

FIRST REGULAR SESSION

# SENATE BILL NO. 351

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHOEMYER.

Read 1st time February 10, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0329S.051

## AN ACT

To repeal sections 32.069 and 144.190, RSMo, and to enact in lieu thereof two new sections relating to sales tax refunds, with penalty provisions.

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

Section A. Sections 32.069 and 144.190, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 32.069 and 144.190, to  
3 read as follows:

32.069. 1. Notwithstanding any other provision of law to the contrary,  
2 interest shall be allowed and paid on any refund or overpayment at the rate  
3 determined by section 32.068 only if the overpayment is not refunded within one  
4 hundred twenty days from the latest of the following dates:

- 5 (1) The last day prescribed for filing a tax return or refund claim, without  
6 regard to any extension of time granted;
- 7 (2) The date the return, payment, or claim is filed; or
- 8 (3) The date the taxpayer files for a credit or refund and provides accurate  
9 and complete documentation to support such claim.

10 **2. The payment of interest allowed under this section shall be an**  
11 **exclusive liability of the state. The director of revenue shall not**  
12 **withhold remittance to any city, town, village, county, or political**  
13 **subdivision for the payment of interest on refunds or overpayments.**

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

7 executors, as provided for in section 144.200.

8           2. If any tax, penalty or interest has been paid more than once, or has  
9 been erroneously or illegally collected, or has been erroneously or illegally  
10 computed, such sum shall be credited on any taxes then due from the person  
11 legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the  
12 balance, with interest as determined by section 32.065, RSMo, shall be refunded  
13 to the person legally obligated to remit the tax, but no such credit or refund shall  
14 be allowed unless duplicate copies of a claim for refund are filed within three  
15 years from date of overpayment.

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

24           4. Notwithstanding the provisions of this section, the director of revenue  
25 shall authorize direct-pay agreements to purchasers which have annual purchases  
26 in excess of seven hundred fifty thousand dollars pursuant to rules and  
27 regulations adopted by the director of revenue. For the purposes of such  
28 direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 70, 92,  
29 94, 162, 190, 238, 321, and 644, RSMo, shall be remitted based upon the location  
30 of the place of business of the purchaser.

31           5. Special rules applicable to error corrections requested by customers of  
32 mobile telecommunications service are as follows:

33           (1) For purposes of this subsection, the terms "customer", "home service  
34 provider", "place of primary use", "electronic database", and "enhanced zip code"  
35 shall have the same meanings as defined in the Mobile Telecommunications  
36 Sourcing Act incorporated by reference in section 144.013;

37           (2) Notwithstanding the provisions of this section, if a customer of mobile  
38 telecommunications services believes that the amount of tax, the assignment of  
39 place of primary use or the taxing jurisdiction included on a billing is erroneous,  
40 the customer shall notify the home service provider, in writing, within three years  
41 from the date of the billing statement. The customer shall include in such  
42 written notification the street address for the customer's place of primary use, the

43 account name and number for which the customer seeks a correction of the tax  
44 assignment, a description of the error asserted by the customer and any other  
45 information the home service provider reasonably requires to process the request;

46 (3) Within sixty days of receiving the customer's notice, the home service  
47 provider shall review its records and the electronic database or enhanced zip code  
48 to determine the customer's correct taxing jurisdiction. If the home service  
49 provider determines that the review shows that the amount of tax, assignment  
50 of place of primary use or taxing jurisdiction is in error, the home service  
51 provider shall correct the error and, at its election, either refund or credit the  
52 amount of tax erroneously collected to the customer for a period of up to three  
53 years from the last day of the home service provider's sixty-day review period. If  
54 the home service provider determines that the review shows that the amount of  
55 tax, the assignment of place of primary use or the taxing jurisdiction is correct,  
56 the home service provider shall provide a written explanation of its determination  
57 to the customer.

58 6. For all refund claims submitted to the department of revenue on or  
59 after September 1, 2003, notwithstanding any provision of this section to the  
60 contrary, if a person legally obligated to remit the tax levied pursuant to sections  
61 144.010 to 144.525 has received a refund of such taxes for a specific issue and  
62 submits a subsequent claim for refund of such taxes on the same issue for a tax  
63 period beginning on or after the date the original refund check issued to such  
64 person, no refund shall be allowed. This subsection shall not apply and a refund  
65 shall be allowed if an additional refund claim is filed due to any of the following:

66 (1) Receipt of additional information or an exemption certificate from the  
67 purchaser of the item at issue;

68 (2) A decision of a court of competent jurisdiction or the administrative  
69 hearing commission; or

70 (3) Changes in regulations or policy by the department of revenue.

71 7. Notwithstanding any provision of law to the contrary, the director of  
72 revenue shall respond to a request for a binding letter ruling filed in accordance  
73 with section 536.021, RSMo, within sixty days of receipt of such request. If the  
74 director of revenue fails to respond to such letter ruling request within sixty days  
75 of receipt by the director, the director of revenue shall be barred from pursuing  
76 collection of any assessment of sales or use tax with respect to the issue which is  
77 the subject of the letter ruling request. For purposes of this subsection, the term  
78 "letter ruling" means a written interpretation of law by the director to a specific

79 set of facts provided by a specific taxpayer or his or her agent.

80           8. If any tax was paid more than once, was incorrectly collected, or was  
81 incorrectly computed, such sum **less two percent** shall be credited on any taxes  
82 then due from the person legally obligated to remit the tax pursuant to sections  
83 144.010 to 144.510, against any deficiency or tax due discovered through an audit  
84 of the person by the department of revenue through adjustment during the same  
85 tax filing period for which the audit applied.

86           **9. If any tax was incorrectly collected or incorrectly computed,**  
87 **any city, county, or political subdivision sales tax refunds shall be**  
88 **deducted by the director of revenue from remittance to such entity. If**  
89 **the deduction for refunded city, county, or political subdivision sales**  
90 **tax revenues would result in a decrease in revenues for such entity in**  
91 **excess of forty percent for the remittance period, the director of**  
92 **revenue may limit such deduction to not more than fifteen percent of**  
93 **the total amount of such taxes refunded per remittance period to**  
94 **recoup refunded revenues. Where the director determines the necessity**  
95 **for such a limit, the director shall make installment payments to the**  
96 **person legally obligated to remit the tax in an amount equal to the**  
97 **deduction provided under this section.**

98           **10. Provisions of law to the contrary notwithstanding, no refund**  
99 **shall be allowed under this section unless the person legally obligated**  
100 **to remit such tax, who is claiming such refund, provides a plan to remit**  
101 **the refund to those individuals or customers from whom such tax was**  
102 **initially collected. If the director of the department of revenue, or his**  
103 **or her designee, determines that such plan is sufficient to ensure**  
104 **remittance to the identifiable taxpaying individuals or customers, a**  
105 **refund shall be made to the person legally obligated to remit such**  
106 **tax. Failure to materially follow the provisions of such plan shall result**  
107 **in the repayment of the full amount of the refund awarded and the**  
108 **imposition of a penalty in an amount equal to three times the amount**  
109 **of such refund to be paid by the person legally obligated to remit the**  
110 **initial tax who claimed the refund and provided the remittance plan.**

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