

CONFERENCE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 860

AN ACT

To repeal sections 143.221, 144.044, 144.049, 144.080, and 144.190, RSMo, and to enact in lieu thereof six new sections relating to taxation, with an existing penalty provision.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 143.221, 144.044, 144.049, 144.080, and
2 144.190, RSMo, are repealed and six new sections enacted in lieu
3 thereof, to be known as sections 137.133, 143.221, 144.044,
4 144.049, 144.080, and 144.190, to read as follows:

5 137.133. In any county with a charter form of government
6 and with more than nine hundred fifty thousand inhabitants, any
7 correspondence by the assessor with a taxpayer requesting
8 information from the taxpayer shall include the following
9 statement in bold, fourteen point font: "Disclosure of
10 information requested on this document is voluntary and not
11 required by law. Any information disclosed may become public
12 record.". The provisions of this section shall not apply to

1 requests for information required to be disclosed under sections
2 137.092 and 137.155.

3 143.221. 1. Every employer required to deduct and withhold
4 tax under sections 143.011 to 143.996 shall, for each calendar
5 quarter, on or before the last day of the month following the
6 close of such calendar quarter, file a withholding return as
7 prescribed by the director of revenue and pay over to the
8 director of revenue or to a depository designated by the director
9 of revenue the taxes so required to be deducted and withheld.

10 2. Where the aggregate amount required to be deducted and
11 withheld by any employer exceeds fifty dollars for at least two
12 of the preceding twelve months, the director, by regulation, may
13 require a monthly return. The due dates of the monthly return
14 and the monthly payment or deposit for the first two months of
15 each quarter shall be by the fifteenth day of the succeeding
16 month. The due dates of the monthly return and the monthly
17 payment or deposit for the last month of each quarter shall be by
18 the last day of the succeeding month. The director may increase
19 the amount required for making a monthly employer withholding
20 payment and return to more than fifty dollars or decrease such
21 required amount, however, the decreased amount shall not be less
22 than fifty dollars.

23 3. Where the aggregate amount required to be deducted and
24 withheld by any employer is less than ~~[twenty]~~ one hundred
25 dollars in each of the four preceding quarters, and to the extent
26 the employer does not meet the requirements in subsection 1 or 2
27 of this section for filing a withholding return on a quarterly or
28 monthly basis, the employer shall file a withholding return for a

1 calendar year. The director, by regulation, may also allow other
2 employers to file annual returns. The return shall be filed and
3 the taxes if any paid on or before January thirty-first of the
4 succeeding year. The director may increase the amount required
5 for making an annual employer withholding payment and return to
6 more than [twenty] one hundred dollars or decrease such required
7 amount, however, the decreased amount shall not be less than
8 [twenty] one hundred dollars.

9 4. If the director of revenue finds that the collection of
10 taxes required to be deducted and withheld by an employer may be
11 jeopardized by delay, he may require the employer to pay over the
12 tax or make a return at any time. A lien outstanding with regard
13 to any tax administered by the director shall be a sufficient
14 basis for this action.

15 144.044. 1. As used in this section, the following terms
16 mean:

17 (1) "Sale of a modular unit", a transfer of a modular unit
18 as defined in section 700.010;

19 (2) "Sale of a new manufactured home", a transfer of a
20 manufactured home, as defined in section 700.010, which involves
21 the delivery of the document known as the manufacturer's
22 statement of origin to a person other than a manufactured home
23 dealer, as dealer is defined in section 700.010, for purposes of
24 allowing such person to obtain a title to the manufactured home
25 from the department of revenue of this state or the appropriate
26 agency or officer of any other state;

27 (3) "Sale of a used manufactured home", any subsequent sale
28 of a manufactured home as defined in section 700.010, which does

1 not qualify as "new" as defined in subdivision (9) of section
2 700.010.

3 2. In the event of the sale of a new manufactured home,
4 forty percent of the purchase price, as defined in section
5 700.320, shall be considered the sale of a service and not the
6 sale of tangible personal property. In addition to the
7 exemptions granted under the provisions of section 144.030, the
8 sale of services as defined in this section shall be specifically
9 exempted from the provisions of sections 238.235 and 238.410, the
10 local sales tax law as defined in section 32.085, sections
11 144.010 to 144.525 and 144.600 to [144.745] 144.761, and from the
12 computation of the tax levied, assessed or payable under sections
13 238.235 and 238.410, the local sales tax law as defined in
14 section 32.085, sections 144.010 to 144.525 and 144.600 to
15 [144.745] 144.761, and section 238.235.

16 3. In the event of the sale of a new modular unit, forty
17 percent of the retail sale of the unit or forty percent of the
18 manufacturer's sales price of the unit if the manufacturer makes
19 a sale to a consumer that is not a retail sale, plus any carrier
20 charge and freight charges shall be considered the sale of a
21 service and sixty percent shall be the retail sale of tangible
22 personal property. In addition to the exemptions granted under
23 the provisions of section 144.030, the sale of services as
24 defined in this section shall be specifically exempted from the
25 provisions of sections 238.235 and 238.410, the local sales tax
26 law as defined in section 32.085, sections 144.010 to 144.525 and
27 144.600 to [144.745] 144.761, and from the computation of the tax
28 levied, assessed, or payable under sections 238.235 and 238.410,

1 the local sales tax law as defined in section 32.085, sections
2 144.010 to 144.525 and 144.600 to [144.745] 144.761, and section
3 238.235.

4 4. In addition to the exemptions granted under the
5 provisions of section 144.030, the sale of a used manufactured
6 home as defined in this section shall be specifically exempted
7 from the provisions of sections 238.235 and 238.410, the local
8 sales tax law as defined in section 32.085, sections 144.010 to
9 144.525 and 144.600 to 144.761, and from the computation of the
10 tax levied, assessed, or payable under sections 238.235 and
11 238.410, the local sales tax law as defined in section 32.085,
12 sections 144.010 to 144.525 and 144.600 to 144.761, and section
13 238.235.

14 144.049. 1. For purposes of this section, the following
15 terms mean:

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

24 (2) "Personal computers", a laptop, desktop, or tower
25 computer system which consists of a central processing unit,
26 random access memory, a storage drive, a display monitor, and a
27 keyboard and devices designed for use in conjunction with a
28 personal computer, such as a disk drive, memory module, compact

1 disk drive, daughterboard, [digitalizer] digitizer, microphone,
2 modem, motherboard, mouse, multimedia speaker, printer, scanner,
3 single-user hardware, single-user operating system, soundcard, or
4 video card;

5 (3) "School supplies", any item normally used by students
6 in a standard classroom for educational purposes, including but
7 not limited to textbooks, notebooks, paper, writing instruments,
8 crayons, art supplies, rulers, book bags, backpacks, handheld
9 calculators, chalk, maps, and globes. The term shall not include
10 watches, radios, CD players, headphones, sporting equipment,
11 portable or desktop telephones, copiers or other office
12 equipment, furniture, or fixtures. School supplies shall also
13 include computer software having a taxable value of three hundred
14 fifty dollars or less and any graphing calculator having a
15 taxable value of one hundred fifty dollars or less.

16 2. In each year beginning on or after January 1, 2005,
17 there is hereby specifically exempted from state sales tax law
18 all retail sales of any article of clothing having a taxable
19 value of one hundred dollars or less, all retail sales of school
20 supplies not to exceed fifty dollars per purchase, all computer
21 software with a taxable value of three hundred fifty dollars or
22 less, all graphing calculators having a taxable value of one
23 hundred fifty dollars or less, and all retail sales of personal
24 computers or computer peripheral devices not to exceed three
25 thousand five hundred dollars, during a three-day period
26 beginning at 12:01 a.m. on the first Friday in August and ending
27 at midnight on the Sunday following.

28 3. If the governing body of any political subdivision

1 adopted an ordinance that applied to the 2004 sales tax holiday
2 to prohibit the provisions of this section from allowing the
3 sales tax holiday to apply to such political subdivision's local
4 sales tax, then, notwithstanding any provision of a local
5 ordinance to the contrary, the 2005 sales tax holiday shall not
6 apply to such political subdivision's local sales tax. However,
7 any such political subdivision may enact an ordinance to allow
8 the 2005 sales tax holiday to apply to its local sales taxes. A
9 political subdivision must notify the department of revenue not
10 less than forty-five calendar days prior to the beginning date of
11 the sales tax holiday occurring in that year of any ordinance or
12 order rescinding an ordinance or order to opt out.

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

15 5. This section applies to sales of items bought for
16 personal use only.

17 6. After the 2005 sales tax holiday, any political
18 subdivision may, by adopting an ordinance or order, choose to
19 prohibit future annual sales tax holidays from applying to its
20 local sales tax. After opting out, the political subdivision may
21 rescind the ordinance or order. The political subdivision must
22 notify the department of revenue not less than forty-five
23 calendar days prior to the beginning date of the sales tax
24 holiday occurring in that year of any ordinance or order
25 rescinding an ordinance or order to opt out.

26 7. This section may not apply to any retailer when less
27 than two percent of the retailer's merchandise offered for sale
28 qualifies for the sales tax holiday. The retailer shall offer a

1 sales tax refund in lieu of the sales tax holiday.

2 144.080. 1. Every person receiving any payment or
3 consideration upon the sale of property or rendering of service,
4 subject to the tax imposed by the provisions of sections 144.010
5 to 144.525, is exercising the taxable privilege of selling the
6 property or rendering the service at retail and is subject to the
7 tax levied in section 144.020. The person shall be responsible
8 not only for the collection of the amount of the tax imposed on
9 the sale or service to the extent possible under the provisions
10 of section 144.285, but shall, on or before the last day of the
11 month following each calendar quarterly period of three months,
12 file a return with the director of revenue showing the person's
13 gross receipts and the amount of tax levied in section 144.020
14 for the preceding quarter, and shall remit to the director of
15 revenue, with the return, the taxes levied in section 144.020,
16 except as provided in subsections 2 and 3 of this section. The
17 director of revenue may promulgate rules or regulations changing
18 the filing and payment requirements of sellers, but shall not
19 require any seller to file and pay more frequently than required
20 in this section.

21 2. Where the aggregate amount levied and imposed upon a
22 seller by section 144.020 is in excess of two hundred and fifty
23 dollars for either the first or second month of a calendar
24 quarter, the seller shall file a return and pay such aggregate
25 amount for such months to the director of revenue by the
26 twentieth day of the succeeding month.

27 3. Where the aggregate amount levied and imposed upon a
28 seller by section 144.020 is less than forty-five dollars in a

1 calendar quarter, the director of revenue shall by regulation
2 permit the seller to file a return for a calendar year. The
3 return shall be filed and the taxes paid on or before January
4 thirty-first of the succeeding year.

5 4. The seller of any property or person rendering any
6 service, subject to the tax imposed by sections 144.010 to
7 144.525, shall collect the tax from the purchaser of such
8 property or the recipient of the service to the extent possible
9 under the provisions of section 144.285, but the seller's
10 inability to collect any part or all of the tax does not relieve
11 the seller of the obligation to pay to the state the tax imposed
12 by section 144.020; except that the collection of the tax imposed
13 by sections 144.010 to 144.525 on motor vehicles and trailers
14 shall be made as provided in sections 144.070 and 144.440.

15 5. [It shall be unlawful for] Any person [to] may advertise
16 or hold out or state to the public or to any customer directly
17 [or indirectly] that the tax or any part thereof imposed by
18 sections 144.010 to 144.525, and required to be collected by the
19 person, will be assumed or absorbed by the person, [or that it
20 will not be separately stated and added to the selling price of
21 the] provided that the amount of tax assumed or absorbed shall be
22 stated on any invoice or receipt for the property sold or service
23 rendered[, or if added, that it or any part thereof will be
24 refunded]. Any person violating any of the provisions of this
25 section shall be guilty of a misdemeanor. This subsection shall
26 not apply to any retailer prohibited from collecting and
27 remitting sales tax under section 66.630.

28 144.190. 1. If a tax has been incorrectly computed by

1 reason of a clerical error or mistake on the part of the director
2 of revenue, such fact shall be set forth in the records of the
3 director of revenue, and the amount of the overpayment shall be
4 credited on any taxes then due from the person legally obligated
5 to remit the tax pursuant to sections 144.010 to 144.525, and the
6 balance shall be refunded to the person legally obligated to
7 remit the tax, such person's administrators or executors, as
8 provided for in section 144.200.

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

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

1 4. Notwithstanding the provisions of section 32.057, a
2 purchaser that originally paid sales or use tax to a vendor or
3 seller may submit a refund claim directly to the director of
4 revenue for such sales or use taxes paid to such vendor or seller
5 and remitted to the director of revenue, provided no sum shall be
6 refunded more than once, any such claim shall be subject to any
7 offset, defense, or other claim the director of revenue otherwise
8 would have against either the purchaser or vendor or seller if
9 such offset or claim has been assessed under section 144.240 or
10 144.670 and such assessment is no longer subject to appeal, and
11 such claim for refund is accompanied by either:

12 (1) A notarized assignment of rights statement by the
13 vendor or seller to the purchaser allowing the purchaser to seek
14 the refund on behalf of the vendor or seller. An assignment of
15 rights statement shall contain the Missouri sales or use tax
16 registration number of the vendor or seller, a list of the
17 transactions covered by the assignment, the tax periods and
18 location for which the original sale was reported to the director
19 of revenue by the vendor or seller, and a notarized statement
20 signed by the vendor or seller affirming that the vendor or
21 seller has not received a refund or credit, will not apply for a
22 refund or credit of the tax collected on any transactions covered
23 by the assignment, and authorizes the director of revenue to
24 amend the seller's return to reflect the refund; or

25 (2) In the event the vendor or seller fails or refuses to
26 provide an assignment of rights statement within sixty days from
27 the date of such purchaser's written request to the vendor or
28 seller, or the purchaser is not able to locate the vendor or

1 seller or the vendor or seller is no longer in business, the
2 purchaser may provide the director of revenue a notarized
3 statement confirming the efforts that have been made to obtain an
4 assignment of rights from the vendor or seller. Such statement
5 shall contain a list of the transactions covered by the
6 assignment, the tax periods and location for which the original
7 sale was reported to the director of revenue by the vendor or
8 seller.

9
10 The director of revenue shall not require such vendor, seller, or
11 purchaser to submit amended returns for refund claims submitted
12 under the provisions of this subsection. Notwithstanding the
13 provisions of section 32.057, if the seller is registered with
14 the director of revenue for collection and remittance of sales
15 tax, the director of revenue shall notify the seller at the
16 seller's last known address of the claim for refund. If the
17 seller objects to the refund within thirty days of the date of
18 the notice, the director of revenue shall not pay the refund. If
19 the seller agrees that the refund is warranted or fails to
20 respond within thirty days, the director of revenue may issue the
21 refund and amend the seller's return to reflect the refund. For
22 purposes of section 32.069, the refund claim shall not be
23 considered to have been filed until the seller agrees that the
24 refund is warranted or thirty days after the date the director of
25 revenue notified the seller and the seller failed to respond.

26 5. Notwithstanding the provisions of section 32.057, when a
27 vendor files a refund claim on behalf of a purchaser and such
28 refund claim is denied by the director of revenue, notice of such

1 denial and the reason for the denial shall be sent by the
2 director of revenue to the vendor and each purchaser whose name
3 and address is submitted with the refund claim form filed by the
4 vendor. A purchaser shall be entitled to appeal the denial of
5 the refund claim within sixty days of the date such notice of
6 denial is mailed by the director of revenue as provided in
7 section 144.261. The provisions of this subsection shall apply
8 to all refund claims filed after August 28, 2012. The provisions
9 of this subsection allowing a purchaser to appeal the
10 [director's] director of revenue's decision to deny a refund
11 claim shall also apply to any refund claim denied by the director
12 of revenue on or after January 1, 2007, if an appeal of the
13 denial of the refund claim is filed by the purchaser no later
14 than September 28, 2012, and if such claim is based solely on the
15 issue of the exemption of the electronic transmission or delivery
16 of computer software.

17 6. Notwithstanding the provisions of this section, the
18 director of revenue shall authorize direct-pay agreements to
19 purchasers which have annual purchases in excess of seven hundred
20 fifty thousand dollars pursuant to rules and regulations adopted
21 by the director of revenue. For the purposes of such direct-pay
22 agreements, the taxes authorized pursuant to chapters 66, 67, 70,
23 92, 94, 162, 190, 238, 321, and 644 shall be remitted based upon
24 the location of the place of business of the purchaser.

25 7. Special rules applicable to error corrections requested
26 by customers of mobile telecommunications service are as follows:

27 (1) For purposes of this subsection, the terms "customer",
28 "home service provider", "place of primary use", "electronic

1 database", and "enhanced zip code" shall have the same meanings
2 as defined in the Mobile Telecommunications Sourcing Act
3 incorporated by reference in section 144.013;

4 (2) Notwithstanding the provisions of this section, if a
5 customer of mobile telecommunications services believes that the
6 amount of tax, the assignment of place of primary use or the
7 taxing jurisdiction included on a billing is erroneous, the
8 customer shall notify the home service provider, in writing,
9 within three years from the date of the billing statement. The
10 customer shall include in such written notification the street
11 address for the customer's place of primary use, the account name
12 and number for which the customer seeks a correction of the tax
13 assignment, a description of the error asserted by the customer
14 and any other information the home service provider reasonably
15 requires to process the request;

16 (3) Within sixty days of receiving the customer's notice,
17 the home service provider shall review its records and the
18 electronic database or enhanced zip code to determine the
19 customer's correct taxing jurisdiction. If the home service
20 provider determines that the review shows that the amount of tax,
21 assignment of place of primary use or taxing jurisdiction is in
22 error, the home service provider shall correct the error and, at
23 its election, either refund or credit the amount of tax
24 erroneously collected to the customer for a period of up to three
25 years from the last day of the home service provider's sixty-day
26 review period. If the home service provider determines that the
27 review shows that the amount of tax, the assignment of place of
28 primary use or the taxing jurisdiction is correct, the home

1 service provider shall provide a written explanation of its
2 determination to the customer.

3 8. For all refund claims submitted to the department of
4 revenue on or after September 1, 2003, notwithstanding any
5 provision of this section to the contrary, if a person legally
6 obligated to remit the tax levied pursuant to sections 144.010 to
7 144.525 has received a refund of such taxes for a specific issue
8 and submits a subsequent claim for refund of such taxes on the
9 same issue for a tax period beginning on or after the date the
10 original refund check issued to such person, no refund shall be
11 allowed. This subsection shall not apply and a refund shall be
12 allowed if the refund claim is filed by a purchaser under the
13 provisions of subsection 4 of this section, the refund claim is
14 for use tax remitted by the purchaser, or an additional refund
15 claim is filed by a person legally obligated to remit the tax due
16 to any of the following:

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

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

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

23 9. Notwithstanding any provision of law to the contrary,
24 the director of revenue shall respond to a request for a binding
25 letter ruling filed in accordance with section 536.021 within
26 sixty days of receipt of such request. If the director of
27 revenue fails to respond to such letter ruling request within
28 sixty days of receipt by the director of revenue, the director of

1 revenue shall be barred from pursuing collection of any
2 assessment of sales or use tax with respect to the issue which is
3 the subject of the letter ruling request. For purposes of this
4 subsection, the term "letter ruling" means a written
5 interpretation of law by the director of revenue to a specific
6 set of facts provided by a specific taxpayer or his or her agent.

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

14 11. The provisions of this section are intended to clarify
15 the limitations on refund claims as originally enacted in this
16 chapter.

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24 Jay Wasson

Sandy Crawford