

FIRST REGULAR SESSION

HOUSE BILL NO. 719

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BRAY.

Read 1st time February 8, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1872L.011

AN ACT

To repeal sections 143.241, 143.711, 144.157 and 144.220, RSMo 2000, relating to state income and sales tax assessments, and to enact in lieu thereof four new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 143.241, 143.711, 144.157 and 144.220, RSMo 2000, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 143.241, 143.711, 144.157
3 and 144.220, to read as follows:

143.241. 1. Every employer required to deduct and withhold tax [under] **pursuant to**
2 sections 143.011 to 143.996 is hereby made liable for such tax. For purposes of assessment and
3 collection, any amount required to be withheld and paid over to the director of revenue, and any
4 penalties, interest, and additions to tax with respect thereto, shall be considered the tax of the
5 employer. Any amount of tax actually deducted and withheld [under] **pursuant to** sections
6 143.011 to 143.996 shall be a special fund in trust for the director of revenue. No employee shall
7 have any right of action against his **or her** employer in respect to any money deducted and
8 withheld from [his] **such employee's** wages and paid over to the director of revenue in
9 compliance or in good faith compliance with sections 143.011 to 143.996.

10 2. Any officer, director, statutory trustee or employee of any corporation, including
11 administratively dissolved corporations, or foreign corporations that have had their certificate
12 of authority revoked, subject to the provisions of sections 143.191 to 143.265, who has the direct
13 control, supervision or responsibility for filing returns and making payment of the amount of tax
14 imposed in accordance with sections 143.191 to 143.265, and who **either** fails to file [and] **or**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 **fails to** pay such return with the director of revenue shall be personally assessed for such
16 amounts, including interest, additions to tax and penalties thereon. This assessment shall be
17 imposed only in the event that the assessment on the corporation is final, and such corporation
18 fails to pay such amounts to the director of revenue. Notice shall be given of the director of
19 revenue's intent to make the assessment against such officers, directors, statutory trustees or
20 employees. The personal liability of such officers, directors, statutory trustees or employees as
21 provided in this section shall survive the administrative dissolution of the corporation or, if a
22 foreign corporation, the revocation of the corporation's certificate of authority.

23 3. If any employer required to withhold and remit tax [under] **pursuant to** sections
24 143.191 to 143.265 or [his] **such employer's** successors shall sell all or substantially all of [his
25 or their] **such employer's or successor's** business or shall quit the business, such employer or
26 successor shall file a final return within fifteen days after the date of selling or quitting business.

27 4. If any employer required to withhold and remit tax [under] **pursuant to** sections
28 143.191 to 143.265 or [his] **such employer's** successors shall contract to sell all or substantially
29 all of [his or their] **such employer's or successor's** business, the seller shall request from the
30 director of revenue a statement or certificate as provided in subsection 6 of this section. The
31 seller shall present such statement or certificate to the purchaser prior to consummation of the
32 sale and secure the purchaser's signature thereon as validation of receipt. Failure to comply with
33 this provision shall result in the seller being liable for an additional penalty equal to twenty-five
34 percent of the seller's delinquency at the time of the sale. The provisions of this section to the
35 contrary notwithstanding, this additional penalty shall be the sole liability of the seller and shall
36 not be a liability of the purchaser.

37 5. Except as provided in subsections 6, 7, and 8 of this section, all successors, if any,
38 shall be required to withhold an amount of the purchase money sufficient to cover the taxes,
39 interest, additions to tax or penalties due and unpaid until such time as the former owner or
40 predecessor, whether immediate or not, shall produce a receipt from the director of revenue
41 showing that the taxes have been paid, or a certificate stating that no taxes are due. If the
42 purchaser of a business shall fail to withhold the purchase money as required by this section and
43 remit at the time of purchase all amounts so withheld to the director to pay all unpaid taxes,
44 interest, additions to tax and penalties due from the former owner or predecessor, the purchaser
45 shall be personally liable for the payment of the taxes, interest, additions to tax and penalties
46 accrued and unpaid by the former owner of the business.

47 6. The director of revenue shall, notwithstanding the provisions of section 32.057,
48 RSMo, upon written request, furnish within fifteen days from the receipt of such a request by
49 certified mail, return receipt requested, or such other methods as may be mutually agreed upon,
50 to any owner, successor, secured creditor, purchaser, or in the case of a proposed purchaser, if

51 joined in writing by the owner, a statement showing the amount of taxes, interest, additions to
52 tax or penalties due and owing or a certificate showing that no taxes, interest, additions to tax
53 or penalties are due [under] **pursuant to** this chapter, including the date for the last payment for
54 such taxes, interest, additions to tax or penalties as shown by the records of the director of
55 revenue.

56 7. A secured creditor who shall enforce a lien against a business subject to the provisions
57 of this chapter shall be entitled to obtain from the director of revenue a statement of employer
58 withholding tax due and the status of the employer withholding tax payments from the director
59 of revenue in accordance with subsection 6 of this section. If the director of revenue does not
60 respond within fifteen days from the date of receipt of such request by the secured creditor
61 seeking to enforce its lien, it shall be conclusively presumed that all such employer withholding
62 tax has been paid as to the secured creditor or any successor of the secured creditor, whether such
63 successor be immediate or not. Nothing in this section shall eliminate the liability of the owner
64 of the business owing employer withholding tax from the liability to pay such employer
65 withholding tax. Any purchaser who acquires the business as a result of an enforcement action
66 by a creditor shall be exempt from the liability set forth in subsection 5 of this section, whether
67 such purchaser be immediate or subsequent thereto.

68 8. Any such creditor who shall enforce a lien against a business subject to the provisions
69 of this section shall be entitled to be paid the principal sums due, all accrued interest to the date
70 of the payment, and the expenses of enforcing the lien of the secured creditor including attorney's
71 fees. The balance, if any, shall be paid to the creditors having a priority interest thereto [under]
72 **pursuant to** the laws of the state of Missouri or the United States of America. Any balance then
73 remaining, up to the amount of the tax, interest, additions to tax and penalties then due, shall be
74 remitted to the director of revenue as provided by this section. Nothing in this section shall
75 affect the priority of any lien filed by the director of revenue against the former owner or
76 predecessor.

77 9. Mailing of notices or requests, by first class mail, postage prepaid, certified with
78 return receipt requested, or such other methods as may be mutually agreed upon, shall be prima
79 facie evidence that the party to whom it is addressed received the correspondence, notice or
80 request.

143.711. 1. Except as otherwise provided in this section and section 143.721, a notice
2 of deficiency shall be mailed to the taxpayer within three years after the return was filed. No
3 deficiency shall be assessed or collected with respect to the year for which the return was filed
4 unless the notice is mailed **to the taxpayer** within the three-year period or the period otherwise
5 fixed. **In the case of an assessment pursuant to section 143.241, no deficiency shall be**
6 **assessed unless the notice of assessment is mailed to the officer, director, statutory trustee**

7 **or employee within three years after the final assessment of the corporation.**

8 2. If a taxpayer other than a corporation omits from [his] **such taxpayer's** return an
9 amount of income that is properly includable in [his] **such taxpayer's** Missouri adjusted gross
10 income and which is in excess of twenty-five percent of the amount of the Missouri adjusted
11 gross income stated in [his] **such taxpayer's** return, a notice of deficiency may be mailed to the
12 taxpayer within six years after the return was filed. If a taxpayer corporation omits from its
13 return an amount of income that is properly includable in its gross income from all sources
14 within this state which is in excess of twenty-five percent of the amount of gross income stated
15 in its return from all sources within this state, a notice of deficiency may be mailed to the
16 taxpayer within six years after the return was filed. For purposes of this subsection, in
17 determining the amount omitted there shall not be taken into account any amount which is
18 omitted in the return if such amount is disclosed in the return, or in a statement attached to the
19 return, in a manner adequate to apprise the director of revenue of the nature and amount of such
20 item.

21 3. If no return is filed or a false and fraudulent return is filed with intent to evade the tax
22 imposed by sections 143.011 to 143.996, a notice of deficiency may be mailed to the taxpayer
23 at any time.

24 4. If a taxpayer fails to comply with the requirement of section 143.601 by not reporting
25 a change or correction increasing [his] **such taxpayer's** federal taxable income or by not filing
26 an amended return, a notice of deficiency may be mailed to the taxpayer within one year after
27 the director of revenue shall become aware of such determination. A notice [under] **pursuant**
28 **to** this subsection shall be limited to the effects on Missouri taxable income of:

29 (1) The issues on which the federal determination is based, and

30 (2) Any change in the amount of [his] **such taxpayer's** federal income tax deduction
31 [under] **pursuant to** the provisions of subsection 1 of section 143.171.

32 5. If the taxpayer shall pursuant to section 143.601 report a change or correction or file
33 an amended return increasing [his] **such taxpayer's** federal taxable income or report a change
34 or correction which is treated in the same manner as if it were a deficiency for federal income
35 tax purposes, the assessment (if not deemed to have been made upon the filing of the report or
36 amended return) may be made at any time within one year after such report or amended return
37 was filed. A notice [under] **pursuant to** this subsection shall be limited in the manner provided
38 in subsection 4 of this section.

39 6. Where, before the expiration of the time prescribed in this section for the assessment
40 of a deficiency, both the director of revenue and the taxpayer shall have consented in writing to
41 its assessment after such time, the deficiency may be assessed at any time prior to the expiration
42 of period agreed upon. The period so agreed may be extended by subsequent agreement in

43 writing made before the expiration of the period previously agreed upon.

44 7. For purposes of this section a return filed before the last day prescribed by law or by
45 regulation promulgated pursuant to law for the filing thereof shall be deemed to be filed on such
46 last day. If a return for any period ending with or within a calendar year is filed before April
47 fifteenth of the succeeding calendar year, such return shall be deemed to be filed on April
48 fifteenth of such succeeding calendar year.

144.157. 1. Any person required to collect, truthfully account for and pay over any tax
2 imposed by sections 67.1170 to 67.1180, RSMo, sections 94.800 to 94.825, RSMo, and sections
3 144.010 to 144.525 and 144.600 to 144.745 who willfully fails to collect such tax or truthfully
4 account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax
5 or the payment thereof, or who shall willfully and knowingly overcharge or overcollect such tax
6 with intent to make claim to any such overcharged or overcollected amounts [under] **pursuant**
7 **to** section 144.190, shall, in addition to other penalties provided by law, be liable to a penalty
8 equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over,
9 or overcharged or overcollected.

10 2. For purposes of this section, the term "person" includes an individual or an officer or
11 employee of any corporation, including an administratively dissolved corporation or a foreign
12 corporation that has had its certificate of authority revoked, or a member or employee of any
13 partnership, who, as such officer, employee or member, is under a duty to perform the act in
14 respect of which the violation occurs.

15 3. Any officers, directors, statutory trustees or employees of any corporation, including
16 administratively dissolved corporations or foreign corporations that have had their certificate of
17 authority revoked, subject to the provisions of sections 144.010 to 144.745, who has the direct
18 control, supervision or responsibility for filing returns and making payment of the amount of
19 tax imposed in accordance with sections 144.010 to 144.745, and who **either** fails to file such
20 return [and make payment of] **or fails to pay** all taxes due with the director of revenue shall be
21 personally assessed for such amounts, including interest, additions to tax and penalties thereon.
22 This assessment shall be imposed only in the event that the assessment on the corporation is
23 final, and such corporation fails to pay such amounts to the director of revenue. Notice shall be
24 given of the director of revenue's intent to make the assessment against such officers, directors,
25 statutory trustees or employees. The personal liability of such officers, directors, statutory
26 trustees or employees as provided in this section shall survive the administrative dissolution of
27 the corporation or, if a foreign corporation, the revocation of the corporation's certificate of
28 authority.

144.220. 1. In the case of a fraudulent return or of neglect or refusal to make a return
2 with respect to any tax [under] **pursuant to** this chapter, there is no limitation on the period of

3 time the director has to assess.

4 2. Where a statute or a rule promulgated by the director has exempted or excepted any
5 person from the payment of tax [under] **pursuant to** this chapter and is thereafter held by a final
6 decision of the Missouri supreme court to be invalid, the director shall not be entitled to make
7 an original or additional assessment of taxes which result from such court decision, nor shall the
8 person be entitled to any refund or credit resulting from such court decision, for any period
9 occurring prior to the date of the court's mandate or the implementation of regulations
10 interpreting such court decision, whichever is later.

11 3. **In the case of an assessment pursuant to section 144.157, no deficiency shall be**
12 **assessed unless the notice of assessment is mailed to the office, director, statutory trustee**
13 **or employee within three years after the final assessment of the corporation.** In other cases,
14 every notice of additional amount proposed to be assessed [under] **pursuant to** this chapter shall
15 be mailed to the person within three years after the return was filed or required to be filed.

16 4. (1) In those cases in which, within three years prior to June 12, 1990, a statute or a
17 rule promulgated by the director has exempted or excepted any person from the payment of tax
18 [under] **pursuant to** this chapter and such statute or rule promulgated by the director is thereafter
19 held by a final decision of the Missouri supreme court to be invalid, and such decision by the
20 court has created significant claims for credits or refunds among substantial numbers of persons
21 where quantifying such claims would reasonably require additional litigation or auditing by the
22 state, or the amount which would be owed by such persons within the three-year period specified
23 in subsection 3 of this section is not readily determinable with reasonable accuracy because of
24 the lack of records or differing contractual relationships between the sellers and resellers, the
25 director, or any person authorized in writing by [him] **the director**, shall offer to enter into an
26 agreement with any person relating to the liability of such person in respect to the tax imposed
27 by this chapter for any taxable period, which agreement shall contain the terms set out in
28 subdivisions (2) through (5) of this subsection.

29 (2) The director shall accept as adequate consideration for an agreement the person's
30 agreement to:

31 (a) Waive all claims for refund or credit of sales or use taxes which claims result from
32 such court decision for tax periods beginning prior to the later of the date of the court's decision
33 holding that the statute or rule promulgated by the director is invalid or the implementation of
34 regulations interpreting that decision;

35 (b) Not initiate or intervene in as a party, for the two-year period following the date of
36 the agreement, in the administrative hearing commission or any federal or state court, any cause
37 of action attacking the constitutionality or general validity of taxes imposed upon the person by
38 chapter 144; provided, however, that such agreement shall not prevent the person from initiating

39 claims such as those based upon clerical or mathematical errors or double payment and claims
40 based upon the application to the person of exceptions or exemptions provided for by rule or
41 statute and provided further that if, for such two-year period, the person obtains a refund or credit
42 as a result of a decision that the taxes imposed upon the person by chapter 144, are
43 unconstitutional or of general invalidity, the person will take reasonable steps to return to
44 identifiable purchasers from whom the person originally collected the tax under a written or oral
45 contract the moneys refunded or credited and moneys not refunded or credited to identifiable
46 purchasers, except those moneys resulting from vending machine sales, shall be returned to the
47 state treasury less a ten percent fee to be retained by that person; and

48 (c) Waive the limitation period specified in subsection 3 of this section as to the
49 three-year period preceding the date of the agreement in the event that the person breaches the
50 provisions of this subdivision.

51 (3) The director shall agree not to seek an original or additional assessment for any
52 period occurring prior to the later of the date of the court's decision holding that the statute or
53 rule promulgated by the director is invalid or the implementation of regulations interpreting that
54 decision except as provided in subdivision (2).

55 (4) The case shall not be reopened as to matters agreed upon or the agreement modified
56 by any officer, employee, or agent of this state.

57 (5) Such agreement shall be binding upon the personal representatives, successors, and
58 assigns of the person.