

(F) The allowance of a tentative carryback adjustment in accordance with Section 6411 of the IRC based on a net operating loss carryback.

(4) Requirements for Reporting Federal Change. An amended return shall be filed as specified in section (5) reflecting and explaining all changes affecting the original return filed. In addition, a copy of the Summary of the Federal Revenue Agent's Report (commonly referred to as an RAR), a copy of a closing agreement entered into with the IRS under Section 7121 of the IRC or a copy of a final court decision, as appropriate, shall be submitted in support of the Report of Change.

(5) Amended Returns. If a taxpayer files an amended federal income tax return, an amended state income tax return reflecting the same changes shall be filed with the Department of Revenue. The amended tax return and any additional tax due shall be filed and paid within ninety (90) days after the amended return is filed with the IRS or within ninety (90) days of the final determination.

(6) Assessment. If a taxpayer fails to comply with the requirements of reporting a federal change as outlined in this rule, a notice of deficiency may be issued at any time within one (1) year after the director of revenue becomes aware of the change(s). The amount of any proposed assessment, set forth in the notice of deficiency, shall be limited to the changes outlined in the federal determination and how they affect Missouri taxable income. However, the limitations contained in this section shall not be construed to reduce the statute of limitations that would otherwise be applicable.

(7) Claim for Refund Period. A taxpayer may file a claim for refund not later than one (1) year and ninety (90) days after the date of final determination as specified in section (3) except as provided in subsections 143.801.5. and 6., RSMo. The claim shall be limited to the changes set forth in the federal determination. The limitations contained in this section shall not be construed to reduce the statute of limitations that would otherwise be applicable. Interest on a claim for refund filed after the ninety (90)-day period specified in section (2), will cease to accrue after the ninetieth day.

*AUTHORITY: section 143.961, RSMo (1994). * Original rule filed July 31, 1984, effective Jan. 12, 1985.*

Amended: Filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed Oct. 24, 1997, effective April 30, 1998.

**Original authority 1972.*

12 CSR 10-2.110 Penalty for Filing Incomplete or Misleading Income Tax Returns

(Rescinded December 26, 1985)

12 CSR 10-2.115 Enterprise Zone Credit and Exemption

(Rescinded July 30, 1994)

12 CSR 10-2.120 Information at Source Reporting Requirements

PURPOSE: This rule specifies methods of reporting miscellaneous income from Missouri sources.

(1) Filing Requirements.

(A) Statement Required. All individuals, businesses and corporations who are required to make a federal at source information report and who make payments to a nonresident of rents, royalties, commissions, prizes, awards, other forms of compensation or other forms of fixed or determinable gains, profits or income having an annual combined worth of one thousand two hundred dollars (\$1,200) or more, which are not subject to withholding and not a part of an information report of S corporations or partnerships, must file an annual statement of those payments regardless of the manner or form in which payment is made. However, annual statements will **not** be required of any individual, business or corporation making those payments to **Missouri residents**.

(B) Form of Statement: Missouri Form 99 MISC which is comparable to federal Form 1099 MISC must be used. Copy 1 must be filed with the Department of Revenue with Form 96, Annual Summary and Transmittal of Information Returns. Copy 2 must be provided to the recipient. Copy 3 is the payer's copy and is optional. A copy of federal Form 1099 MISC may be used as a substitute for Missouri Form 99 MISC, if copies are clearly marked: Copy 1 Missouri copy and Copy 2 information supplied to the Missouri Department of Revenue.

(C) Due Dates. Information statements shall be filed with the Department of Revenue on or before February 28 of each year for the previous calendar year, except where extension of time to file has been approved by the

director or by the Internal Revenue Service, and a copy provided to recipients by January 31.

(2) Optional Magnetic Tape Reporting. Individuals, businesses and corporations with computer capabilities may use magnetic tape to file information at source payments. The requirements for magnetic tape reporting is desired by those who do not file under the combined federal state program. A written request must be furnished to the Department of Revenue for approval outlining the proposed requirements.

(3) Penalty. In each case of failure to file a copy of the statement required by this section, (determined with regard to any extension of time to file) unless it is shown that the failure is due to reasonable cause and not willful neglect, there shall be paid upon notice and demand by the director of revenue, and in the same manner as tax, by the person so failing to file, a penalty of two dollars (\$2) for each statement not so filed but the total amount imposed on the delinquent person for all failures during any calendar year shall not exceed one thousand dollars (\$1000).

*AUTHORITY: section 143.591, RSMo (1994). * Original rule filed Jan. 15, 1985, effective June 13, 1985.*

**Original authority 1972.*

12 CSR 10-2.125 Cultural Contributions

PURPOSES: This rule establishes the requirements and procedures for claiming the deduction provided in section 143.141, RSMo for contributions of literary, musical, scholarly and artistic compositions.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) The itemized deduction authorized by section 143.141(3), RSMo for cultural contributions will be allowed if the following requirements are met:

(A) The taxpayer must itemize deductions on both the federal and Missouri returns for the tax year in which the cultural contribution is made;

(B) The not-for-profit agency or institution to which the contribution is made must be exempt from taxation as specified in section 501 of the *Internal Revenue Code* (IRC);

(C) The taxpayer must be the original creator of the literary, musical, scholarly or artistic composition which constitutes the cultural contribution;

(D) The cultural contribution must be appraised within one (1) year of donation by a qualified appraiser who is not a relative of the donor or donee as defined in Title 26, IRC section 168(e)(4)(D). The appraisal must contain a detailed description of the composition, the appraiser's name, address, phone number and be signed and dated by the appraiser under penalties of perjury;

(E) The appraisal must be attached to the income tax return and be accompanied by a sworn statement from the donor and donee which indicates acceptance, by both, of the fair market value fixed by the appraiser. The statement shall also show the actual date of the donation of the cultural contribution, the donor's address and telephone number and the address where the composition may be viewed, if applicable; and

(F) The cultural contribution and the appraisal are subject to review and approval by the Department of Revenue. The amount of the deduction for the cultural contribution shall not exceed the appraised value established in subsection (1)(E) reduced by any amount deducted from federal adjusted gross income attributable to the contribution. Those parts of the federal income tax return pertaining to that deduction shall be attached to the Missouri return.

AUTHORITY: section 143.591, RSMo (1994).* Original rule filed Jan. 15, 1985, effective June 13, 1985.

*Original authority 1972.

12 CSR 10-2.130 Allocation of Taxable Social Security Benefits Between Spouses

PURPOSE: This rule explains the proper method of determining and reporting the taxable portion of Social Security benefits in cases where both spouses have income.

(1) Social Security benefits which are included in federal adjusted gross income (AGI) must be allocated between spouses on the Missouri Individual Income Tax Return, Form 40. 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 income. 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 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.

AUTHORITY sections 143.031, 143.111 and 143.181, RSMo (1994).* Original rule filed Jan. 15, 1985, effective June 13, 1985.

*Original authority: 143.031 and 143.611, RSMo (1972) and 143.181, RSMo (1972), amended 1983.

12 CSR 10-2.135 Frivolous Returns

PURPOSE: This rule provides examples of misleading or incomplete returns and when the penalty for filing that return will be imposed.

(1) A penalty of up to five hundred dollars (\$500) will be imposed for filing an incomplete or misleading income tax return. Any taxpayer(s) who files a misleading or incomplete return will be mailed a notice stating that fact. The notice will be sent, by regular mail, to the address on the return or the best address available. The taxpayer(s) will have ninety (90) days (one hundred fifty (150) days if the taxpayer(s) is outside the United States) from the date the notice is mailed to file a proper tax return. The date the notice is mailed will be the date of the letter unless shown to be otherwise by the taxpayer(s).

(2) The filing of a legitimate return will not abate the assessment after the expiration of the time period for filing a legitimate return. Some examples of misleading or incomplete returns which will incur the penalty are listed in this rule, but are not limited to these examples only:

(A) A return is filed on which the format has been changed without consent of the Missouri Department of Revenue;

(B) A return is filed which the taxpayer claims s/he cannot legally pay because the *United States Constitution* requires gold or silver standard and not federal reserve notes as legal tender;

(C) A return is filed on which the taxpayer claims to be a wage earner and refuses to pay or file a return because wages are not income;

(D) Any instance where the taxpayer fails to file or complete a return citing violation of his/her constitutional rights;

(E) A return is filed where the taxpayer lowers his/her income by discounting his/her income because of inflation or other factors; and

(F) Any return filed which does not meet the previous criteria but is determined by the Department of Revenue to be misleading or incomplete for any other reason.

AUTHORITY: section 143.773, RSMo (1994).* Original rule filed Jan. 15, 1985, effective June 13, 1985. Amended: Filed Aug. 14, 1986, effective Nov. 28, 1986.

*Original authority 1984.

12 CSR 10-2.140 Partnership Filing Requirements

PURPOSE: This rule explains the circumstances under which a partnership return shall be filed and the general contents of that return.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.