

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 11
92ND GENERAL ASSEMBLY

Reported from the Committee on Tax Policy, May 5, 2003, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 11 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0345L.08C

AN ACT

To repeal sections 34.040, 71.620, 92.250, 143.121, 143.124, 143.181, 143.225, 143.782, 144.025, 144.081, 338.501, 338.515, 338.520, 338.525, 338.545, and 338.550, RSMo, and to enact in lieu thereof nineteen new sections relating to taxation, with an emergency clause and a termination date for a certain section.

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

Section A. Sections 34.040, 71.620, 92.250, 143.121, 143.124, 143.181, 143.225, 143.782, 144.025, 144.081, 338.501, 338.515, 338.520, 338.525, 338.545, and 338.550, RSMo, are repealed and nineteen new sections enacted in lieu thereof, to be known as sections 21.810, 34.040, 71.620, 92.250, 143.121, 143.124, 143.181, 143.225, 143.782, 144.025, 144.049, 144.081, 313.826, 338.515, 338.520, 338.550, 488.5028, 1, and 2, to read as follows:

21.810. 1. There is established a permanent joint committee of the general assembly to be known as the "Joint Committee on Tax Policy" which shall be composed of five members of the senate, appointed by the president pro tem of the senate, and five members of the house of representatives, appointed by the speaker of the house of representatives. A majority of the members of the committee shall constitute a quorum. The members shall annually select one of the members to be the chair and one of the members to be the vice chair. The speaker of the house of representatives and the president pro tem of the senate shall appoint the respective

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

majority members. The minority leader of the house and the minority leader of the senate shall appoint the respective minority members. The members shall receive no additional compensation, but shall be reimbursed for actual and necessary expenses incurred by them in the performance of their duties. No major party shall be represented on the committee by more than three members from the senate nor by more than three members from the house. The committee is authorized to meet and act year round and to employ the necessary personnel within the limits of appropriations. The staff of the committee on legislative research, house research, and senate research shall provide necessary clerical, research, fiscal, and legal services to the committee, as the committee may request.

2. It shall be the duty of the committee:

(1) To make a continuing study and analysis of the current and proposed tax policy of this state as it relates to:

(a) Fairness and equity;

(b) True economic impact;

(c) Burden on individuals and businesses;

(d) Effectiveness of tax expenditures;

(e) Impact on political subdivisions of this state;

(f) Agreements and contracts with the federal government, other states and territories, political subdivisions, and private entities relating to the collection and administration of state and local taxes and fees;

(g) Compliance with the state and United States Constitution and federal and international law; and

(h) The effects of interstate commerce;

(2) To make a continuing study and review of the department of revenue, the department of economic development, the state tax commission, and any other state agency, commission, or state executive office responsible for the administration of tax policies, including the internal organization, management, powers, duties and functions of the departments, commissions, and offices;

(3) To study the effects of the coupling or decoupling with the federal income tax code as it relates to the state income tax;

(4) To make recommendations, as and when the committee deems fit, to the general assembly for legislative action or to report findings and to the departments, commissions, and offices for administrative or procedural changes; and

(5) To study the effects of a sales tax holiday.

3. All state departments, commissions, and offices responsible for the administration of tax policies shall cooperate with and assist the committee in the performance of its duties and

shall make available all books, records and information requested, except individually identifiable information regarding a specific taxpayer. The committee may also consult with public and private universities and academies, public and private organizations, and private citizens in the performance of its duties. The committee may contract with public and private entities, within the limits of appropriation, for analysis and study of current or proposed changes to state and local tax policy. The committee shall have the power to subpoena witnesses, take testimony under oath, compel the attendance of witnesses, the giving of testimony and the production of records.

34.040. 1. All purchases in excess of three thousand dollars shall be based on competitive bids, except as otherwise provided in this chapter.

2. On any purchase where the estimated expenditure shall be twenty-five thousand dollars or over, except as provided in subsection 5 of this section, the commissioner of administration shall:

(1) Advertise for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders and may advertise in at least two weekly minority newspapers and may provide such information through an electronic medium available to the general public at least five days before bids for such purchases are to be opened. Other methods of advertisement, which may include minority business purchase councils, however, may be adopted by the commissioner of administration when such other methods are deemed more advantageous for the supplies to be purchased;

(2) Post a notice of the proposed purchase in his or her office; and

(3) Solicit bids by mail or other reasonable method generally available to the public from prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the commissioner of administration so as to reach such office before the time set for opening bids.

3. The contract shall be let to the lowest and best bidder. The commissioner of administration shall have the right to reject any or all bids and advertise for new bids, or purchase the required supplies on the open market if they can be so purchased at a better price. When bids received pursuant to this section are unreasonable or unacceptable as to terms and conditions, noncompetitive, or the low bid exceeds available funds and it is determined in writing by the commissioner of administration that time or other circumstances will not permit the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this section, provided that each responsible bidder who submitted such bid under the original solicitation is notified of the determination and is given a reasonable opportunity to modify their bid and submit a best and final bid to the state. In cases where the bids received are noncompetitive or the low bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

4. All bids shall be based on standard specifications wherever such specifications have been approved by the commissioner of administration. The commissioner of administration shall make rules governing the delivery, inspection, storage and distribution of all supplies so purchased and governing the manner in which all claims for supplies delivered shall be submitted, examined, approved and paid. The

commissioner shall determine the amount of bond or deposit and the character thereof which shall accompany bids or contracts.

5. The department of natural resources may, without the approval of the commissioner of administration required pursuant to this section, enter into contracts of up to five hundred thousand dollars to abate illegal waste tire sites pursuant to section 260.276, RSMo, when the director of the department determines that urgent action is needed to protect public health, safety, natural resources or the environment. The department shall follow bidding procedures pursuant to this section and may promulgate rules necessary to establish such procedures. 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, 1999, shall be invalid and void.

6. The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise.

71.620. 1. Hereafter no person following for a livelihood the profession or calling of minister of the gospel, duly accredited Christian Science practitioner, teacher, professor in a college, priest, lawyer, certified public accountant, dentist, chiropractor, optometrist, chiropodist, [or] physician or surgeon **or investment funds service corporation as defined in section 143.451, RSMo**, in this state, shall be taxed or made liable to pay any municipal or other corporation tax or license fee of any description whatever for the privilege of following or carrying on such profession or calling, any law, ordinance or charter to the contrary notwithstanding.

2. No person following for a livelihood the profession of insurance agent or broker, veterinarian, architect, professional engineer, land surveyor, auctioneer, or real estate broker or salesman in this state, shall be taxed or made liable to pay any municipal or other corporation tax or license fee for the privilege of following or carrying on his profession by a municipality unless that person maintains a business office within that municipality.

92.250. The earnings or net profits subject to tax of any nonresident individual, of any association or business conducted by nonresidents, or of any corporation, in any case in which the work done, services performed or rendered, and business or other activities conducted or done, performed, rendered or

conducted both within and without the city may be ascertained by formulae set forth in any ordinance enacted pursuant to sections 92.210 to 92.300 or prescribed by rules or regulations adopted pursuant to the ordinance; **provided, however that in determining its net profits subject to tax, and irrespective of any other formulae set forth in any ordinance enacted, any corporation shall be permitted to utilize the apportionment method used to determine its Missouri taxable income pursuant to section 143.451, RSMo.**

143.121. 1. The Missouri adjusted gross income of a resident individual shall be [his] **the taxpayer's** federal adjusted gross income subject to the modifications in this section.

2. There shall be added to [his] **the taxpayer's** federal adjusted gross income:

(a) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit;

(b) Interest on certain governmental obligations excluded from federal gross income by Section 103 of the Internal Revenue Code. The previous sentence shall not apply to interest on obligations of the state of Missouri or any of its political subdivisions or authorities and shall not apply to the interest described in subdivision (a) of subsection 3 of this section. The amount added [under] **pursuant to** this paragraph shall be reduced by the amounts applicable to such interest that would have been deductible in computing the taxable income of the taxpayer except only for the application of Section 265 of the Internal Revenue Code. The reduction shall only be made if it is at least five hundred dollars;

(c) The amount of any deduction that is included in the computation of federal taxable income [under] **pursuant to** Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002 to the extent the amount deducted relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent the amount deducted exceeds the amount that would have been deductible [under] **pursuant to** Section 168 of the Internal Revenue Code of 1986 as in effect on January 1, 2002; and

(d) The amount of any deduction that is included in the computation of federal taxable income for net operating loss allowed by Section 172 of the Internal Revenue Code of 1986, as amended, [except for any deduction] **other than the deduction allowed by Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as amended,** for a net operating loss the taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a period [not to exceed] **of more than** twenty years and carries backward for [not] more than two years. **Any amount of net operating loss taken against federal income taxes but disallowed against Missouri income taxes pursuant to this paragraph since July 1, 2002, may be carried forward and taken against any loss on the Missouri income tax return for a period of not more than twenty years from the year of the initial loss.**

3. There shall be subtracted from [his] **the taxpayer's** federal adjusted gross income the following amounts to the extent included in federal adjusted gross income:

(a) Interest or dividends on obligations of the United States and its territories and possessions or

of any authority, commission or instrumentality of the United States to the extent exempt from Missouri income taxes [under] **pursuant to** the laws of the United States. The amount subtracted [under] **pursuant to** this paragraph shall be reduced by any interest on indebtedness incurred to carry the described obligations or securities and by any expenses incurred in the production of interest or dividend income described in this paragraph. The reduction in the previous sentence shall only apply to the extent that such expenses including amortizable bond premiums are deducted in determining [his] **the taxpayer's** federal adjusted gross income or included in [his] **the taxpayer's** Missouri itemized deduction. The reduction shall only be made if the expenses total at least five hundred dollars;

(b) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax purposes on December 31, 1972, that does not exceed such difference in basis. If a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to one-half of such portion of the gain;

(c) The amount necessary to prevent the taxation [under sections 143.011 to 143.996] **pursuant to chapter 143** of any annuity or other amount of income or gain which was properly included in income or gain and was taxed [under] **pursuant to** the laws of Missouri for a taxable year prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income;

(e) The amount of any state income tax refund for a prior year which was included in the federal adjusted gross income;

(f) The portion of capital gain specified in [subsection 3 of section 144.747] **section 135.357**, RSMo, that would otherwise be included in federal adjusted gross income; and

(g) The amount that would have been deducted in the computation of federal taxable income [under] **pursuant to** Section 168 of the Internal Revenue Code as in effect on January 1, 2002, to the extent that amount relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent that amount exceeds the amount actually deducted [under] **pursuant to** Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002.

4. There shall be added to or subtracted from [his] **the taxpayer's** federal adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment provided in section 143.351. 5. There shall be added to or subtracted from [his] **the taxpayer's** federal adjusted gross income the modifications provided in section 143.411.

143.124. 1. Other provisions of law to the contrary notwithstanding, the total amount of all annuities, pensions, or retirement allowances above the amount of six thousand dollars annually provided by any law of this state, the United States, or any other state to any person except as provided in subsection 4 of this section, shall be subject to tax pursuant to the provisions of this chapter, in the same

manner, to the same extent and under the same conditions as any other taxable income received by the person receiving it. For purposes of this section, annuity, pension, or retirement allowance shall be defined as an annuity, pension or retirement allowance provided by the United States, this state, any other state or any political subdivision or agency or institution of this or any other state. For all tax years beginning on or after January 1, 1998, for purposes of this section, annuity, pension or retirement allowance shall be defined to include 401(k) plans, deferred compensation plans, self-employed retirement plans, also known as Keogh plans, annuities from a defined pension plan and individual retirement arrangements, also known as IRAs, as described in the Internal Revenue Code, but not including Roth IRAs, as well as an annuity, pension or retirement allowance provided by the United States, this state, any other state or any political subdivision or agency or institution of this or any other state. An individual taxpayer shall only be allowed a maximum deduction of six thousand dollars pursuant to this section. Taxpayers filing combined returns shall only be allowed a maximum deduction of six thousand dollars for each taxpayer on the combined return.

2. For the period beginning July 1, 1989, and ending December 31, 1989, there shall be subtracted from Missouri adjusted gross income for that period, determined pursuant to section 143.121, the first three thousand dollars of retirement benefits received by each taxpayer:

(1) If the taxpayer's filing status is single, head of household or qualifying widow(er) and the taxpayer's Missouri adjusted gross income is less than twelve thousand five hundred dollars; or

(2) If the taxpayer's filing status is married filing combined and their combined Missouri adjusted gross income is less than sixteen thousand dollars; or

(3) If the taxpayer's filing status is married filing separately and the taxpayer's Missouri adjusted gross income is less than eight thousand dollars.

3. For the tax years beginning on or after January 1, 1990, there shall be subtracted from Missouri adjusted gross income, determined pursuant to section 143.121, a maximum of the first six thousand dollars of retirement benefits received by each taxpayer from sources other than privately funded sources, and for tax years beginning on or after January 1, 1998, there shall be subtracted from Missouri adjusted gross income, determined pursuant to section 143.121, a maximum of the first one thousand dollars of any retirement allowance received from any privately funded source for tax years beginning on or after January 1, 1998, but before January 1, 1999, and a maximum of the first three thousand dollars of any retirement allowance received from any privately funded source for tax years beginning on or after January 1, 1999, but before January 1, 2000, and a maximum of the first four thousand dollars of any retirement allowance received from any privately funded source for tax years beginning on or after January 1, 2000, but before January 1, 2001, and a maximum of the first five thousand dollars of any retirement allowance received from any privately funded source for tax years beginning on or after January 1, 2001, but before January 1, 2002, and a maximum of the first six thousand dollars of any retirement allowance received from any privately funded sources for tax years beginning on or after January 1, 2002. A taxpayer shall be entitled

to the maximum exemption provided by this subsection:

(1) If the taxpayer's filing status is single, head of household or qualifying widow(er) and the taxpayer's Missouri adjusted gross income is less than twenty-five thousand dollars; or

(2) If the taxpayer's filing status is married filing combined and their combined Missouri adjusted gross income is less than thirty-two thousand dollars; or

(3) If the taxpayer's filing status is married filing separately and the taxpayer's Missouri adjusted gross income is less than sixteen thousand dollars.

4. If a taxpayer's adjusted gross income exceeds the adjusted gross income ceiling for such taxpayer's filing status, as provided in subdivisions (1), (2) and (3) of subsection 3 of this section, such taxpayer shall be entitled to an exemption equal to the greater of zero or the maximum exemption provided in subsection 3 of this section reduced by one dollar for every dollar such taxpayer's income exceeds the ceiling for his or her filing status.

5. For purposes of this section, any Social Security benefits otherwise included in Missouri adjusted gross income shall be subtracted; but Social Security benefits shall not be subtracted for purposes of other computations pursuant to this chapter, and are not to be considered as retirement benefits for purposes of this section.

6. The provisions of subdivisions (1) and (2) of subsection 3 of this section shall apply during all tax years in which the federal Internal Revenue Code provides exemption levels for calculation of the taxability of Social Security benefits that are the same as the levels in subdivisions (1) and (2) of subsection 3 of this section. If the exemption levels for the calculation of the taxability of Social Security benefits are adjusted by applicable federal law or regulation, the exemption levels in subdivisions (1) and (2) of subsection 3 of this section shall be accordingly adjusted to the same exemption levels.

7. The portion of a taxpayer's lump sum distribution from an annuity or other retirement plan not otherwise included in Missouri adjusted gross income as calculated pursuant to this chapter, but subject to taxation under Internal Revenue Code Section 402 shall be taxed in an amount equal to ten percent of the taxpayer's federal liability on such distribution for the same tax year.

8. For purposes of this section, retirement benefits received shall not include any withdrawals from qualified retirement plans which are subsequently rolled over into another retirement plan.

9. The exemptions provided for in this section shall not affect the calculation of the income to be used to determine the property tax credit provided in sections 135.010 to 135.035, RSMo.

10. The exemptions provided for in this section shall apply to any annuity, pension, or retirement allowance as defined in subsection 1 of this section to the extent that such amounts are included in the taxpayer's federal adjusted gross income and not otherwise deducted from the taxpayer's federal adjusted gross income in the calculation of Missouri taxable income. This subsection shall not apply to any individual who qualifies under federal guidelines to be one hundred percent disabled.

143.181. 1. The Missouri nonresident adjusted gross income shall be that part of the nonresident individual's federal adjusted gross income derived from sources within Missouri, as modified in the same manner as set forth in section 143.121 with respect to resident individuals. It shall be the sum of:

(1) The net amount of items of income, gain, loss, and deduction entering into his **or her** federal adjusted gross income which are derived from or connected with sources in this state including

(a) [His] **The individual's** distributive share of partnership income and deductions determined under section 143.421, and

(b) [His] **The individual's** share of estate or trust income and deductions determined under section 143.391, and

(c) [His] **The individual's** pro rata share of S corporation income and deductions determined under subsection 3 of section 143.471; and

(2) The portion of the modifications described in section 143.121 which relate to income derived from sources in this state, including any modifications attributable to him **or her** as a partner.

2. Items of income, gain, loss, and deduction derived from or connected with sources within this state are those items attributable to:

(1) The ownership or disposition of any interest in real or tangible personal property in this state; [and]

(2) A business, trade, profession, or occupation carried on in this state;

(3) Winnings from a wager placed in a lottery conducted by the state lottery commission, if the proceeds from such wager are required, pursuant to the Internal Revenue Code of 1986, as amended, or regulations adopted thereunder, to be reported by the state lottery commission to the Internal Revenue Service; and

(4) Winnings from any other wager placed in this state or from any wagering transaction, gaming activity, or gambling activity in this state, if the proceeds from such wager, wagering transaction, gaming activity, or gambling activity are required, pursuant to the Internal Revenue Code of 1986, as amended, or regulations adopted thereunder, to be reported by the payer to the Internal Revenue Service.

3. Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from sources within this state only to the extent that such income is from:

(1) Property employed in a business, trade, profession, or occupation carried on in this state;

(2) Winnings from a wager placed in a lottery conducted by the state lottery commission, if the proceeds from such wager are required, pursuant to the Internal Revenue Code of 1986, as amended, or regulations adopted thereunder, to be reported by the state lottery commission to the Internal Revenue Service; and

(3) Winnings from any other wager placed in this state or from any wagering transaction,

gaming activity, or gambling activity in this state, if the proceeds from such wager, wagering transaction, gaming activity, or gambling activity are required, pursuant to the Internal Revenue Code of 1986, as amended, or regulations adopted thereunder, to be reported by the payer to the Internal Revenue Service.

4. Deductions with respect to capital losses, net long-term capital gains, and net operation losses shall be based solely on income, gains, losses, and deductions derived from sources within this state in the same manner as the corresponding federal deductions under regulations to be prescribed by the director of revenue.

5. If a business, trade, profession, or occupation is carried on partly within and partly without this state, the items of income and deduction derived from or connected with sources within this state shall be determined by apportionment and allocation under regulations to be prescribed by the director of revenue.

6. Compensation paid by the United States for service in the armed forces of the United States performed by a nonresident shall not constitute income derived from sources within this state.

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

5. 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. (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. (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. 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.

9. The director of revenue may prescribe the use of an electronic funds payment system for the payment of withholding taxes by any employer subject to the requirement of quarter-monthly remittance as provided in this section.

143.782. As used in sections 143.782 to 143.788, unless the context clearly requires otherwise, the following terms shall mean and include:

(1) **"Court", the supreme court, court of appeals, or any circuit court of the state;**

(2) "Debt", any sum due and legally owed to any state agency which has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for that sum, **court costs as defined in section 488.010, RSMo, fines and fees owed**, or any support obligation which is being enforced by the division of family services on behalf of a person who is receiving support enforcement services pursuant to section 454.425, RSMo;

[(2)] (3) "Debtor", any individual, sole proprietorship, partnership, corporation or other legal entity owing a debt;

[(3)] (4) "Department", the department of revenue of the state of Missouri;

[(4)] (5) "Refund", the Missouri income tax refund which the department determines to be due any taxpayer pursuant to the provisions of this chapter. The amount of a refund shall not include any senior citizens property tax credit provided by sections 135.010 to 135.035, RSMo; and

[(5)] (6) "State agency", any department, division, board, commission, office, or other agency of

the state of Missouri, including public community college district.

144.025. 1. Notwithstanding any other provisions of law to the contrary, in any retail sale other than retail sales governed by [subsection 3] **subsections 4 and 5** of this section, where any article **on which sales or use tax has been paid, credited, or otherwise satisfied or which was exempted or excluded from sales or use tax** is taken in trade as a credit or part payment on the purchase price of the article being sold, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the actual allowance made for the article traded in or exchanged, if there is a bill of sale or other record showing the actual allowance made for the article traded in or exchanged. **Where the article being traded in for credit or part payment is a motor vehicle, trailer, boat, or outboard motor the person trading in the article must be the owner or holder of a properly assigned certificate of ownership.** Where the purchaser of a motor vehicle, trailer, boat or outboard motor receives a rebate from the seller or manufacturer, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the amount of the rebate, if there is a bill of sale or other record showing the actual rebate given by the seller or manufacturer. Where the trade-in or exchange allowance plus any applicable rebate exceeds the purchase price of the purchased article there shall be no sales or use tax owed. This section shall also apply to motor vehicles, trailers, boats, and outboard motors sold by the owner or holder of the properly assigned certificate of ownership if the seller purchases or contracts to purchase a subsequent motor vehicle, trailer, boat, or outboard motor within one hundred eighty days before or after the date of the sale of the original article and a notarized bill of sale showing the paid sale price is presented to the department of revenue at the time of licensing. A copy of the bill of sale shall be left with the licensing office. Where the subsequent motor vehicle, trailer, boat, or outboard motor is titled more than one hundred eighty days after the sale of the original motor vehicle, trailer, boat, or outboard motor, the allowance pursuant to this section shall be made if the person titling such article establishes that the purchase or contract to purchase was finalized prior to the expiration of the one hundred eighty-day period.

2. As used in this section, the term "boat" includes all motorboats and vessels, as the terms "motorboat" and "vessel" are defined in section 306.010, RSMo.

3. As used in this section, the term "motor vehicle" includes motor vehicles as defined in section 301.010, RSMo, recreational vehicles as defined in section 700.010, RSMo, or a combination of a truck as defined in section 301.010, RSMo, and a trailer as defined in section 301.010, RSMo.

4. The provisions of subsection 1 of this section shall not apply to retail sales of manufactured homes in which the purchaser receives a document known as the "Manufacturer's Statement of Origin" for purposes of obtaining a title to the manufactured home from the department of revenue of this state or from the appropriate agency or officer of any other state.

5. Any purchaser of a motor vehicle or trailer used for agricultural use by the purchaser shall be allowed to use as an allowance to offset the sales and use tax liability towards the

purchase of the motor vehicle or trailer any grain or livestock produced or raised by the purchaser. The director of revenue may prescribe forms for compliance with this subsection.

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

(1) "Clothing", any article of wearing apparel, including footwear, intended to be worn on or about the human body. The term shall include but not be limited to cloth and other material used to make school uniforms or other school clothing. Items normally sold in pairs shall not be separated to qualify for the exemption. The term shall not include watches, watchbands, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, or belt buckles; and

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

(3) "School supplies", any item normally used by students in a standard classroom for educational purposes, including but not limited to, textbooks, notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, back packs, handheld calculators, chalk, maps, and globes. The term shall not include watches, radios, CD players, headphones, sporting equipment, portable or desktop telephones, copiers or other office equipment, furniture, or fixtures. School supplies shall also include computer software having a taxable value of two hundred dollars or less.

2. There is hereby specifically exempted from state sales tax law all retail sales of any article of clothing having a taxable value of one hundred dollars or less, all retail sales of school supplies not to exceed fifty dollars per purchase, all computer software with a taxable value of two hundred dollars or less, and all retail sales of personal computers or computer peripheral devices not to exceed two thousand dollars, during a three-day period beginning at 12:01 a.m. on the second Friday in August and ending at midnight on the Sunday following.

3. The governing body of any political subdivision may adopt an ordinance to exempt such sales that occur within the political subdivision on the portion of the local sales tax levy applicable to the political subdivision during the period specified in subsection 2 of this section. Upon adoption of such an ordinance, the governing body of the political subdivision shall provide written notice to the department of revenue of the substance of the ordinance. In the event such notification is not received by the department of revenue before the first day of July in any given year, the ordinance shall not become effective before the first day of September in the year the notice is received.

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

fairgrounds.

5. The provisions of this section shall expire July 1, 2005.

144.081. 1. The director of revenue, by regulation, may require a seller to timely remit the unpaid state sales tax for each quarter-monthly period, only if the seller's aggregate state sales tax was ten thousand dollars or more in each of at least six months during the prior twelve months. The term "state sales tax" as used in this section means the tax imposed by sections 144.010 to 144.510 and the additional sales tax imposed by sections 43(a) to 43(c) and 47(a) to 47(c) of article IV of the Missouri Constitution and does not include any sales taxes imposed by political subdivisions of the state pursuant to other provisions of law.

2. The director may increase the monthly requirement to more than ten 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 state sales taxes more often than monthly unless authorized by this section.

3. A remittance shall be timely if mailed as provided in section 143.851, RSMo, 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 144.140. The unpaid amount at the end of a quarter-monthly period shall not include unpaid amounts for a prior quarter-monthly period only if the seller made a remittance with respect to the prior quarter-monthly period. The excess, if any, of a remittance over the actual amount for a period shall be applied in order of time to each of the seller's succeeding remittances with respect to the same return period.

5. 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 of a calendar month.

6. (1) In the case of an underpayment of any amount required to be paid pursuant to this section, a seller 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. (1) The penalty with respect to any quarter-monthly period shall not be imposed if the seller's timely remittance for the quarter-monthly period equals or exceeds one-fourth of the average monthly state sales tax liability of the seller 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 a seller who had a state sales tax liability for at least six months of the previous calendar year.

(2) The penalty shall not be imposed if the seller 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 seller for the first two months the seller is obligated to make quarter-monthly remittance of state sales taxes.

8. Tax amounts remitted under this section shall be treated as payments on the seller's monthly return required by sections 144.080 and 144.090. 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 144.140, interest, penalties and additions to tax and for purposes of all sections of this chapter, except this section.

9. The director of revenue may prescribe the use of an electronic funds payment system for the payment of sales and use taxes by any seller subject to the requirement of quarter-monthly remittance as provided in this section.

313.826. Each excursion gambling boat licensed by the commission shall withhold for state income tax purposes from winnings of twelve hundred dollars or more an amount equal to four percent of the prize. Withholdings made pursuant to this section shall be subject to the withholding tax provisions pursuant to sections 143.191 to 143.261, RSMo, including section 143.261, RSMo.

338.515. The tax imposed by sections 338.500 to 338.550 shall become effective July 1, [2002] **2003**, or the effective date of sections 338.500 to 338.550, whichever is later.

338.520. 1. The determination of the amount of tax due shall be the monthly gross retail prescription receipts reported to the department of revenue multiplied by the tax rate established by rule by the department of social services. Such tax rate may be a graduated rate based on gross retail prescription receipts and shall not exceed a rate of six percent per annum of gross retail prescription receipts; provided, that such rate shall not exceed one-tenth of one percent per annum in the case of licensed pharmacies of which eighty percent or more of such gross receipts are attributable to prescription drugs that are delivered directly to the patient via common carrier, by mail, or a courier service.

2. The department of social services shall notify each licensed retail pharmacy of the amount of tax due. Such amount may be paid in increments over the balance of the assessment period.

3. The department of social services may adjust the tax rate quarterly on a prospective basis. The department of social services may adjust more frequently for individual providers if there is a substantial and statistically significant change in their pharmacy sales characteristics. The department of social services may define such adjustment criteria by rule.

338.550. 1. The pharmacy tax required by sections 338.500 to 338.550 shall [be the subject of an annual health care cost impact study commissioned by the department of insurance to be completed

prior to or on January 1, 2003, and each year the tax is in effect. The report shall be submitted to the speaker of the house, president pro tem of the senate, and the governor. This study shall employ an independent economist and an independent actuary paid for by the state's department of social services. The department shall seek the advice and input from the department of social services, business health care purchasers, as well as health care insurers in the selection of the economist and actuary. This study shall assess the degree of health care costs shifted to individual Missourians and individual and group health plans resulting from this tax. 2.] **expire ninety days after any one or more of the following conditions are met:**

(1) The aggregate dispensing fee paid to pharmacists per prescription is less than the fiscal year 2003 dispensing fees reimbursement amount; or

(2) The formula used to calculate the reimbursement for products dispensed by pharmacies is changed resulting in lower reimbursement in the aggregate than provided in fiscal year 2003; or

(3) July 1, 2005.

The director of the department of social services shall notify the revisor of statutes of the expiration date as provided in this subsection. The provisions of sections 338.500 to 338.550 shall not apply to pharmacies domiciled or headquartered outside this state which are engaged in prescription drug sales that are delivered directly to patients within this state via common carrier, mail or a carrier service.

[3.] **2.** Sections 338.500 to 338.550 shall expire on June 30, [2003] **2005.**

488.5028. 1. If a person fails to pay court costs, fines, fees, or other sums ordered by a court to be paid to the state or political subdivision, a court may report any such delinquencies in excess of twenty-five dollars to the office of state courts administrator and request that the state courts administrator seek a setoff of an income tax refund. The state courts administrator shall set guidelines necessary to effectuate the purpose of the offset program.

2. The office of state courts administrator shall provide the department of revenue with the information necessary to identify each debtor whose refund is sought to be setoff and the amount of the debt or debts owed by each such debtor who is entitled to a tax refund in excess of twenty-five dollars.

3. The department of revenue shall notify the office of state courts administrator that a refund has been setoff on behalf of a court and shall certify the amount of such setoff, which shall not exceed the amount of the claimed debt certified. When the refund owed exceeds the claimed debt, the department of revenue shall send the excess amount to the debtor within a reasonable time after such excess is determined.

4. The office of state courts administrator shall notify the debtor by mail that a setoff has

been sought. The notice shall contain the following:

- (1) The name of the debtor;
- (2) The manner in which the debt arose;
- (3) The amount of the claimed debt and the department's intention to setoff the refund against the debt;
- (4) The amount, if any, of the refund due after setoff of the refund against the debt; and
- (5) The right of the debtor to apply in writing to the court originally requesting setoff for review of the setoff because the debt was previously satisfied.

Any debtor applying to the court for review of the setoff shall file a written application within thirty days of the date of mailing of the notice and send a copy of the application to the office of state courts administrator. The application for review of the setoff shall contain the name of the debtor, the case name and number from which the debt arose, and the grounds for review. The court may upon application, or on its own motion, hold a hearing on the application. The hearing shall be ancillary to the original action with the only matters for determination whether the refund setoff was appropriate because the debt was unsatisfied at the time the court reported the delinquency to the office of state courts administrator and that the debt remains unsatisfied. In the case of a joint or combined return, the notice sent by the department shall contain the name of the nonobligated taxpayer named in the return, if any, against whom no debt is claimed. The notice shall state that as to the nonobligated taxpayer that no debt is owed and that the taxpayer is entitled to a refund regardless of the debt owed by such other person or persons named on the joint or combined return. The nonobligated taxpayer may seek a refund as provided in section 143.784, RSMo.

5. Upon receipt of funds transferred from the department of revenue to the office of state courts administrator pursuant to a refund setoff, the state courts administrator shall deposit such funds in the state treasury to be held in an escrow account, which is hereby established. Interest earned on those funds shall be credited to the escrow account and used to offset administrative expenses. If a debtor files with a court an application for review, the state courts administrator shall hold such sums in question until directed by such court to release the funds. If no application for review is filed, the state courts administrator shall, within forty-five days of receipt of funds from the department, send to the clerk of the court in which the debt arose such sums as are collected by the department of revenue for credit to the debtor's account.

Section 1. 1. As a condition of continued employment with the state of Missouri, all persons employed full-time, part-time, or on a temporary or contracted basis by the executive, legislative, or judicial branch shall file all state income tax returns and pay all state income taxes owed.

2. Each chief administrative officer or their designee of each division of each branch of state government shall at least one time each year check the status of every employee within the division against a database developed by the director of revenue to determine if all state income tax returns have been filed and all state income taxes owed have been paid. The officer or designee shall notify any employee if the database shows any state income tax return has not been filed or taxes are owed under that employee's name or taxpayer number. Upon notification, the employee will have forty-five days to satisfy the liability or provide the officer or designee with a copy of a payment plan approved by the director of revenue. Failure to satisfy the liability or provide a copy of the payment plan within the thirty days will result in immediate dismissal of the employee from employment by the state.

3. The chief administrative officer of each division of the general assembly or their designee shall at least one time each year provide the name and social security number of every member of the general assembly to the director of revenue to determine if all state income tax returns have been filed and all state income taxes owed have been paid. The director shall notify any member of the general assembly if the database shows any state income tax return has not been filed or taxes are owed under that member's name or taxpayer number. Upon notification, the member will have thirty days to satisfy the liability or provide the director with a copy of a payment plan approved by the director of revenue. Failure to satisfy the liability or provide a copy of the payment plan within the forty-five days will result in the member's name being submitted to the appropriate ethics committee for disciplinary action deemed appropriate by the committee.

4. The chief administrative officer of each division of the judicial branch or their designee shall at least one time each year provide the name and social security number of every elected or appointed member of the judicial branch to the director of revenue to determine if all state income tax returns have been filed and all state income taxes owed have been paid. The director shall notify any member if the database shows any state income tax return has not been filed or taxes are owed under that member's name or taxpayer number. Upon notification, the member will have thirty days to satisfy the liability or provide the director with a copy of a payment plan approved by the director of revenue. Failure to satisfy the liability or provide a copy of the payment plan within the forty-five days will result in the member's name being submitted to the appropriate ethics body for disciplinary action deemed appropriate by that body.

5. The director of revenue shall at least one time each year check the status of every statewide elected official against a database developed by the director to determine if all state income tax returns have been filed and all state income taxes owed have been paid. The director shall notify any elected official if the database shows any state income tax return has not been filed or taxes are owed under that official's name or taxpayer number. Upon notification, the

official will have forty-five days to satisfy the liability or agree to a payment plan approved by the director of revenue. Failure to satisfy the liability or agree to the payment plan within the thirty days will result in the official's name being submitted to the state ethics commission.

Section 2. A professional license or permit pursuant to sections 209.319 to 209.339, RSMo, sections 214.270 to 214.516, RSMo, sections 256.010 to 256.453, RSMo, sections 436.005 to 436.071, RSMo, and chapters 317 and 324 to 346, RSMo, shall be revoked within forty-five days after renewal without verification from the department of revenue that state income tax returns have been filed by, and all state income taxes including any interest and penalties on such taxes paid by, such person. Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section.

[338.501. In fiscal year 2003, the amount generated by the tax imposed pursuant to section 338.500, less any amount paid pursuant to section 338.545, shall be used in the formula necessary to qualify for the calculations included in house bill 1102, section 2.325 through section 2.333 as passed by the ninety-first general assembly, second regular session.]

[338.525. If a pharmacy's gross retail prescription receipts are included in the revenue assessed by the federal reimbursement allowance or the nursing facility reimbursement allowance, the proportion of those taxes paid or the entire tax due shall be allowed as a credit for the pharmacy tax due pursuant to section 338.500.]

[338.545. 1. The Medicaid pharmacy dispensing fee shall be adjusted to include a supplemental payment amount equal to the tax assessment due plus ten percent.

2. The amount of the supplemental payment shall be adjusted once annually beginning July first or once annually after the initial start date of the pharmacy tax, whichever is later.

3. If the pharmacy tax required by sections 338.500 to 338.550 is declared invalid, the pharmacy dispensing fee for the Medicaid program shall be the same as the amount required on July 1, 2001.]

Section B. Because immediate action is necessary to fund critical services of state government and to stimulate the economy, section A of 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 section A of this act shall be in full force and effect July 1, 2003, or upon its passage and approval, whichever later occurs.