

SECOND REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 1248

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR MATHEWSON.

Offered April 23, 2002.

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Taken up for Perfection April 24, 2002. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4939S.06P

AN ACT

To repeal sections 143.225, 143.261, 143.811 and 144.190, RSMo, and to enact in lieu thereof seven new sections relating to assessment, collection and refund procedures of taxes, with an emergency clause.

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

Section A. Sections 143.225, 143.261, 143.811 and 144.190, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 136.320, 143.225, 143.261, 143.811, 144.190, 1 and 2, to read as follows:

136.320. 1. Notwithstanding the provisions of any other law to the contrary, with respect to taxes administered by the department of revenue, an amnesty from the assessment or payment of all penalties, additions to tax, and interest shall apply with respect to unpaid taxes reported and paid in full from August 1, 2002, to September 30, 2002, regardless of whether previously assessed, except for penalties, additions to tax, and interest paid before August 1, 2002. The amnesty shall apply only to state tax liabilities due but unpaid on or before December 31, 2001, and shall not extend to any taxpayer who at the time of payment:

(1) Is a party to any criminal investigations or to any civil or criminal litigation that is pending in any court of the United States or this state for

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

nonpayment, delinquency, or fraud in relation to any state tax imposed by the state of Missouri;

- (2) Is a party to an appeal with the administrative hearing commission; or**
- (3) Is a party to a protest with the department of revenue.**

2. Upon written application by the taxpayer, on forms prescribed by the director of revenue, and upon compliance with the provisions of this section, the department of revenue shall not seek to collect any penalty, addition to tax, or interest which may be applicable. The department of revenue shall not seek civil or criminal prosecution for any taxpayer for the taxable period for which the amnesty has been granted.

3. Amnesty shall be granted only to those taxpayers who have applied for amnesty within the period stated in subsection 1 of this section, who have filed a tax return for each taxable period for which amnesty is requested, who have paid the entire balance due within sixty days of approval by the department of revenue, and who agree to comply with state tax laws for the next three years from the date of the agreement. No taxpayer shall be entitled to a waiver of any penalty, addition to tax, or interest pursuant to this section unless full payment of the tax due is made in accordance with rules and regulations established by the director of revenue.

4. A collection fee, not to exceed twenty-five percent of the delinquent tax amount, may be imposed but shall not be subject to waiver or abatement. The collection fee shall be in addition to all other penalties and interest otherwise authorized by law and may be imposed upon any tax liabilities eligible to be satisfied during the amnesty period established pursuant to subsection 1 of this section that are not satisfied during such period.

5. If a taxpayer elects to participate in the amnesty program established pursuant to this section as evidenced by full payment of the tax due as established by the director of revenue, that election shall constitute an express and absolute relinquishment of all administrative and judicial rights of appeal. No tax payment received pursuant to this section shall be eligible for refund or credit.

6. Nothing in this section shall be interpreted to disallow the department of revenue to adjust a taxpayer's tax return as a result of any state or federal audit.

7. The department may promulgate such rules or regulations or issue administrative guidelines as are necessary to administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are

nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

143.225. 1. The director of revenue, by regulation, may require an employer to timely remit the unpaid amount required to be deducted and withheld by section 143.191 at the end of any quarter-monthly period, only if the employer was required to deduct and withhold six thousand dollars or more in each of at least two months during the prior twelve months.

2. The director may increase the monthly requirement to more than six thousand dollars or otherwise narrow the application of the quarter-monthly remittance system authorized by this section. The director may not require the remittance of withheld taxes more often than monthly unless authorized by this section.

3. A remittance shall be timely if mailed as provided in section 143.851 within three banking days after the end of the quarter-monthly period or if received by the director or deposited in a depository designated by the director within four banking days after the end of the quarter-monthly period.

4. [The unpaid amount shall be after a reduction for the compensation provided by section 143.261.] **Beginning January 1, 2006, the unpaid amount shall be after a reduction for the compensation provided by section 143.261.**

5. The unpaid amount at the end of a quarter-monthly period shall not include unpaid amounts for any prior quarter-monthly period.

[5.] **6.** For purposes of this section, "quarter-monthly period" means:

- (1) The first seven days of a calendar month;
- (2) The eighth to fifteenth day of a calendar month;
- (3) The sixteenth to twenty-second day of a calendar month; and
- (4) The portion following the twenty-second day of a calendar month.

[6.] **7.** (1) In the case of an underpayment of any amount required to be paid pursuant to this section, an employer shall be liable for a penalty in lieu of all other penalties, interest or additions to tax imposed by this chapter for violating this section. The penalty shall be five percent of the amount of the underpayment determined under subdivision (2) of this subsection.

(2) The amount of the underpayment shall be the excess of

- (a) Ninety percent of the unpaid amount at the end of a quarter-monthly period, over
- (b) The amount, if any, of the timely remittance for the quarter-monthly period.

[7.] **8.** (1) The penalty with respect to any quarter-monthly period shall not be imposed if the employer's timely remittance for the quarter-monthly period equals or exceeds one-fourth of the average monthly withholding tax liability of the employer for the preceding calendar year. The month of highest liability and the month of lowest liability shall be excluded in

computing the average. This subdivision shall apply only to an employer who had a withholding tax liability for at least six months of the previous calendar year.

(2) The penalty shall not be imposed if the employer establishes that the failure to make a timely remittance of at least ninety percent was due to reasonable cause, and not due to willful neglect.

(3) The penalty shall not be imposed against any employer for the first two months the employer is obligated to make quarter-monthly remittance of withholding taxes.

[8.] **9.** Tax amounts remitted under this section shall be treated as payments on the employer's monthly return required by subsection 2 of section 143.221. Tax amounts remitted under this section shall be deemed to have been paid on the last day prescribed for filing the return. The preceding sentence shall apply in computing [compensation under section 143.261,] interest, penalties and additions to tax and for purposes of all sections of chapter 143, except this section. **Beginning January 1, 2006, such computation shall include compensation pursuant to section 143.261.**

143.261. Beginning January 1, 2006, for every remittance to the director of revenue made on or before the date the remittance becomes due, the employer, other than the United States and its agencies, the state of Missouri and political subdivisions thereof, may deduct and retain the following percentages of the total amount of tax withheld and paid in each calendar year:

(1) Two percent of five thousand dollars or less;

(2) One percent of amount collected in excess of five thousand dollars and up to and including ten thousand dollars;

(3) One-half percent of amount collected in excess of ten thousand dollars.

143.811. 1. Under regulations prescribed by the director of revenue, interest shall be allowed and paid at the rate determined by section 32.065, RSMo, on any overpayment in respect of the tax imposed by sections 143.011 to 143.996; except that, where the overpayment resulted from the filing of an amendment of the tax by the taxpayer after the last day prescribed for the filing of the return, interest shall be allowed and paid at the rate of six percent per annum. With respect to the part of an overpayment attributable to a deposit made pursuant to subsection 2 of section 143.631, interest shall be paid thereon at the rate in section 32.065, RSMo, from the date of the deposit to the date of refund. No interest shall be allowed or paid if the amount thereof is less than one dollar.

2. For purposes of this section:

(1) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer;

(2) Any tax paid by the taxpayer before the last day prescribed for its payment, any

income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year to which such amount constitutes a credit or payment.

3. For purposes of this section with respect to any withholding tax:

(1) 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 considered filed April fifteenth of such succeeding calendar year; and

(2) If a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be considered paid on April fifteenth of such succeeding calendar year.

4. If any overpayment of tax imposed by sections 143.011 to 143.996 is refunded within four months after the last date prescribed (or permitted by extension of time) for filing the return of such tax or within four months after the return was filed, whichever is later, no interest shall be allowed under this section on overpayment.

5. Any overpayment resulting from a carryback, including a net operating loss and a corporate capital loss, shall be deemed not to have been made prior to the close of the taxable year in which the loss arises.

6. Any overpayment resulting from a carryback of a tax credit, including but not limited to the tax credits provided in sections 253.557 and 348.432, RSMo, shall be deemed not to have been made prior to the close of the taxable year in which the tax credit was authorized.

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

2. If any [tax,] penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.510, and the balance, with interest as determined by section 32.065, RSMo, shall be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from date of overpayment.

3. Except as provided in subsection 6 or 7 of this section, if any tax was paid more than once, was incorrectly collected, or was incorrectly computed, such sum

shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.510, or refunded, with interest as determined by section 32.065, RSMo, to the person legally obligated to remit the tax, only if duplicate copies of a claim for refund are filed within three years from date of overpayment and:

(1) Where the claim for refund is over one thousand dollars, the person legally obligated to remit the tax demonstrates to the satisfaction of the director or revenue that all incorrectly collected or incorrectly computed amounts were or will be refunded or credited to every purchaser that originally paid the tax;

(2) Refunds under one thousand dollars may not exceed one thousand dollars in the aggregate over any five year time frame; or

(3) In lieu of subdivisions (1) and (2) of this subsection and regardless of the amount of refund claimed, the person legally obligated to remit the tax submits to the director amended sales tax returns showing the correct amount of gross receipts for each reporting period originally filed and proves to the director's satisfaction that the tax originally reported and remitted to the director was paid by such person claiming the refund or credit and was not collected from purchasers.

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

[4.] **5.** Notwithstanding the provisions of this section, the director of revenue shall authorize direct-pay agreements to purchasers which have annual purchases in excess of seven hundred fifty thousand dollars pursuant to rules and regulations adopted by the director of revenue. For the purposes of such direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 92 and 94, RSMo, shall be remitted based upon the location of the place of business of the purchaser.

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

7. Any taxpayer in the State of Missouri may sue the state on behalf of a class

of all taxpayers for refunds of sales taxes which have been incorrectly or illegally collected in the same manner as is permitted under article X, Sections 18(e)(5) and 23 of the Missouri Constitution.

Section 1. Within sixty days of the enactment of this act, the state gaming commission shall provide the general assembly with a report wherein it shall indicate the extent to which the admission fee to excursion gambling boats must be increased to provide sufficient revenue to enable the general assembly to authorize a three percent pay increase for all state employees. The state gaming commission shall make a diligent effort to utilize presently available information from various state entities in order to minimize the costs of this report.

Section 2. The aggregate increase in revenue produced by the provisions of this act, calculated in comparison to the revenue produced in the immediately prior full fiscal year by the same provisions of law prior to their modification by this act, shall be considered part of general revenue, and shall be considered as a source of revenue to fund section 163.031, RSMo.

[143.261. For every remittance to the director of revenue made on or before the date the remittance becomes due, the employer, other than the United States and its agencies, the state of Missouri and political subdivisions thereof, may deduct and retain the following percentages of the total amount of tax withheld and paid in each calendar year:

- (1) Two percent of five thousand dollars or less;
- (2) One percent of amount collected in excess of five thousand dollars and up to and including ten thousand dollars;
- (3) One-half percent of amount collected in excess of ten thousand dollars.]

Section B. Because of the immediate need to secure adequate state revenue this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.