

SECOND REGULAR SESSION

SENATE BILL NO. 909

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Read 1st time January 9, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2646S.011

AN ACT

To repeal sections 136.300 and 621.050, RSMo, relating to the burden of proof in tax cases, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 136.300 and 621.050, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 136.300 and 621.050, to read as follows:

136.300. 1. With respect to any issue relevant to ascertaining the tax liability of a taxpayer all laws of the state imposing a tax shall be strictly construed against the taxing authority in favor of the taxpayer. The director of revenue shall have the burden of proof with respect to any factual issue relevant to ascertaining the liability of a taxpayer only if:

(1) The taxpayer has produced evidence that establishes that there is a reasonable dispute with respect to the issue; and

(2) The taxpayer has adequate records of its transactions and provides the department of revenue reasonable access to these records; and

(3) In the case of a partnership, corporation or trust, the net worth of the taxpayer does not exceed seven million dollars and the taxpayer does not have more than five hundred employees at the time the final decision of the director of the department of revenue is issued].

2. This section shall [not] apply to any issue with respect to the applicability of any tax exemption or credit **only if the taxpayer has provided to the director of revenue complete, accurate and legible records in support of such exemption or credit. A taxpayer that has accepted a tax exemption certificate in good faith from a purchaser shall not be held liable for the tax if the certificate is determined to be invalid by the**

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

director of revenue and the director shall collect the tax from the purchaser that avoided the tax by using the invalid exemption certificate.

621.050. 1. Except as otherwise provided by law, any person or entity shall have the right to appeal to the administrative hearing commission from any finding, order, decision, assessment or additional assessment made by the director of revenue. Any person or entity who is a party to such a dispute shall be entitled to a hearing before the administrative hearing commission by the filing of a petition with the administrative hearing commission within thirty days after the decision of the director is placed in the United States mail or within thirty days after the decision is delivered, whichever is earlier. The decision of the director of revenue shall contain a notice of the right of appeal in substantially the following language:

If you were adversely affected by this decision, you may appeal to the administrative hearing commission. To appeal, you must file a petition with the administrative hearing commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission.

2. The procedures applicable to the processing of such hearings and determinations shall be those established by chapter 536, RSMo; provided that, any provision of law to the contrary notwithstanding, in any action before the commission arising **[under] pursuant to** chapter 144, RSMo, a seller may prove that a sale is exempt from taxation **[under] pursuant to** such chapter in accordance with proof admissible under the applicable rules of evidence. The administrative hearing commission shall maintain a transcript of all testimony and proceedings in hearings governed by this section, and copies thereof shall be made available to any interested person upon the payment of a fee which shall in no case exceed the reasonable cost of preparation and supply. Decisions of the administrative hearing commission **[under] pursuant to** this section shall be binding subject to appeal by either party. In the event the taxpayer prevails in any dispute **[under] pursuant to** this section, interest shall be allowed at the rate of six percent per annum upon the amount found to have been wrongfully collected or erroneously paid except for taxes paid under protest and held by the director in a special deposit which shall be paid as specified by section 144.700, RSMo. [In any proceeding before the administrative hearing commission under this section the burden of proof shall be on the taxpayer except for the following issues, as to which the burden of proof shall be on the director of revenue:

- (1) Whether the taxpayer has been guilty of fraud with attempt to evade tax;
- (2) Whether the petitioner is liable as the transferee of property of a taxpayer (but not to show that the taxpayer was liable for the tax); and
- (3) Whether the taxpayer is liable for any increase in a deficiency where such increase is asserted initially after the notice of deficiency was mailed and a protest filed, unless such

increase in deficiency is the result of a change or correction of federal taxable income required to be reported by the taxpayer, and of which change or correction the director of revenue had no notice or knowledge at the time he mailed the notice of deficiency.]

3. With respect to any issue relevant to ascertaining the tax liability of a taxpayer, the provisions of section 136.300, RSMo, regarding the burden of proof, shall apply.

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