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

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.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(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.

(2) Losses: General Rule. 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:

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 x 3,000) and Spouse 2 (3/5 x 3,000).

MAGI is therefore—

Spouse 1 Spouse 2 Total

Wages $10,000 $5,000

Section 1211

deduction ($1,200) ($1,800)

MAGI $8,800 $3,200 $12,000

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

Spouse 1 Spouse 2 Total

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 x 3,000) and Spouse 2 (300/5,500 x 3,000).

MAGI is therefore—

Spouse 1 Spouse 2 Total

Wages $10,000 $5,000

Section 1211

deduction ($2,850) ($150)

MAGI $7,150 $4,850 $12,000

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

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 is therefore:

Spouse 1 Spouse 2 Total

Wages $10,000 $5,000

Section 1211

deduction ($3,000) $0

MAGI $7,000 $5,000 $12,000

(3) Social Security benefits that are included in federal adjusted gross income (AGI) must be allocated between spouses on the 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 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 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 × 80%) for the husband and four thousand dollars by twenty percent ($4,000 × 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.

(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. 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 thousand dollars ($38,000) (thirty-eight thousand dollars ($38,000) plus zero) because the MOST subtraction is limited to the spouse's Missouri adjusted gross income.

(5) The form Individual Income Tax Return – Long Form, MO-1040 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 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.

(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 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.

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.

*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.