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# EMERGENCY RULE

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

### EMERGENCY RULE

#### 12 CSR 10-2.436 SALT Parity Act Implementation

*PURPOSE: This rule explains how a partnership or an S corporation may elect to become an affected business entity under section 143.436, RSMo, the timing of affected business entity tax return filing, how to designate an affected business entity representative for a tax year, the estimated tax obligations and withholding obligations of an affected business entity, and an aspect of the tax credit under the SALT Parity Act.*

*EMERGENCY STATEMENT: The Director of Revenue (the “Director”) finds that an emergency rule is necessary to preserve a compelling governmental interest that requires an early effective date, as the SALT Parity Act (section 143.436, RSMo) applies to the tax year ending December 31, 2022, and authorizes the Director to prescribe by rule how an election to become subject to the tax imposed by the SALT Parity Act may be made, and authorizes the Director to promulgate other rules to implement the SALT Parity Act. Because the SALT Parity Act became law on August 28, 2022, is not possible for a rule to become effective prior to the end of the tax year to which the rule would apply. Failure to have a rule in place as soon possible would constitute a substantial hardship to taxpayers who may wish to elect to become subject to the SALT Parity Act, as no rule would prescribe how or when such an election could be made. Moreover, failure to have a rule in place as soon as possible would cause significant compliance difficulties for taxpayers who are considering becoming subject to the SALT Parity Act, as they may be otherwise unaware of material information about the affected business entity return filing and any extensions thereof, how to designate an affected business entity representative, the withholding obligations and lack of estimated tax payment requirements of an affected business entity, and an aspect of the tax credit under the SALT Parity Act. This emergency rule mitigates such substantial hardship and helps to reduce those compliance difficulties. As a result, the Director finds a compelling governmental interest, which requires this emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed December 27, 2022, becomes effective January 11, 2023, and expires July 9, 2023.*

(1) For tax years ending on or after December 31, 2022, a partnership or S corporation electing to become an affected business entity for a tax year shall make such election on its affected business entity tax return (Form MO-PTE). A separate election must be made for each tax year.

(2) An election to become an affected business entity for a tax year shall not be effective if the partnership or S corporation has not successfully designated a person as an affected business entity representative for that tax year at or before the time the partnership or S corporation attempts to make such election. For an election to be effective, the affected business entity tax return (Form MO-PTE) on which the election is made must include the signatures of either:

(A) Each member of the electing entity who is a member at the time the affected business entity tax return is filed; or

(B) An officer, manager, or member of the electing entity who is authorized to make the election and who attests to having such authorization under penalty of perjury.

(3) The deadline for making an election to become an affected business entity for a tax year is the filing deadline for the affected business entity tax return (Form MO-PTE). No election can be made after the deadline, including any approved extension.

(4) If an election to become an affected business entity has been made for a tax year, the election cannot be revoked for that tax year.

(5) At or before the time that a partnership or S corporation files its affected business entity tax return (Form MO-PTE) on which the election is made, the partnership or S corporation shall designate an affected business entity representative for that tax year. Only one natural person may serve as an affected business entity representative for a tax year.

(A) To designate a person as an affected business entity representative, the partnership or S corporation must file with the department a Power of Attorney (Form 2827) designating that person as an appointed representative and giving that person the title of “Affected Business Entity Representative.”

(B) The Power of Attorney (Form 2827) must include the signature of an officer, manager, or member of the partnership or S corporation who is authorized to designate an affected business entity representative and who attests to having such authorization under penalty of perjury. Alternatively, the Power of Attorney (Form 2827) must include the signatures of partners or shareholders who together hold the majority of the voting power of the partnership or S corporation. In lieu of adding signature(s) in the signature box of the Power of Attorney (Form 2827), an attachment shall be included with the filing of the Power of Attorney (Form 2827), containing such signature(s) under the following statement: “Under penalties of perjury, I (we) hereby certify that I (we) am (are) members of, or an officer or manager of, the taxpayer named on this Form 2827, and that I (we together) am (are) authorized to designate an affected business entity representative for the taxpayer.”

(C) As necessary qualifications to be designated as an affected business entity representative for a tax year, a person must have a working e-mail address, telephone number, and physical address at which to receive mail.

(D) The Power of Attorney (Form 2827) must include a current working e-mail address, telephone number, and physical mailing address of the person to be designated as the affected business entity representative. A filing lacking any information required by subsections (B) or (D) of this section will be ineffective to designate a person as an affected business entity representative.

(E) If a Power of Attorney (Form 2827) is filed with the signatures required by subsection (B) above, but the filing lacks one or more items of information required by subsection (D) above, or the person who would otherwise serve as affected business entity representative lacks one of the qualifications required by subsection (C) above, that person shall nevertheless be considered an authorized representative of the partnership or S corporation for purposes of receiving and discussing the partnership or S corporation’s confidential tax information otherwise protected by section 32.057, RSMo. By way of example, the department may communicate with that person to share what items or qualifications were lacking in the attempt to make that person an affected business entity representative.

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(F) If a person has already been designated as an affected business entity representative for an affected business entity's prior tax year, in lieu of the other requirements of this section, that person may be re-designated as an affected business entity representative for a later tax year by the filing of that tax year's affected business entity tax return (Form MO-PTE) and the checking of a box on that return indicating the affected business entity's intent to re-designate that representative.

(6) An affected business entity representative may be removed from the role of affected business entity representative for a tax year if the partnership or S corporation designates a new affected business entity representative for that tax year. The removal of an affected business entity representative does not change the binding effect of any prior actions taken by that affected business entity representative.

(7) An affected business entity is not subject to an estimated income tax declaration filing requirement, or an estimated income tax payment requirement. An affected business entity may choose to make an early payment of its anticipated tax liability for a tax year, even if the tax year is not yet complete.

(8) The election to become an affected business entity does not relieve a partnership or S corporation of its withholding obligations under section 143.411.5, RSMo, or section 143.471.6, RSMo, respectively.

(9) The affected business entity's tax under section 143.436, RSMo, is due at the same time the affected business entity's return is due, that is, by the fifteenth day of the fourth month following the end of the partnership or S corporation's tax year. By this same date, the affected business entity shall file an affected business entity tax return (Form MO-PTE) unless a filing extension is approved by the department. If an affected business entity is approved for a filing extension of the affected business entity tax return (Form MO-PTE), the affected business entity is likewise granted an equal extension of time for the payment of the tax due under Section 143.436, RSMo. Pursuant to Section 143.731.2, RSMo, interest on this tax will continue to accrue regardless of any extension of time for payment.

(10) If a partnership or S corporation has received a federal extension for filing its annual partnership or S corporation federal return, that partnership or S corporation is hereby granted an equal extension of time for filing its affected business entity tax return (Form MO-PTE), except that this extension will be no longer than six months. The partnership or S corporation must attach a copy of the approved federal extension to its affected business entity tax return (Form MO-PTE). This section applies only to partnerships or S corporations that have an original affected business entity tax return due date that matches the original due date of their annual partnership or S corporation federal return.

(11) The tax credits granted to a member of an affected business entity by sections 143.436.8 and 143.436.10, RSMo, shall be computed based on the member's direct and indirect pro rata share of the tax actually paid pursuant to section 143.436, RSMo, by any affected business entity of which such member is directly or indirectly a member. If an affected business entity reduces its tax liability under section 143.436, RSMo, by use of tax credits, other than a credit for payment or overpayment of this tax, the affected business entity's tax actually paid will generally be reduced.

*AUTHORITY: sections 32.057.2, 136.120, and 143.961, RSMo 2016, and section 143.436, RSMo Supp. 2022. Emergency rule filed Dec. 27, 2022, effective Jan. 11, 2023, expires July 9, 2023. An emergency rule and a proposed rule covering this same material will be published in the Feb. 1, 2023, issue of the **Missouri Register**.*

*PUBLIC COST: This emergency rule will cost state agencies or political subdivisions less than eleven thousand dollars (\$11,000) in the time the emergency is effective.*

*PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.*

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## FISCAL NOTE PUBLIC COST

- I. Department Title: Department of Revenue  
Division Title: Director of Revenue  
Chapter Title: Chapter 2 – Income Tax**

<b>Rule Number and Name:</b>	12 CSR 10.2436 SALT Parity Act Implementation
<b>Type of Rulemaking:</b>	New

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Revenue	Less than \$11,000

**III. WORKSHEET**

**IV. ASSUMPTIONS**

The SALT Parity Act allows the Department to create an entity level income reporting tax return for S Corps and Partnerships. Additionally, members of the S Corps and Partnerships will receive a tax credit on their individual income tax return for the amount of tax paid by the entity. This program will result in the Department adding a line to the MO-1040, the MO-TC and creating the entity level return. These changes are being done by in-house staff who make changes to our tax forms annually. These changes are not expected to result in a fiscal impact.

The Department's internal tax reporting computer system will need to be updated to accept the changes on the MO-1040, MO-TC and the new entity reporting form. The Department has a vendor that makes changes to our system as needed. These changes are expected to result in one-time computer upgrades costs of less than \$11,000.

No other political subdivision or state agency is impacted by the SALT Parity Act.