

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR

SENATE BILL NO. 860

97TH GENERAL ASSEMBLY

5906H.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 143.221, 144.044, 144.049, 144.080, and 144.190, RSMo, and to enact in lieu thereof five new sections relating to taxation.

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

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2 repealed and five new sections enacted in lieu thereof, to be known as sections 143.221, 144.044,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

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

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

15 3. Where the aggregate amount required to be deducted and withheld by any employer
16 is less than [twenty] **one hundred** dollars in each of the four preceding quarters, **and to the**

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

17 **extent the employer does not meet the requirements in subsection 1 or 2 of this section for**
18 **filing a withholding return on a quarterly or monthly basis**, the employer shall file a
19 withholding return for a calendar year. The director, by regulation, may also allow other
20 employers to file annual returns. The return shall be filed and the taxes if any paid on or before
21 January thirty-first of the succeeding year. The director may increase the amount required for
22 making an annual employer withholding payment and return to more than [twenty] **one hundred**
23 dollars or decrease such required amount, however, the decreased amount shall not be less than
24 [twenty] **one hundred** dollars.

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

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

2 (1) "Sale of a modular unit", a transfer of a modular unit as defined in section 700.010;
3 (2) "Sale of a new manufactured home", a transfer of a manufactured home, as defined
4 in section 700.010, which involves the delivery of the document known as the manufacturer's
5 statement of origin to a person other than a manufactured home dealer, as dealer is defined in
6 section 700.010, for purposes of allowing such person to obtain a title to the manufactured home
7 from the department of revenue of this state or the appropriate agency or officer of any other
8 state;

9 **(3) "Sale of a used manufactured home", any subsequent sale of a manufactured**
10 **home as defined in section 700.010, which does not qualify as "new" as defined in**
11 **subdivision (9) of section 700.010.**

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

21 3. In the event of the sale of a new modular unit, forty percent of the retail sale of the unit
22 or forty percent of the manufacturer's sales price of the unit if the manufacturer makes a sale to
23 a consumer that is not a retail sale, plus any carrier charge and freight charges shall be considered
24 the sale of a service and sixty percent shall be the retail sale of tangible personal property. In

25 addition to the exemptions granted under the provisions of section 144.030, the sale of services
26 as defined in this section shall be specifically exempted from the provisions of sections 238.235
27 and 238.410, the local sales tax law as defined in section 32.085, sections 144.010 to 144.525
28 and 144.600 to [144.745] **144.761**, and from the computation of the tax levied, assessed, or
29 payable under sections 238.235 and 238.410, the local sales tax law as defined in section 32.085,
30 sections 144.010 to 144.525 and 144.600 to [144.745] **144.761**, and section 238.235.

31 **4. In addition to the exemptions granted under the provisions of section 144.030,**
32 **the sale of a used manufactured home as defined in this section shall be specifically**
33 **exempted from the provisions of sections 238.235 and 238.410, the local sales tax law as**
34 **defined in section 32.085, sections 144.010 to 144.525 and 144.600 to 144.761, and from the**
35 **computation of the tax levied, assessed, or payable under sections 238.235 and 238.410, the**
36 **local sales tax law as defined in section 32.085, sections 144.010 to 144.525 and 144.600 to**
37 **144.761, and section 238.235.**

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

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

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

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

22 2. In each year beginning on or after January 1, 2005, there is hereby specifically
23 exempted from state sales tax law all retail sales of any article of clothing having a taxable value

24 of one hundred dollars or less, all retail sales of school supplies not to exceed fifty dollars per
25 purchase, all computer software with a taxable value of three hundred fifty dollars or less, **all**
26 **graphing calculators having a taxable value of one hundred fifty dollars or less**, and all
27 retail sales of personal computers or computer peripheral devices not to exceed three thousand
28 five hundred dollars, during a three-day period beginning at 12:01 a.m. on the first Friday in
29 August and ending at midnight on the Sunday following.

30 3. If the governing body of any political subdivision adopted an ordinance that applied
31 to the 2004 sales tax holiday to prohibit the provisions of this section from allowing the sales tax
32 holiday to apply to such political subdivision's local sales tax, then, notwithstanding any
33 provision of a local ordinance to the contrary, the 2005 sales tax holiday shall not apply to such
34 political subdivision's local sales tax. However, any such political subdivision may enact an
35 ordinance to allow the 2005 sales tax holiday to apply to its local sales taxes. A political
36 subdivision must notify the department of revenue not less than forty-five calendar days prior
37 to the beginning date of the sales tax holiday occurring in that year of any ordinance or order
38 rescinding an ordinance or order to opt out.

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

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

42 6. After the 2005 sales tax holiday, any political subdivision may, by adopting an
43 ordinance or order, choose to prohibit future annual sales tax holidays from applying to its local
44 sales tax. After opting out, the political subdivision may rescind the ordinance or order. The
45 political subdivision must notify the department of revenue not less than forty-five calendar days
46 prior to the beginning date of the sales tax holiday occurring in that year of any ordinance or
47 order rescinding an ordinance or order to opt out.

48 7. This section may not apply to any retailer when less than two percent of the retailer's
49 merchandise offered for sale qualifies for the sales tax holiday. The retailer shall offer a sales
50 tax refund in lieu of the sales tax holiday.

144.080. 1. Every person receiving any payment or consideration upon the sale of
2 property or rendering of service, subject to the tax imposed by the provisions of sections 144.010
3 to 144.525, is exercising the taxable privilege of selling the property or rendering the service at
4 retail and is subject to the tax levied in section 144.020. The person shall be responsible not only
5 for the collection of the amount of the tax imposed on the sale or service to the extent possible
6 under the provisions of section 144.285, but shall, on or before the last day of the month
7 following each calendar quarterly period of three months, file a return with the director of
8 revenue showing the person's gross receipts and the amount of tax levied in section 144.020 for
9 the preceding quarter, and shall remit to the director of revenue, with the return, the taxes levied

10 in section 144.020, except as provided in subsections 2 and 3 of this section. The director of
11 revenue may promulgate rules or regulations changing the filing and payment requirements of
12 sellers, but shall not require any seller to file and pay more frequently than required in this
13 section.

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

18 3. Where the aggregate amount levied and imposed upon a seller by section 144.020 is
19 less than forty-five dollars in a calendar quarter, the director of revenue shall by regulation permit
20 the seller to file a return for a calendar year. The return shall be filed and the taxes paid on or
21 before January thirty-first of the succeeding year.

22 4. The seller of any property or person rendering any service, subject to the tax imposed
23 by sections 144.010 to 144.525, shall collect the tax from the purchaser of such property or the
24 recipient of the service to the extent possible under the provisions of section 144.285, but the
25 seller's inability to collect any part or all of the tax does not relieve the seller of the obligation
26 to pay to the state the tax imposed by section 144.020; except that the collection of the tax
27 imposed by sections 144.010 to 144.525 on motor vehicles and trailers shall be made as provided
28 in sections 144.070 and 144.440.

29 5. [It shall be unlawful for] Any person [to] **may** advertise or hold out or state to the
30 public or to any customer directly [or indirectly] that the tax or any part thereof imposed by
31 sections 144.010 to 144.525, and required to be collected by the person, will be assumed or
32 absorbed by the person, [or that it will not be separately stated and added to the selling price of
33 the] **provided that the amount of tax assumed or absorbed shall be stated on any invoice**
34 **or receipt for the** property sold or service rendered[, or if added, that it or any part thereof will
35 be refunded]. Any person violating any of the provisions of this section shall be guilty of a
36 misdemeanor. **This subsection shall not apply to any retailer prohibited from collecting and**
37 **remitting sales tax under section 66.630.**

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

7 2. If any tax, penalty or interest has been paid more than once, or has been erroneously
8 or illegally collected, or has been erroneously or illegally computed, such sum shall be credited

9 on any taxes then due from the person legally obligated to remit the tax pursuant to sections
10 144.010 to 144.525, and the balance, with interest as determined by section 32.065, shall be
11 refunded to the person legally obligated to remit the tax, but no such credit or refund shall be
12 allowed unless duplicate copies of a claim for refund are filed within three years from date of
13 overpayment.

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

21 4. Notwithstanding the provisions of section 32.057, a purchaser that originally paid
22 sales or use tax to a vendor or seller may submit a refund claim directly to the director of revenue
23 for such sales or use taxes paid to such vendor or seller and remitted to the director **of revenue**,
24 provided no sum shall be refunded more than once, any such claim shall be subject to any offset,
25 defense, or other claim the director **of revenue** otherwise would have against either the purchaser
26 or vendor or seller **if such offset or claim has been assessed under section 144.240 or 144.670**
27 **and such assessment is no longer subject to appeal**, and such claim for refund is accompanied
28 by either:

29 (1) A notarized assignment of rights statement by the vendor or seller to the purchaser
30 allowing the purchaser to seek the refund on behalf of the vendor or seller. An assignment of
31 rights statement shall contain the Missouri sales or use tax registration number of the vendor or
32 seller, a list of the transactions covered by the assignment, the tax periods and location for which
33 the original sale was reported to the director of revenue by the vendor or seller, and a notarized
34 statement signed by the vendor or seller affirming that the vendor or seller has not received a
35 refund or credit, will not apply for a refund or credit of the tax collected on any transactions
36 covered by the assignment, and authorizes the director **of revenue** to amend the seller's return
37 to reflect the refund; or

38 (2) In the event the vendor or seller fails or refuses to provide an assignment of rights
39 statement within sixty days from the date of such purchaser's written request to the vendor or
40 seller, or the purchaser is not able to locate the vendor or seller or the vendor or seller is no
41 longer in business, the purchaser may provide the director **of revenue** a notarized statement
42 confirming the efforts that have been made to obtain an assignment of rights from the vendor or
43 seller. Such statement shall contain a list of the transactions covered by the assignment, the tax

44 periods and location for which the original sale was reported to the director of revenue by the
45 vendor or seller.

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47 The director **of revenue** shall not require such vendor, seller, or purchaser to submit amended
48 returns for refund claims submitted under the provisions of this subsection. Notwithstanding the
49 provisions of section 32.057, if the seller is registered with the director **of revenue** for collection
50 and remittance of sales tax, the director **of revenue** shall notify the seller at the seller's last
51 known address of the claim for refund. If the seller objects to the refund within thirty days of
52 the date of the notice, the director **of revenue** shall not pay the refund. If the seller agrees that
53 the refund is warranted or fails to respond within thirty days, the director **of revenue** may issue
54 the refund and amend the seller's return to reflect the refund. For purposes of section 32.069, the
55 refund claim shall not be considered to have been filed until the seller agrees that the refund is
56 warranted or thirty days after the date the director **of revenue** notified the seller and the seller
57 failed to respond.

58 5. Notwithstanding the provisions of section 32.057, when a vendor files a refund claim
59 on behalf of a purchaser and such refund claim is denied by the director **of revenue**, notice of
60 such denial and the reason for the denial shall be sent by the director **of revenue** to the vendor
61 and each purchaser whose name and address is submitted with the refund claim form filed by the
62 vendor. A purchaser shall be entitled to appeal the denial of the refund claim within sixty days
63 of the date such notice of denial is mailed by the director **of revenue** as provided in section
64 144.261. The provisions of this subsection shall apply to all refund claims filed after August 28,
65 2012. The provisions of this subsection allowing a purchaser to appeal the [director's] **director**
66 **of revenue's** decision to deny a refund claim shall also apply to any refund claim denied by the
67 director **of revenue** on or after January 1, 2007, if an appeal of the denial of the refund claim is
68 filed by the purchaser no later than September 28, 2012, and if such claim is based solely on the
69 issue of the exemption of the electronic transmission or delivery of computer software.

70 6. Notwithstanding the provisions of this section, the director of revenue shall authorize
71 direct-pay agreements to purchasers which have annual purchases in excess of seven hundred
72 fifty thousand dollars pursuant to rules and regulations adopted by the director of revenue. For
73 the purposes of such direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 70,
74 92, 94, 162, 190, 238, 321, and 644 shall be remitted based upon the location of the place of
75 business of the purchaser.

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

78 (1) For purposes of this subsection, the terms "customer", "home service provider",
79 "place of primary use", "electronic database", and "enhanced zip code" shall have the same

80 meanings as defined in the Mobile Telecommunications Sourcing Act incorporated by reference
81 in section 144.013;

82 (2) Notwithstanding the provisions of this section, if a customer of mobile
83 telecommunications services believes that the amount of tax, the assignment of place of primary
84 use or the taxing jurisdiction included on a billing is erroneous, the customer shall notify the
85 home service provider, in writing, within three years from the date of the billing statement. The
86 customer shall include in such written notification the street address for the customer's place of
87 primary use, the account name and number for which the customer seeks a correction of the tax
88 assignment, a description of the error asserted by the customer and any other information the
89 home service provider reasonably requires to process the request;

90 (3) Within sixty days of receiving the customer's notice, the home service provider shall
91 review its records and the electronic database or enhanced zip code to determine the customer's
92 correct taxing jurisdiction. If the home service provider determines that the review shows that
93 the amount of tax, assignment of place of primary use or taxing jurisdiction is in error, the home
94 service provider shall correct the error and, at its election, either refund or credit the amount of
95 tax erroneously collected to the customer for a period of up to three years from the last day of
96 the home service provider's sixty-day review period. If the home service provider determines
97 that the review shows that the amount of tax, the assignment of place of primary use or the taxing
98 jurisdiction is correct, the home service provider shall provide a written explanation of its
99 determination to the customer.

100 8. For all refund claims submitted to the department of revenue on or after September
101 1, 2003, notwithstanding any provision of this section to the contrary, if a person legally
102 obligated to remit the tax levied pursuant to sections 144.010 to 144.525 has received a refund
103 of such taxes for a specific issue and submits a subsequent claim for refund of such taxes on the
104 same issue for a tax period beginning on or after the date the original refund check issued to such
105 person, no refund shall be allowed. This subsection shall not apply and a refund shall be allowed
106 if **the refund claim is filed by a purchaser under the provisions of subsection 4 of this**
107 **section, the refund claim is for use tax remitted by the purchaser, or** an additional refund
108 **claim is filed by a person legally obligated to remit the tax** due to any of the following:

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

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

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

114 9. Notwithstanding any provision of law to the contrary, the director of revenue shall
115 respond to a request for a binding letter ruling filed in accordance with section 536.021 within

116 sixty days of receipt of such request. If the director of revenue fails to respond to such letter
117 ruling request within sixty days of receipt by the director **of revenue**, the director of revenue
118 shall be barred from pursuing collection of any assessment of sales or use tax with respect to the
119 issue which is the subject of the letter ruling request. For purposes of this subsection, the term
120 "letter ruling" means a written interpretation of law by the director **of revenue** to a specific set
121 of facts provided by a specific taxpayer or his or her agent.

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

127 **11. The provisions of this section are intended to clarify the limitations on refund
128 claims as originally enacted in this chapter.**

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