition, though the term is used to determine whether the threshold is met for triggering certain one-tenth of a percent (0.1%) reductions in the top personal income tax rate, as provided in Mo. Rev. Stat. § 143.011.2.

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<sup>7</sup> *Id.*

<sup>8</sup> S.B. 884, adding Mo. Rev. Stat. § 143.455.13(1).

<sup>9</sup> S.B. 884, adding Mo. Rev. Stat. § 143.455.13(2).

<sup>10</sup> S.B. 884, adding Mo. Rev. Stat. § 143.455.13(3).

<sup>11</sup> S.B. 884, adding Mo. Rev. Stat. § 143.455.13(4).

<sup>12</sup> Mo. Code Regs. tit.12, § 10-2.045(19).

<sup>13</sup> S.B. 884, amending Mo. Rev. Stat. § 143.431.3.

<sup>14</sup> S.B. 884, amending Mo. Rev. Stat. § 144.087.1; § 144.087.3.

<sup>15</sup> S.B. 884, amending Mo. Rev. Stat. § 143.471.4.

<sup>16</sup> S.B. 884, adding Mo. Rev. Stat. § 620.1350.3.

<sup>17</sup> S.B. 884, amending Mo. Rev. Stat. § 143.431.3.

<sup>18</sup> S.B. 884, amending Mo. Rev. Stat. § 143.011.2(4).

<sup>19</sup> S.B. 884, amending Mo. Rev. Stat. § 143.011.4(3).

## Considerations

S.B. 884 contains significant changes that may impact taxpayers doing business in Missouri. Taxpayers should review the effects the new law may have on their state tax obligations in Missouri with regard to the reduction in the corporate income tax rate, the changes to the apportionment and allocation provisions, and the elimination of transactions between members of an affiliated group filing a Missouri consolidated income tax return. Taxpayers impacted by the enactment of S.B. 884 should consult with their Missouri tax advisors for further assistance.

## Contacts:

If you have questions regarding S.B. 884 or other Missouri income tax matters, please contact any of the following Deloitte Tax professionals:

**Charles Fischer**  
**Senior Manager**  
Deloitte Tax LLP, St. Louis  
+1 314 641 4349  
[chafischer@deloitte.com](mailto:chafischer@deloitte.com)

**Anita Sims**  
**Managing Director**  
Deloitte Tax LLP, St. Louis  
+1 314 641 4351  
[asims@deloitte.com](mailto:asims@deloitte.com)

**Chad Halloran**  
**Manager**  
Deloitte Tax LLP, St. Louis  
+1 314 641 4321  
[chadhalloran@deloitte.com](mailto:chadhalloran@deloitte.com)

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