

FIRST REGULAR SESSION

SENATE BILL NO. 467

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUSE,

Read 1st time February 12, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1922S.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Section A. Sections 143.241, 143.711, 144.157 and 144.220, RSMo 2000, are repealed and four new sections enacted in lieu thereof, to be known as sections 143.241, 143.711, 144.157 and 144.220, to read as follows:

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

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

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

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

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

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

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

6. The director of revenue shall, notwithstanding the provisions of section 32.057, RSMo, upon written request, furnish within fifteen days from the receipt of such a request by certified mail, return receipt requested, or such other methods as may be mutually agreed upon, to any owner, successor, secured creditor, purchaser, or in the case of a proposed purchaser, if joined in writing by the owner, a statement showing the amount of taxes, interest, additions to tax or penalties due and owing or a certificate showing that no taxes, interest, additions to tax or penalties

are due [under] **pursuant to** this chapter, including the date for the last payment for such taxes, interest, additions to tax or penalties as shown by the records of the director of revenue.

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

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

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

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

2. If a taxpayer other than a corporation omits from his return an amount of income that is properly includable in his Missouri adjusted gross income and which is in excess of twenty-five percent of the amount of the Missouri adjusted gross income stated in his return, a notice of deficiency may be mailed to the taxpayer within six years after the return was filed. If a taxpayer corporation omits from its return an amount of income that is properly includable in its gross income

from all sources within this state which is in excess of twenty-five percent of the amount of gross income stated in its return from all sources within this state, a notice of deficiency may be mailed to the taxpayer within six years after the return was filed. For purposes of this subsection, in determining the amount omitted there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the director of revenue of the nature and amount of such item.

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

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

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

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

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

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

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

144.157. 1. Any person required to collect, truthfully account for and pay over any tax imposed by sections 67.1170 to 67.1180, RSMo, sections 94.800 to 94.825, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745 who willfully fails to collect such tax or truthfully

account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, or who shall willfully and knowingly overcharge or overcollect such tax with intent to make claim to any such overcharged or overcollected amounts **[under] pursuant to** section 144.190, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over, or overcharged or overcollected.

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

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

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

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

3. **In the case of an assessment pursuant to section 144.157, no deficiency shall be assessed unless the notice of assessment is mailed to the officer, director, statutory trustee or employee within three years after the final assessment of the corporation.** In

other cases, every notice of additional amount proposed to be assessed [under] **pursuant to** this chapter shall be mailed to the person within three years after the return was filed or required to be filed.

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

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

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

(b) Not initiate or intervene in as a party, for the two-year period following the date of the agreement, in the administrative hearing commission or any federal or state court, any cause of action attacking the constitutionality or general validity of taxes imposed upon the person by **this** chapter [144]; provided, however, that such agreement shall not prevent the person from initiating claims such as those based upon clerical or mathematical errors or double payment and claims based upon the application to the person of exceptions or exemptions provided for by rule or statute and provided further that if, for such two-year period, the person obtains a refund or credit as a result of a decision that the taxes imposed upon the person by **this** chapter [144], are unconstitutional or of general invalidity, the person will take reasonable steps to return to identifiable purchasers from whom the person originally collected the tax under a written or oral contract the moneys refunded or credited and moneys not refunded or credited to identifiable purchasers, except those moneys resulting from vending machine sales, shall be returned to the state treasury less a ten percent fee to be retained by that person; and

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

this subdivision.

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

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

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

^T
Unofficial

Bill

Copy