
Missouri - Proposed rule would allow taxpayers to elect the new single sales factor method on original returns filed on or after August 28, 2013

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In brief

Under a proposed rule filed by the Missouri Department of Revenue on September 18, 2013, corporate taxpayers may generally elect the new single sales factor method on original corporate income tax returns filed on or after August 28, 2013. The proposed rule leaves many open issues, including the level of reliance afforded to taxpayers that file returns before the proposed rule is effective, the method for sourcing sales of services and intangibles, and the statutory support for limiting the new election to originally filed returns.

Since Missouri apportionment elections have historically been irrevocable once made, taxpayers must fully consider the potential impact of any revisions to the proposed rule during the comment period, any new rules that might be proposed addressing open questions, or any unfavorable rulings subsequently issued by the Department or Missouri courts.

In detail

New single sales factor election

On July 12, 2013, Missouri enacted [H.B. 128](#), which provides taxpayers with a new single sales factor apportionment election. [Click here](#) for our insight into H.B. 128.

If taken, the election provides that:

- sales of tangible personal property are included in a taxpayer's apportionment numerator if the purchaser's destination point is in Missouri (without regard to the FOB point or other conditions of the sale)
- sales of tangible personal property are not included in the numerator if the destination point is outside

Missouri, regardless of the shipping point location

- investment or reinvestment of a taxpayer's own funds, or the sale of any such investment or reinvestment, is excluded from the sales numerator and denominator.

H.B. 128 has an effective date of August 28, 2013; however, the law is silent regarding the first tax year in which the new single sales factor method is available.

Additionally, the law is silent regarding how to source sales of services and intangibles.

Proposed rule – Election available for original returns filed on or after August 28, 2013

On September 18, 2013, the Missouri Department of Revenue filed a proposed rule addressing the new apportionment election provided under H.B. 128.

The rule provides that the new method:

- may be elected on an original corporate income tax return filed on or after August 28, 2013, regardless of the taxable year for which the original income tax return is being filed
- may be elected by a corporation that has income resulting from transactions partially in this state and partially in another state or states
- is irrevocable and cannot be changed on a subsequent return
- may not be elected on an amended return, i.e., it may not be elected on

any return filed on or before August 27, 2013.

The takeaway

While the proposed rule is helpful in some respects, several open questions remain.

The proposed rule will not be effective until after a 30-day comment period ends, which will be after the October 15, 2013, extended filing deadline for calendar year taxpayers. What authority does this proposed rule have for filings made before its effective date?

H.B. 128 provides no restrictive language limiting the new election to only originally filed returns. It is unknown whether the denial of an election taken on an amended return would survive judicial scrutiny, although the position of irrevocability is consistent with Missouri's historical rules related to apportionment elections. Nevertheless, given the unique timing of the date on which a taxpayer may elect to use the new single factor apportionment method, questions of uniformity or equality may arise if similarly situated taxpayers have different apportionment computation elections

available to them for the same tax year simply due to when they filed their returns.

While interpretive guidance exists regarding the sourcing of service and intangible income under Missouri's historical single sales factor method, neither the statute nor the proposed rule concerning the new method provide any similar guidance. How do taxpayers properly source service and intangible income under the new method?

Current forms do not cover the new method. How mechanically does a taxpayer properly make the election to use the new method? Additionally, taxpayers are left to manually alter forms in order to reflect changes made pursuant to electing the new method.

Finally, since Missouri apportionment elections have historically been irrevocable once made, taxpayers must fully consider the potential impact of any revisions to the proposed rule during the comment period, any new rules that might be proposed addressing open questions, or any unfavorable rulings subsequently issued by the Department or Missouri courts.

Let's talk

If you have any questions regarding this proposed rule, please contact:

State and Local Tax Services

Jeff Dardick
Partner, *St. Louis*
+1 (314) 206-8355
jeffrey.m.dardick@us.pwc.com

Brian Bernert
Principal, *St. Louis*
+1 (314) 206-8790
brian.w.bernert@us.pwc.com

David Kennedy
Director, *St. Louis*
+1 (314) 206-8461
david.a.kennedy@us.pwc.com