

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR

SENATE BILL NO. 860

97TH GENERAL ASSEMBLY

2014

5906S.05T

AN ACT

To repeal sections 143.221, 144.044, 144.049, 144.080, and 144.190, RSMo, and to enact in lieu thereof six new sections relating to taxation, with an existing penalty provision.

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

Section A. Sections 143.221, 144.044, 144.049, 144.080, and 144.190, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 137.133, 143.221, 144.044, 144.049, 144.080, and 144.190, to read as follows:

137.133. In any county with a charter form of government and with more than nine hundred fifty thousand inhabitants, any correspondence by the assessor with a taxpayer requesting information from the taxpayer shall include the following statement in bold, fourteen point font: "Disclosure of information requested on this document is voluntary and not required by law. Any information disclosed may become public record.". The provisions of this section shall not apply to requests for information required to be disclosed under sections 137.092 and 137.155.

143.221. 1. Every employer required to deduct and withhold tax under sections 143.011 to 143.996 shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the director of revenue and pay over to the director of revenue or to a depository designated by the director of revenue the taxes so required to be deducted and withheld.

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

7 2. Where the aggregate amount required to be deducted and withheld by
8 any employer exceeds fifty dollars for at least two of the preceding twelve months,
9 the director, by regulation, may require a monthly return. The due dates of the
10 monthly return and the monthly payment or deposit for the first two months of
11 each quarter shall be by the fifteenth day of the succeeding month. The due
12 dates of the monthly return and the monthly payment or deposit for the last
13 month of each quarter shall be by the last day of the succeeding month. The
14 director may increase the amount required for making a monthly employer
15 withholding payment and return to more than fifty dollars or decrease such
16 required amount, however, the decreased amount shall not be less than fifty
17 dollars.

18 3. Where the aggregate amount required to be deducted and withheld by
19 any employer is less than [twenty] **one hundred** dollars in each of the four
20 preceding quarters, **and to the extent the employer does not meet the**
21 **requirements in subsection 1 or 2 of this section for filing a**
22 **withholding return on a quarterly or monthly basis**, the employer shall file
23 a withholding return for a calendar year. The director, by regulation, may also
24 allow other employers to file annual returns. The return shall be filed and the
25 taxes if any paid on or before January thirty-first of the succeeding year. The
26 director may increase the amount required for making an annual employer
27 withholding payment and return to more than [twenty] **one hundred** dollars or
28 decrease such required amount, however, the decreased amount shall not be less
29 than [twenty] **one hundred** dollars.

30 4. If the director of revenue finds that the collection of taxes required to
31 be deducted and withheld by an employer may be jeopardized by delay, he may
32 require the employer to pay over the tax or make a return at any time. A lien
33 outstanding with regard to any tax administered by the director shall be a
34 sufficient basis for this action.

144.044. 1. As used in this section, the following terms mean:

2 (1) "Sale of a modular unit", a transfer of a modular unit as defined in
3 section 700.010;

4 (2) "Sale of a new manufactured home", a transfer of a manufactured
5 home, as defined in section 700.010, which involves the delivery of the document
6 known as the manufacturer's statement of origin to a person other than a
7 manufactured home dealer, as dealer is defined in section 700.010, for purposes
8 of allowing such person to obtain a title to the manufactured home from the
9 department of revenue of this state or the appropriate agency or officer of any

10 other state;

11 **(3) "Sale of a used manufactured home", any subsequent sale of**
12 **a manufactured home as defined in section 700.010, which does not**
13 **qualify as "new" as defined in subdivision (9) of section 700.010.**

14 2. In the event of the sale of a new manufactured home, forty percent of
15 the purchase price, as defined in section 700.320, shall be considered the sale of
16 a service and not the sale of tangible personal property. In addition to the
17 exemptions granted under the provisions of section 144.030, the sale of services
18 as defined in this section shall be specifically exempted from the provisions of
19 sections 238.235 and 238.410, the local sales tax law as defined in section 32.085,
20 sections 144.010 to 144.525 and 144.600 to [144.745] **144.761**, and from the
21 computation of the tax levied, assessed or payable under sections 238.235 and
22 238.410, the local sales tax law as defined in section 32.085, sections 144.010 to
23 144.525 and 144.600 to [144.745] **144.761**, and section 238.235.

24 3. In the event of the sale of a new modular unit, forty percent of the
25 retail sale of the unit or forty percent of the manufacturer's sales price of the unit
26 if the manufacturer makes a sale to a consumer that is not a retail sale, plus any
27 carrier charge and freight charges shall be considered the sale of a service and
28 sixty percent shall be the retail sale of tangible personal property. In addition
29 to the exemptions granted under the provisions of section 144.030, the sale of
30 services as defined in this section shall be specifically exempted from the
31 provisions of sections 238.235 and 238.410, the local sales tax law as defined in
32 section 32.085, sections 144.010 to 144.525 and 144.600 to [144.745] **144.761**, and
33 from the computation of the tax levied, assessed, or payable under sections
34 238.235 and 238.410, the local sales tax law as defined in section 32.085, sections
35 144.010 to 144.525 and 144.600 to [144.745] **144.761**, and section 238.235.

36 **4. In addition to the exemptions granted under the provisions of**
37 **section 144.030, the sale of a used manufactured home as defined in this**
38 **section shall be specifically exempted from the provisions of sections**
39 **238.235 and 238.410, the local sales tax law as defined in section 32.085,**
40 **sections 144.010 to 144.525 and 144.600 to 144.761, and from the**
41 **computation of the tax levied, assessed, or payable under sections**
42 **238.235 and 238.410, the local sales tax law as defined in section 32.085,**
43 **sections 144.010 to 144.525 and 144.600 to 144.761, and section 238.235.**

144.049. 1. For purposes of this section, the following terms mean:

2 (1) "Clothing", any article of wearing apparel, including footwear, intended
3 to be worn on or about the human body. The term shall include but not be

4 limited to cloth and other material used to make school uniforms or other school
5 clothing. Items normally sold in pairs shall not be separated to qualify for the
6 exemption. The term shall not include watches, watchbands, jewelry, handbags,
7 handkerchiefs, umbrellas, scarves, ties, headbands, or belt buckles; and

8 (2) "Personal computers", a laptop, desktop, or tower computer system
9 which consists of a central processing unit, random access memory, a storage
10 drive, a display monitor, and a keyboard and devices designed for use in
11 conjunction with a personal computer, such as a disk drive, memory module,
12 compact disk drive, daughterboard, [digitalizer] **digitizer**, microphone, modem,
13 motherboard, mouse, multimedia speaker, printer, scanner, single-user hardware,
14 single-user operating system, soundcard, or video card;

15 (3) "School supplies", any item normally used by students in a standard
16 classroom for educational purposes, including but not limited to textbooks,
17 notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags,
18 backpacks, handheld calculators, chalk, maps, and globes. The term shall not
19 include watches, radios, CD players, headphones, sporting equipment, portable
20 or desktop telephones, copiers or other office equipment, furniture, or
21 fixtures. School supplies shall also include computer software having a taxable
22 value of three hundred fifty dollars or less **and any graphing calculator**
23 **having a taxable value of one hundred fifty dollars or less.**

24 2. In each year beginning on or after January 1, 2005, there is hereby
25 specifically exempted from state sales tax law all retail sales of any article of
26 clothing having a taxable value of one hundred dollars or less, all retail sales of
27 school supplies not to exceed fifty dollars per purchase, all computer software
28 with a taxable value of three hundred fifty dollars or less, **all graphing**
29 **calculators having a taxable value of one hundred fifty dollars or less,**
30 and all retail sales of personal computers or computer peripheral devices not to
31 exceed three thousand five hundred dollars, during a three-day period beginning
32 at 12:01 a.m. on the first Friday in August and ending at midnight on the Sunday
33 following.

34 3. If the governing body of any political subdivision adopted an ordinance
35 that applied to the 2004 sales tax holiday to prohibit the provisions of this section
36 from allowing the sales tax holiday to apply to such political subdivision's local
37 sales tax, then, notwithstanding any provision of a local ordinance to the
38 contrary, the 2005 sales tax holiday shall not apply to such political subdivision's
39 local sales tax. However, any such political subdivision may enact an ordinance
40 to allow the 2005 sales tax holiday to apply to its local sales taxes. A political

41 subdivision must notify the department of revenue not less than forty-five
42 calendar days prior to the beginning date of the sales tax holiday occurring in
43 that year of any ordinance or order rescinding an ordinance or order to opt out.

44 4. This section shall not apply to any sales which take place within the
45 Missouri state fairgrounds.

46 5. This section applies to sales of items bought for personal use only.

47 6. After the 2005 sales tax holiday, any political subdivision may, by
48 adopting an ordinance or order, choose to prohibit future annual sales tax
49 holidays from applying to its local sales tax. After opting out, the political
50 subdivision may rescind the ordinance or order. The political subdivision must
51 notify the department of revenue not less than forty-five calendar days prior to
52 the beginning date of the sales tax holiday occurring in that year of any ordinance
53 or order rescinding an ordinance or order to opt out.

54 7. This section may not apply to any retailer when less than two percent
55 of the retailer's merchandise offered for sale qualifies for the sales tax
56 holiday. The retailer shall offer a sales tax refund in lieu of the sales tax holiday.

144.080. 1. Every person receiving any payment or consideration upon
2 the sale of property or rendering of service, subject to the tax imposed by the
3 provisions of sections 144.010 to 144.525, is exercising the taxable privilege of
4 selling the property or rendering the service at retail and is subject to the tax
5 levied in section 144.020. The person shall be responsible not only for the
6 collection of the amount of the tax imposed on the sale or service to the extent
7 possible under the provisions of section 144.285, but shall, on or before the last
8 day of the month following each calendar quarterly period of three months, file
9 a return with the director of revenue showing the person's gross receipts and the
10 amount of tax levied in section 144.020 for the preceding quarter, and shall remit
11 to the director of revenue, with the return, the taxes levied in section 144.020,
12 except as provided in subsections 2 and 3 of this section. The director of revenue
13 may promulgate rules or regulations changing the filing and payment
14 requirements of sellers, but shall not require any seller to file and pay more
15 frequently than required in this section.

16 2. Where the aggregate amount levied and imposed upon a seller by
17 section 144.020 is in excess of two hundred and fifty dollars for either the first or
18 second month of a calendar quarter, the seller shall file a return and pay such
19 aggregate amount for such months to the director of revenue by the twentieth day
20 of the succeeding month.

21 3. Where the aggregate amount levied and imposed upon a seller by

22 section 144.020 is less than forty-five dollars in a calendar quarter, the director
23 of revenue shall by regulation permit the seller to file a return for a calendar
24 year. The return shall be filed and the taxes paid on or before January
25 thirty-first of the succeeding year.

26 4. The seller of any property or person rendering any service, subject to
27 the tax imposed by sections 144.010 to 144.525, shall collect the tax from the
28 purchaser of such property or the recipient of the service to the extent possible
29 under the provisions of section 144.285, but the seller's inability to collect any
30 part or all of the tax does not relieve the seller of the obligation to pay to the
31 state the tax imposed by section 144.020; except that the collection of the tax
32 imposed by sections 144.010 to 144.525 on motor vehicles and trailers shall be
33 made as provided in sections 144.070 and 144.440.

34 5. [It shall be unlawful for] Any person [to] **may** advertise or hold out or
35 state to the public or to any customer directly [or indirectly] that the tax or any
36 part thereof imposed by sections 144.010 to 144.525, and required to be collected
37 by the person, will be assumed or absorbed by the person, [or that it will not be
38 separately stated and added to the selling price of the] **provided that the**
39 **amount of tax assumed or absorbed shall be stated on any invoice or**
40 **receipt for the** property sold or service rendered[, or if added, that it or any
41 part thereof will be refunded]. Any person violating any of the provisions of this
42 section shall be guilty of a misdemeanor. **This subsection shall not apply to**
43 **any retailer prohibited from collecting and remitting sales tax under**
44 **section 66.630.**

144.190. 1. If a tax has been incorrectly computed by reason of a clerical
2 error or mistake on the part of the director of revenue, such fact shall be set forth
3 in the records of the director of revenue, and the amount of the overpayment shall
4 be credited on any taxes then due from the person legally obligated to remit the
5 tax pursuant to sections 144.010 to 144.525, and the balance shall be refunded
6 to the person legally obligated to remit the tax, such person's administrators or
7 executors, as provided for in section 144.200.

8 2. If any tax, penalty or interest has been paid more than once, or has
9 been erroneously or illegally collected, or has been erroneously or illegally
10 computed, such sum shall be credited on any taxes then due from the person
11 legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the
12 balance, with interest as determined by section 32.065, shall be refunded to the
13 person legally obligated to remit the tax, but no such credit or refund shall be
14 allowed unless duplicate copies of a claim for refund are filed within three years

15 from date of overpayment.

16 3. Every claim for refund must be in writing and signed by the applicant,
17 and must state the specific grounds upon which the claim is founded. Any refund
18 or any portion thereof which is erroneously made, and any credit or any portion
19 thereof which is erroneously allowed, may be recovered in any action brought by
20 the director of revenue against the person legally obligated to remit the tax. In
21 the event that a tax has been illegally imposed against a person legally obligated
22 to remit the tax, the director of revenue shall authorize the cancellation of the tax
23 upon the [director's] **director of revenue's** record.

24 4. Notwithstanding the provisions of section 32.057, a purchaser that
25 originally paid sales or use tax to a vendor or seller may submit a refund claim
26 directly to the director of revenue for such sales or use taxes paid to such vendor
27 or seller and remitted to the director **of revenue**, provided no sum shall be
28 refunded more than once, any such claim shall be subject to any offset, defense,
29 or other claim the director **of revenue** otherwise would have against either the
30 purchaser or vendor or seller **if such offset or claim has been assessed**
31 **under section 144.240 or 144.670 and such assessment is no longer**
32 **subject to appeal**, and such claim for refund is accompanied by either:

33 (1) A notarized assignment of rights statement by the vendor or seller to
34 the purchaser allowing the purchaser to seek the refund on behalf of the vendor
35 or seller. An assignment of rights statement shall contain the Missouri sales or
36 use tax registration number of the vendor or seller, a list of the transactions
37 covered by the assignment, the tax periods and location for which the original
38 sale was reported to the director of revenue by the vendor or seller, and a
39 notarized statement signed by the vendor or seller affirming that the vendor or
40 seller has not received a refund or credit, will not apply for a refund or credit of
41 the tax collected on any transactions covered by the assignment, and authorizes
42 the director **of revenue** to amend the seller's return to reflect the refund; or

43 (2) In the event the vendor or seller fails or refuses to provide an
44 assignment of rights statement within sixty days from the date of such
45 purchaser's written request to the vendor or seller, or the purchaser is not able
46 to locate the vendor or seller or the vendor or seller is no longer in business, the
47 purchaser may provide the director **of revenue** a notarized statement confirming
48 the efforts that have been made to obtain an assignment of rights from the vendor
49 or seller. Such statement shall contain a list of the transactions covered by the
50 assignment, the tax periods and location for which the original sale was reported
51 to the director of revenue by the vendor or seller.

52 The director **of revenue** shall not require such vendor, seller, or purchaser to
53 submit amended returns for refund claims submitted under the provisions of this
54 subsection. Notwithstanding the provisions of section 32.057, if the seller is
55 registered with the director **of revenue** for collection and remittance of sales tax,
56 the director **of revenue** shall notify the seller at the seller's last known address
57 of the claim for refund. If the seller objects to the refund within thirty days of
58 the date of the notice, the director **of revenue** shall not pay the refund. If the
59 seller agrees that the refund is warranted or fails to respond within thirty days,
60 the director **of revenue** may issue the refund and amend the seller's return to
61 reflect the refund. For purposes of section 32.069, the refund claim shall not be
62 considered to have been filed until the seller agrees that the refund is warranted
63 or thirty days after the date the director **of revenue** notified the seller and the
64 seller failed to respond.

65 5. Notwithstanding the provisions of section 32.057, when a vendor files
66 a refund claim on behalf of a purchaser and such refund claim is denied by the
67 director **of revenue**, notice of such denial and the reason for the denial shall be
68 sent by the director **of revenue** to the vendor and each purchaser whose name
69 and address is submitted with the refund claim form filed by the vendor. A
70 purchaser shall be entitled to appeal the denial of the refund claim within sixty
71 days of the date such notice of denial is mailed by the director **of revenue** as
72 provided in section 144.261. The provisions of this subsection shall apply to all
73 refund claims filed after August 28, 2012. The provisions of this subsection
74 allowing a purchaser to appeal the [director's] **director of revenue's** decision
75 to deny a refund claim shall also apply to any refund claim denied by the director
76 **of revenue** on or after January 1, 2007, if an appeal of the denial of the refund
77 claim is filed by the purchaser no later than September 28, 2012, and if such
78 claim is based solely on the issue of the exemption of the electronic transmission
79 or delivery of computer software.

80 6. Notwithstanding the provisions of this section, the director of revenue
81 shall authorize direct-pay agreements to purchasers which have annual purchases
82 in excess of seven hundred fifty thousand dollars pursuant to rules and
83 regulations adopted by the director of revenue. For the purposes of such
84 direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 70, 92,
85 94, 162, 190, 238, 321, and 644 shall be remitted based upon the location of the
86 place of business of the purchaser.

87 7. Special rules applicable to error corrections requested by customers of
88 mobile telecommunications service are as follows:

89 (1) For purposes of this subsection, the terms "customer", "home service
90 provider", "place of primary use", "electronic database", and "enhanced zip code"
91 shall have the same meanings as defined in the Mobile Telecommunications
92 Sourcing Act incorporated by reference in section 144.013;

93 (2) Notwithstanding the provisions of this section, if a customer of mobile
94 telecommunications services believes that the amount of tax, the assignment of
95 place of primary use or the taxing jurisdiction included on a billing is erroneous,
96 the customer shall notify the home service provider, in writing, within three years
97 from the date of the billing statement. The customer shall include in such
98 written notification the street address for the customer's place of primary use, the
99 account name and number for which the customer seeks a correction of the tax
100 assignment, a description of the error asserted by the customer and any other
101 information the home service provider reasonably requires to process the request;

102 (3) Within sixty days of receiving the customer's notice, the home service
103 provider shall review its records and the electronic database or enhanced zip code
104 to determine the customer's correct taxing jurisdiction. If the home service
105 provider determines that the review shows that the amount of tax, assignment
106 of place of primary use or taxing jurisdiction is in error, the home service
107 provider shall correct the error and, at its election, either refund or credit the
108 amount of tax erroneously collected to the customer for a period of up to three
109 years from the last day of the home service provider's sixty-day review period. If
110 the home service provider determines that the review shows that the amount of
111 tax, the assignment of place of primary use or the taxing jurisdiction is correct,
112 the home service provider shall provide a written explanation of its determination
113 to the customer.

114 8. For all refund claims submitted to the department of revenue on or
115 after September 1, 2003, notwithstanding any provision of this section to the
116 contrary, if a person legally obligated to remit the tax levied pursuant to sections
117 144.010 to 144.525 has received a refund of such taxes for a specific issue and
118 submits a subsequent claim for refund of such taxes on the same issue for a tax
119 period beginning on or after the date the original refund check issued to such
120 person, no refund shall be allowed. This subsection shall not apply and a refund
121 shall be allowed if **the refund claim is filed by a purchaser under the**
122 **provisions of subsection 4 of this section, the refund claim is for use tax**
123 **remitted by the purchaser, or** an additional refund claim is filed **by a**
124 **person legally obligated to remit the tax** due to any of the following:

125 (1) Receipt of additional information or an exemption certificate from the

126 purchaser of the item at issue;

127 (2) A decision of a court of competent jurisdiction or the administrative
128 hearing commission; or

129 (3) Changes in regulations or policy by the department of revenue.

130 9. Notwithstanding any provision of law to the contrary, the director of
131 revenue shall respond to a request for a binding letter ruling filed in accordance
132 with section 536.021 within sixty days of receipt of such request. If the director
133 of revenue fails to respond to such letter ruling request within sixty days of
134 receipt by the director **of revenue**, the director of revenue shall be barred from
135 pursuing collection of any assessment of sales or use tax with respect to the issue
136 which is the subject of the letter ruling request. For purposes of this subsection,
137 the term "letter ruling" means a written interpretation of law by the director **of**
138 **revenue** to a specific set of facts provided by a specific taxpayer or his or her
139 agent.

140 10. If any tax was paid more than once, was incorrectly collected, or was
141 incorrectly computed, such sum shall be credited on any taxes then due from the
142 person legally obligated to remit the tax pursuant to sections 144.010 to 144.510
143 against any deficiency or tax due discovered through an audit of the person by the
144 department of revenue through adjustment during the same tax filing period for
145 which the audit applied.

146 **11. The provisions of this section are intended to clarify the**
147 **limitations on refund claims as originally enacted in this chapter.**

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