

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 372

## 91ST GENERAL ASSEMBLY

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Reported from the Committee on Ways and Means, February 22, 2001, with recommendation that the Senate Committee Substitute do pass.

1440S.03C

TERRY L. SPIELER, Secretary.

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### AN ACT

To amend chapter 32, RSMo 2000, by adding thereto two new sections relating to assessment and collection procedures of the department of revenue.

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

Section A. Chapter 32, RSMo, is amended by adding thereto two new sections, to be known as sections 32.375 and 32.378, to read as follows:

**32.375. 1. Notwithstanding any provision of law to the contrary, in any dispute regarding the potential liability of a taxpayer for collection and remittance or payment of sales or use tax or related interest, additions to tax or penalties, the director of revenue may, at the request of the taxpayer, consider the reasons for the taxpayer's failure to pay the amounts in dispute.**

**2. The director may abate any amount assessed or decide to not assess any such amount pursuant to this section if the director determines:**

**(1) The taxpayer took reasonable steps to determine whether the amounts were owed;**

**(2) Based on information reasonably available to the taxpayer, the taxpayer reasonably believed that the transactions at issue were not subject to tax and that the amounts in dispute were not owed;**

**(3) At the time of the transactions at issue, the department of revenue had not issued a regulation that indicated that the transactions at issue were subject to tax, nor had the department issued any other written or oral communication that the taxpayer knew of or should have known of stating that the transactions at issue were subject to tax; and**

**(4) In the discretion of the director, such abatement is in the best interest of the state and will not undermine compliance by taxpayers with the tax laws of this state.**

**3. If the director determines that any amounts may be abated pursuant to this section, as consideration for the abatement, the taxpayer shall agree that:**

**(1) The taxpayer shall bear his or her own costs, including any attorney fees;**

**(2) During the three year period beginning with the date of the agreement, the taxpayer shall comply with all sales and use tax obligations arising from the type of transactions that were the basis of the amounts that are the subject of the agreement unless and until such transactions are found to be nontaxable by the administrative hearing commission or a court of competent jurisdiction. The taxpayer may challenge or protest any such sales or use tax obligations arising during the three year period and any statutory changes that become effective during the three year period shall apply to the taxpayer notwithstanding any provision of the agreement;**

**(3) As consideration for such tax relief, the taxpayer shall agree to collect and remit or pay tax on the disputed type of transaction beginning on the date the agreement is final and continuing unless and until the administrative hearing commission or a court of competent jurisdiction renders a final decision that finds the type of transaction nontaxable.**

**4. If the director determines the amounts in dispute should not be abated, the director shall issue a final decision setting forth the director's determination. Within sixty days after the date on which the director's decision is delivered in person or is mailed to the taxpayer, whichever is earlier, the taxpayer may file a petition for review of the final decision with the administrative hearing commission.**

**5. On petition for review before the administrative hearing commission, the commission shall consider the factors set forth in subsection 2 of this section. Based on these factors, the commission may:**

**(1) Issue an order to the director stating an amount to be abated by the director;**

**or**

**(2) Issue an order denying the relief sought by the taxpayer.**

**6. The provisions of subsection 3 of this section shall apply to any abatement ordered by the commission.**

**32.378. 1. In addition to the authority granted to the director of revenue and the administrative hearing commission pursuant to section 32.375, the director of revenue may agree to compromise any tax, interest, penalties or additions to tax assessed or collected by the director of revenue on any of the following grounds:**

**(1) Doubt as to collectibility, which exists in any case where the amount assessed including interest, additions to tax and penalties exceeds the taxpayer's ability to pay**

as defined by regulations promulgated by the director of revenue; or

(2) To promote effective tax administration which means that compromise of the liability will not undermine compliance by taxpayers with the tax laws and that:

(a) Collection of the full liability will result in severe economic hardship to the taxpayer; or

(b) Regardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance by taxpayers. Such exceptional circumstances include, but are not limited to, instances where the taxpayer's failure to pay the taxes assessed is the result of circumstances beyond the reasonable control of the taxpayer and is not the result of negligence on the part of the taxpayer, or instances where a reasonable person would not have expected the assessment based on previous policy of the department of revenue or information provided to the taxpayer by the department of revenue.

2. As part of the consideration for any compromise of taxes that is based on subdivision (1) of subsection 1 of this section, the taxpayer shall agree:

(1) That the state of Missouri shall keep all payments and other credits applied to the tax, interest, penalties or additions to tax for the periods covered by the offer;

(2) That the state of Missouri shall keep any and all amounts otherwise due the taxpayer as a result of overpayments of any tax or other liability, including interest, additions to tax and penalties, for periods ending before or as of the end of the calendar year in which the offer is accepted; except that the state shall not keep any amounts that, together with amounts already paid on the compromise exceed the liability compromised;

(3) That the taxpayer shall have no right to contest in court or otherwise the amount of the liability compromised;

(4) That the taxpayer shall bear his or her own costs, including any attorney fees;

(5) That during the three year period beginning with the date of the compromise, the taxpayer shall comply with all tax obligations arising from issues or transactions related to the issues or transactions that were the basis of the tax that is the subject of the compromise and that the taxpayer shall not challenge or protest any such tax obligations arising during the three year period; however, any statutory changes that become effective during the three year period shall apply to the taxpayer notwithstanding this provision of the compromise;

(6) That if there is a default in payment of any principal or interest due under terms of the agreement of compromise, or if the taxpayer fails to comply with the provisions of the agreement set forth in subdivision (5) of this subsection, the director

of revenue may:

(a) Proceed immediately by suit to collect the entire unpaid balance of the amount agreed upon; or

(b) Proceed immediately by suit to collect as liquidated damages an amount equal to the liability compromised, minus any payments already received under the terms of the agreement, with interest on the unpaid balance from the date of default; or

(c) Disregard the amount of the compromise and apply all amounts previously paid under the agreement against the amount of the liability compromised and assess and collect by levy or suit the balance of the liability.

3. The director's remedies under this section are cumulative and the director may pursue any combination of such remedies together or consecutively until the entire liability is paid. No action or inaction by the director shall constitute a waiver or election not to pursue any remedy granted by this section.

4. The taxpayer requesting to compromise payment of taxes, interest, additions to tax, or penalties shall provide any information reasonably requested by the director in order that the director may determine that the offer is made in good faith.

5. If compromise of taxes is agreed upon, any statute of limitations applicable to the assessment and collection of the liability compromised shall be tolled during the period beginning on the date of the compromise and ending one year after the last payment is due pursuant to the agreement.

6. The director's decision to reject or accept an offer of compromise under this section shall be based on consideration of all the facts and circumstances, including the taxpayer's record of overall compliance with the tax laws.

7. The provisions of this section shall not apply to the resolution of any dispute of tax liability in accordance with section 32.375.