

SECOND REGULAR SESSION

# SENATE BILL NO. 1394

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR VOGEL.

Read 1st time March 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4828S.011

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## AN ACT

To repeal sections 32.087, 143.241, 143.782, 144.083, and 144.157, RSMo, and to enact in lieu thereof five new sections relating to tax collection.

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

Section A. Sections 32.087, 143.241, 143.782, 144.083, and 144.157, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 32.087, 143.241, 143.782, 144.083, and 144.157, to read as follows:

32.087. 1. Within ten days after the adoption of any ordinance or order in favor of adoption of any local sales tax authorized under the local sales tax law by the voters of a taxing entity, the governing body or official of such taxing entity shall forward to the director of revenue by United States registered mail or certified mail a certified copy of the ordinance or order. The ordinance or order shall reflect the effective date thereof.

2. Any local sales tax so adopted shall become effective on the first day of the second calendar quarter after the director of revenue receives notice of adoption of the local sales tax, except as provided in subsection 18 of this section.

3. Every retailer within the jurisdiction of one or more taxing entities which has imposed one or more local sales taxes under the local sales tax law shall add all taxes so imposed along with the tax imposed by the sales tax law of the state of Missouri to the sale price and, when added, the combined tax shall constitute a part of the price, and shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The combined rate of the state sales tax and all local sales taxes shall be the sum of the rates, multiplying the combined rate times the amount of the sale.

4. The brackets required to be established by the director of revenue under the provisions of section 144.285, RSMo, shall be based upon the sum of the combined rate of the

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

state sales tax and all local sales taxes imposed under the provisions of the local sales tax law.

5. The ordinance or order imposing a local sales tax under the local sales tax law shall impose upon all sellers a tax for the privilege of engaging in the business of selling tangible personal property or rendering taxable services at retail to the extent and in the manner provided in sections 144.010 to 144.525, RSMo, and the rules and regulations of the director of revenue issued pursuant thereto; except that the rate of the tax shall be the sum of the combined rate of the state sales tax or state highway use tax and all local sales taxes imposed under the provisions of the local sales tax law.

6. On and after the effective date of any local sales tax imposed under the provisions of the local sales tax law, the director of revenue shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the director of revenue shall collect in addition to the sales tax for the state of Missouri all additional local sales taxes authorized under the authority of the local sales tax law. All local sales taxes imposed under the local sales tax law together with all taxes imposed under the sales tax law of the state of Missouri shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the director of revenue.

7. All applicable provisions contained in sections 144.010 to 144.525, RSMo, governing the state sales tax and section 32.057, the uniform confidentiality provision, shall apply to the collection of any local sales tax imposed under the local sales tax law except as modified by the local sales tax law.

8. All exemptions granted to agencies of government, organizations, persons and to the sale of certain articles and items of tangible personal property and taxable services under the provisions of sections 144.010 to 144.525, RSMo, as these sections now read and as they may hereafter be amended, it being the intent of this general assembly to ensure that the same sales tax exemptions granted from the state sales tax law also be granted under the local sales tax law, are hereby made applicable to the imposition and collection of all local sales taxes imposed under the local sales tax law.

9. The same sales tax permit, exemption certificate and retail certificate required by sections 144.010 to 144.525, RSMo, for the administration and collection of the state sales tax shall satisfy the requirements of the local sales tax law, and no additional permit or exemption certificate or retail certificate shall be required; except that the director of revenue may prescribe a form of exemption certificate for an exemption from any local sales tax imposed by the local sales tax law.

10. All discounts allowed the retailer under the provisions of the state sales tax law for the collection of and for payment of taxes under the provisions of the state sales tax law are hereby allowed and made applicable to any local sales tax collected under the provisions of the local sales tax law.

11. The penalties provided in section 32.057 and sections 144.010 to 144.525, RSMo, for a violation of the provisions of those sections are hereby made applicable to violations of the provisions of the local sales tax law.

12. (1) For the purposes of any local sales tax imposed by an ordinance or order under the local sales tax law, all sales, except the sale of motor vehicles, trailers, boats, and outboard motors, shall be deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination. In the event a retailer has more than one place of business in this state which participates in the sale, the sale shall be deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing. A sale by a retailer's agent or employee shall be deemed to be consummated at the place of business from which he works.

(2) For the purposes of any local sales tax imposed by an ordinance or order under the local sales tax law, all sales of motor vehicles, trailers, boats, and outboard motors shall be deemed to be consummated at the residence of the purchaser and not at the place of business of the retailer, or the place of business from which the retailer's agent or employee works.

(3) For the purposes of any local tax imposed by an ordinance or under the local sales tax law on charges for mobile telecommunications services, all taxes of mobile telecommunications service shall be imposed as provided in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sections 116 through 124, as amended.

13. Local sales taxes imposed pursuant to the local sales tax law on the purchase and sale of motor vehicles, trailers, boats, and outboard motors shall not be collected and remitted by the seller, but shall be collected by the director of revenue at the time application is made for a certificate of title, if the address of the applicant is within a taxing entity imposing a local sales tax under the local sales tax law.

14. The director of revenue and any of his deputies, assistants and employees who have any duties or responsibilities in connection with the collection, deposit, transfer, transmittal, disbursement, safekeeping, accounting, or recording of funds which come into the hands of the director of revenue under the provisions of the local sales tax law shall enter a surety bond or bonds payable to any and all taxing entities in whose behalf such funds have been collected under the local sales tax law in the amount of one hundred thousand dollars for each such tax; but the director of revenue may enter into a blanket bond covering himself and all such deputies, assistants and employees. The cost of any premium for such bonds shall be paid by the director of revenue from the share of the collections under the sales tax law retained by the director of revenue for the benefit of the state.

15. The director of revenue shall annually report on his management of each trust

fund which is created under the local sales tax law and administration of each local sales tax imposed under the local sales tax law. He shall provide each taxing entity imposing one or more local sales taxes authorized by the local sales tax law with a detailed accounting of the source of all funds received by him for the taxing entity. Notwithstanding any other provisions of law, the state auditor shall annually audit each trust fund. A copy of the director's report and annual audit shall be forwarded to each taxing entity imposing one or more local sales taxes.

16. Within the boundaries of any taxing entity where one or more local sales taxes have been imposed, if any person is delinquent in the payment of the amount required to be paid by him under the local sales tax law or in the event a determination has been made against him for taxes and penalty under the local sales tax law, the limitation for bringing suit for the collection of the delinquent tax and penalty shall be the same as that provided in sections 144.010 to 144.525, RSMo. Where the director of revenue has determined that suit must be filed against any person for the collection of delinquent taxes due the state under the state sales tax law, and where such person is also delinquent in payment of taxes under the local sales tax law, the director of revenue shall notify the taxing entity [to which delinquent taxes are due under the local sales tax law by United States registered mail or certified mail at least ten days before turning the case over to the attorney general. The taxing entity, acting through its attorney, may join in such suit as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such taxing entity.] in the event any person fails or refuses to pay the amount of any local sales tax due[, the director of revenue shall promptly notify the taxing entity to which the tax would be due] so that appropriate action may be taken by the taxing entity.

17. Where property is seized by the director of revenue under the provisions of any law authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed by the state sales tax law, and where such taxpayer is also delinquent in payment of any tax imposed by the local sales tax law, the director of revenue shall permit the taxing entity to join in any sale of property to pay the delinquent taxes and penalties due the state and to the taxing entity under the local sales tax law. The proceeds from such sale shall first be applied to all sums due the state, and the remainder, if any, shall be applied to all sums due such taxing entity.

18. If a local sales tax has been in effect for at least one year under the provisions of the local sales tax law and voters approve reimposition of the same local sales tax at the same rate at an election as provided for in the local sales tax law prior to the date such tax is due to expire, the tax so reimposed shall become effective the first day of the first calendar quarter after the director receives a certified copy of the ordinance, order or resolution accompanied by a map clearly showing the boundaries thereof and the results of such election, provided that such ordinance, order or resolution and all necessary accompanying

materials are received by the director at least thirty days prior to the expiration of such tax. Any administrative cost or expense incurred by the state as a result of the provisions of this subsection shall be paid by the city or county reimposing such tax.

143.241. 1. Every employer required to deduct and withhold tax under 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 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 fails to file [and] or 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 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 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 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.

143.782. 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;

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

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

(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, **unless such refund is being offset for a delinquency or debt relating to individual income tax or a property tax credit**; and

(6) "State agency", any department, division, board, commission, office, or other agency of the state of Missouri, including public community college district.

144.083. 1. The director of revenue shall require all persons who are responsible for the collection of taxes under the provisions of section 144.080 to procure a retail sales license at no cost to the licensee which shall be prominently displayed at his place of business, and the license is valid until revoked by the director or surrendered by the person to whom issued when sales are discontinued. The director shall issue the retail sales license within ten working days following the receipt of a properly completed application. Any person applying for a retail sales license or reinstatement of a revoked sales tax license who owes any tax under sections 144.010 to 144.510 **or sections 143.191 to 143.261, RSMo**, must pay the amount due plus interest and penalties before the department may issue the applicant a license or reinstate the revoked license. All persons beginning business subsequent to August 13, 1986, and who are required to collect the sales tax shall secure a retail sales license prior

to making sales at retail. Such license may, after ten days' notice, be revoked by the director of revenue only in the event the licensee shall be in default for a period of sixty days in the payment of any taxes levied under section 144.020 **or sections 143.191 to 143.261, RSMo.**

2. The possession of a retail sales license shall be a prerequisite to the issuance of any city or county occupation license or any state license which is required for conducting any business where goods are sold at retail. The revocation of a retailer's license by the director shall render the occupational license or the state license null and void.

3. No person responsible for the collection of taxes under section 144.080 shall make sales at retail unless such person is the holder of a valid retail sales license. After all appeals have been exhausted, the director of revenue may notify the county or city law enforcement agency representing the area in which the former licensee's business is located that the retail sales license of such person has been revoked, and that any county or city occupation license of such person is also revoked. The county or city may enforce the provisions of this section, and may prohibit further sales at retail by such person.

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 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 fails to file such return [and] **or** 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.

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