

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILLS NOS. 517 & 754

AN ACT

To repeal sections 143.191, 143.801, 144.020, 144.049, and 144.080, RSMo, and to enact in lieu thereof five 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 143.191, 143.801, 144.020, 144.049, and
2 144.080, RSMo, are repealed and five new sections enacted in lieu
3 thereof, to be known as sections 143.191, 143.801, 144.020,
4 144.049, and 144.080, to read as follows:

5 143.191. 1. Every employer maintaining an office or
6 transacting any business within this state and making payment of
7 any wages taxable under [sections 143.011 to 143.998] this
8 chapter to a resident or nonresident individual shall deduct and
9 withhold from such wages for each payroll period the amount
10 provided in subsection 3 of this section.

11 2. The term "wages" referred to in subsection 1 of this
12 section means wages as defined by section 3401(a) of the Internal
13 Revenue Code of 1986, as amended. The term "employer" means any

1 person, firm, corporation, association, fiduciary of any kind, or
2 other type of organization for whom an individual performs
3 service as an employee, except that if the person or organization
4 for whom the individual performs service does not have control of
5 the payment of compensation for such service, the term "employer"
6 means the person having control of the payment of the
7 compensation. The term includes the United States, this state,
8 other states, and all agencies, instrumentalities, and
9 subdivisions of any of them.

10 3. (1) The method of determining the amount to be withheld
11 shall be prescribed by regulations of the director of revenue.
12 The prescribed table, percentages, or other method shall result,
13 so far as practicable, in withholding from the employee's wages
14 during each calendar year an amount substantially equivalent to
15 the tax reasonably estimated to be due from the employee under
16 [sections 143.011 to 143.998] this chapter with respect to the
17 amount of such wages included in his Missouri adjusted gross
18 income during the calendar year.

19 (2) The amount to be withheld by an employer with respect
20 to tips received by an employee in the course of the employee's
21 employment shall be calculated based solely upon the amount of
22 tips reported by the employee in a written statement furnished to
23 the employer as required by subsection (a) of section 6053 of the
24 Internal Revenue Code of 1986, as amended, or if greater, the
25 amount of tips received by the employer and remitted to the
26 employee. If an employee shares tips, the employer shall
27 withhold only from the employee who actually receives the shared
28 tips. The employer's Missouri income tax withholding obligation

1 with respect to an employee's tip income shall be limited to the
2 portion of the employee's wages under the control of the employer
3 against which the employer is required, pursuant to federal law,
4 to withhold federal income taxes on the employee's tips. Such
5 withholding obligation shall be calculated after making
6 reductions for all required federal tax withholding, Missouri
7 income tax withholding on non-tip income, and other amounts which
8 have higher legal priority.

9 4. For purposes of this section an employee shall be
10 entitled to the same number of personal and dependency
11 withholding exemptions as the number of exemptions to which he is
12 entitled for federal income tax withholding purposes. An
13 employer may rely upon the number of federal withholding
14 exemptions claimed by the employee, except where the employee
15 provides the employer with a form claiming a different number of
16 withholding exemptions in this state.

17 5. The director of revenue may enter into agreements with
18 the tax departments of other states (which require income tax to
19 be withheld from the payment of wages) so as to govern the
20 amounts to be withheld from the wages of residents of such states
21 under this section. Such agreements may provide for recognition
22 of anticipated tax credits in determining the amounts to be
23 withheld and, under regulations prescribed by the director of
24 revenue, may relieve employers in this state from withholding
25 income tax on wages paid to nonresident employees. The
26 agreements authorized by this subsection are subject to the
27 condition that the tax department of such other states grant
28 similar treatment to residents of this state.

1 6. The director of revenue shall enter into agreements with
2 the Secretary of the Treasury of the United States or with the
3 appropriate secretaries of the respective branches of the Armed
4 Forces of the United States for the withholding, as required by
5 subsections 1 and 2 of this section, of income taxes due the
6 state of Missouri on wages or other payments for service in the
7 armed services of the United States or on payments received as
8 retirement or retainer pay of any member or former member of the
9 Armed Forces entitled to such pay.

10 7. Subject to appropriations for the purpose of
11 implementing this section, the director of revenue shall comply
12 with provisions of the laws of the United States as amended and
13 the regulations promulgated thereto in order that all residents
14 of this state receiving monthly retirement income as a civil
15 service annuitant from the federal government taxable by this
16 state may have withheld monthly from any such moneys, whether
17 pension, annuities or otherwise, an amount for payment of state
18 income taxes as required by state law, but such withholding shall
19 not be less than twenty-five dollars per quarter.

20 8. The provisions of this section shall not apply to out-
21 of-state businesses operating under sections 190.270 to 190.285.

22 143.801. 1. A claim for credit or refund of an overpayment
23 of any tax imposed by sections 143.011 to 143.996 shall be filed
24 by the taxpayer within three years from the time the return was
25 filed or two years from the time the tax was paid, whichever of
26 such periods expires the later; or if no return was filed by the
27 taxpayer, within two years from the time the tax was paid. No
28 credit or refund shall be allowed or made after the expiration of

1 the period of limitation prescribed in this subsection for the
2 filing of a claim for credit or refund, unless a claim for credit
3 or refund is filed by the taxpayer within such period.

4 2. If the claim is filed by the taxpayer during the
5 three-year period prescribed in subsection 1 of this section, the
6 amount of the credit or refund shall not exceed the portion of
7 the tax paid within the three years immediately preceding the
8 filing of the claim plus the period of any extension of time for
9 filing the return. If the claim is not filed within such
10 three-year period, but is filed within the two-year period, the
11 amount of the credit or refund shall not exceed the portion of
12 the tax paid during the two years immediately preceding the
13 filing of the claim. If no claim is filed, the credit or refund
14 shall not exceed the amount which would be allowable under either
15 of the preceding sentences, as the case may be, if a claim was
16 filed on the date the credit or refund is allowed.

17 3. If pursuant to subsection 6 of section 143.711 an
18 agreement for an extension of the period for assessment of income
19 taxes is made within the period prescribed in subsection 1 of
20 this section for the filing of a claim for credit or refund, the
21 period for filing a claim for credit or for making a credit or
22 refund if no claim is filed, shall not expire prior to six months
23 after the expiration of the period within which an assessment may
24 be made pursuant to the agreement or any extension thereof. The
25 amount of such credit or refund shall not exceed the portion of
26 the tax paid after the execution of the agreement and before the
27 filing of the claim or the making of the credit or refund, as the
28 case may be, plus the portion of the tax paid within the period

1 which would be applicable under subsection 1 of this section if a
2 claim had been filed on the date the agreement was executed.

3 4. If a taxpayer is required by section 143.601 to report a
4 change or correction in federal taxable income reported on his
5 federal income tax return, or to report a change or correction
6 which is treated in the same manner as if it were an overpayment
7 for federal income tax purposes, an amended return or a claim for
8 credit or refund of any resulting overpayment of tax shall be
9 filed by the taxpayer within one year from the time the notice of
10 such change or correction or such amended return was required to
11 be filed with the director of revenue. If the report or amended
12 return required by section 143.601 is not filed within the
13 ninety-day period therein specified, interest on any resulting
14 refund or credit shall cease to accrue after such ninetieth day.
15 The amount of such credit or refund shall not exceed the amount
16 of the reduction in tax attributable to:

17 (1) The issues on which such federal change or correction
18 or the items amended on the taxpayer's amended federal income tax
19 return are based, and

20 (2) Any change in the amount of [his] the taxpayer's
21 federal income tax deduction under the provisions of subsection 1
22 of section 143.171. No effect shall be given in the preceding
23 sentence to any federal change or correction or to any item on an
24 amended return unless it is timely under the applicable federal
25 period of limitations. The time and amount provisions of this
26 subsection shall be in lieu of any other provisions of this
27 section. This subsection shall not affect the time within which
28 or the amount for which a claim for credit or refund may be filed

1 apart from this subsection.

2 5. If the claim for credit or refund relates to an
3 overpayment of tax on account of the deductibility by the
4 taxpayer of a debt as a debt which became worthless or a loss
5 from worthlessness of a security or the effect that the
6 deductibility of a debt or of a loss has on the application to
7 the taxpayer of a carryover, the claim may be made, under
8 regulations prescribed by the director of revenue within seven
9 years from the date prescribed by law for filing the return for
10 the year with respect to which the claim is made.

11 6. If the claim for credit or refund relates to an
12 overpayment attributable to a net operating loss carryback or a
13 capital loss carryback, in lieu of the three-year period of
14 limitations prescribed in subsection 1 of this section, the
15 period shall be that period which ends with the expiration of the
16 fifteenth day of the fortieth month (or the thirty-ninth month,
17 in the case of a corporation) following the end of the taxable
18 year of the net operating loss or net capital loss which results
19 in such carryback, or the period prescribed in subsection 3 of
20 this section in respect of such taxable year, whichever expires
21 later. In the case of such a claim, the amount of the credit or
22 refund may exceed the portion of the tax paid within the period
23 provided in subsections 2, 3 and 4 of this section, whichever is
24 applicable, to the extent of the amount of the overpayment
25 attributable to such carryback.

26 7. (1) No period of limitations provided in subsections 1
27 to 6 of this section shall apply if a taxpayer amends, or the
28 federal Internal Revenue Service or its successor agency changes,

1 the taxpayer's federal income tax return for the same tax period
2 and:

3 (a) Such amendment or change occurs after any period of
4 limitations provided in subsections 1 to 6 of this section has
5 expired;

6 (b) Such amendment or change reveals that the taxpayer is
7 eligible to claim a credit or refund of an overpayment of any tax
8 imposed under this chapter; and

9 (c) A period of limitations provided in subsections 1 to 6
10 of this section prohibits the taxpayer from claiming such credit
11 or refund.

12 (2) If the taxpayer files a claim for such credit or
13 refund, the claim shall be filed in the manner provided in this
14 chapter and shall be filed within one year from the time the
15 taxpayer amends or the federal Internal Revenue Service changes
16 the taxpayer's federal income tax return.

17 144.020. 1. A tax is hereby levied and imposed for the
18 privilege of titling new and used motor vehicles, trailers,
19 boats, and outboard motors purchased or acquired for use on the
20 highways or waters of this state which are required to be titled
21 under the laws of the state of Missouri and, except as provided
22 in subdivision (9) of this subsection, upon all sellers for the
23 privilege of engaging in the business of selling tangible
24 personal property or rendering taxable service at retail in this
25 state. The rate of tax shall be as follows:

26 (1) Upon every retail sale in this state of tangible
27 personal property, excluding motor vehicles, trailers,
28 motorcycles, mopeds, motortricycles, boats and outboard motors

1 required to be titled under the laws of the state of Missouri and
2 subject to tax under subdivision (9) of this subsection, a tax
3 equivalent to four percent of the purchase price paid or charged,
4 or in case such sale involves the exchange of property, a tax
5 equivalent to four percent of the consideration paid or charged,
6 including the fair market value of the property exchanged at the
7 time and place of the exchange, except as otherwise provided in
8 section 144.025;

9 (2) A tax equivalent to four percent of the amount paid for
10 admission and seating accommodations, or fees paid to, or in any
11 place of amusement, entertainment or recreation, games and
12 athletic events;

13 (3) A tax equivalent to four percent of the basic rate paid
14 or charged on all sales of electricity or electrical current,
15 water and gas, natural or artificial, to domestic, commercial or
16 industrial consumers;

17 (4) A tax equivalent to four percent on the basic rate paid
18 or charged on all sales of local and long distance
19 telecommunications service to telecommunications subscribers and
20 to others through equipment of telecommunications subscribers for
21 the transmission of messages and conversations and upon the sale,
22 rental or leasing of all equipment or services pertaining or
23 incidental thereto; except that, the payment made by
24 telecommunications subscribers or others, pursuant to section
25 144.060, and any amounts paid for access to the internet or
26 interactive computer services shall not be considered as amounts
27 paid for telecommunications services;

28 (5) A tax equivalent to four percent of the basic rate paid

1 or charged for all sales of services for transmission of messages
2 of telegraph companies;

3 (6) A tax equivalent to four percent on the amount of sales
4 or charges for all rooms, meals and drinks furnished at any
5 hotel, motel, tavern, inn, restaurant, eating house, drugstore,
6 dining car, tourist cabin, tourist camp or other place in which
7 rooms, meals or drinks are regularly served to the public. The
8 tax imposed under this subdivision shall not apply to any
9 automatic mandatory gratuity for a large group imposed by a
10 restaurant when such gratuity is reported as employee tip income
11 and the restaurant withholds income tax under section 143.191 on
12 such gratuity;

13 (7) A tax equivalent to four percent of the amount paid or
14 charged for intrastate tickets by every person operating a
15 railroad, sleeping car, dining car, express car, boat, airplane
16 and such buses and trucks as are licensed by the division of
17 motor carrier and railroad safety of the department of economic
18 development of Missouri, engaged in the transportation of persons
19 for hire;

20 (8) A tax equivalent to four percent of the amount paid or
21 charged for rental or lease of tangible personal property,
22 provided that if the lessor or renter of any tangible personal
23 property had previously purchased the property under the
24 conditions of "sale at retail" or leased or rented the property
25 and the tax was paid at the time of purchase, lease or rental,
26 the lessor, sublessor, renter or subrenter shall not apply or
27 collect the tax on the subsequent lease, sublease, rental or
28 subrental receipts from that property. The purchase, rental or

1 lease of motor vehicles, trailers, motorcycles, mopeds,
2 motortricycles, boats, and outboard motors shall be taxed and the
3 tax paid as provided in this section and section 144.070. In no
4 event shall the rental or lease of boats and outboard motors be
5 considered a sale, charge, or fee to, for or in places of
6 amusement, entertainment or recreation nor shall any such rental
7 or lease be subject to any tax imposed to, for, or in such places
8 of amusement, entertainment or recreation. Rental and leased
9 boats or outboard motors shall be taxed under the provisions of
10 the sales tax laws as provided under such laws for motor vehicles
11 and trailers. Tangible personal property which is exempt from
12 the sales or use tax under section 144.030 upon a sale thereof is
13 likewise exempt from the sales or use tax upon the lease or
14 rental thereof;

15 (9) A tax equivalent to four percent of the purchase price,
16 as defined in section 144.070, of new and used motor vehicles,
17 trailers, boats, and outboard motors purchased or acquired for
18 use on the highways or waters of this state which are required to
19 be registered under the laws of the state of Missouri. This tax
20 is imposed on the person titling such property, and shall be paid
21 according to the procedures in section 144.440.

22 2. All tickets sold which are sold under the provisions of
23 sections 144.010 to 144.525 which are subject to the sales tax
24 shall have printed, stamped or otherwise endorsed thereon, the
25 words "This ticket is subject to a sales tax."

26 144.049. 1. For purposes of this section, the following
27 terms mean:

28 (1) "Clothing", any article of wearing apparel, including

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

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

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

28 2. In each year beginning on or after January 1, 2005,

1 there is hereby specifically exempted from state sales tax law
2 all retail sales of any article of clothing having a taxable
3 value of one hundred dollars or less, all retail sales of school
4 supplies not to exceed fifty dollars per purchase, all computer
5 software with a taxable value of three hundred fifty dollars or
6 less, all graphing calculators having a taxable value of one
7 hundred fifty dollars or less, and all retail sales of personal
8 computers or computer peripheral devices not to exceed [three]
9 one thousand five hundred dollars, during a three-day period
10 beginning at 12:01 a.m. on the first Friday in August and ending
11 at midnight on the Sunday following.

12 3. If the governing body of any political subdivision
13 adopted an ordinance that applied to the 2004 sales tax holiday
14 to prohibit the provisions of this section from allowing the
15 sales tax holiday to apply to such political subdivision's local
16 sales tax, then, notwithstanding any provision of a local
17 ordinance to the contrary, the 2005 sales tax holiday shall not
18 apply to such political subdivision's local sales tax. However,
19 any such political subdivision may enact an ordinance to allow
20 the 2005 sales tax holiday to apply to its local sales taxes. A
21 political subdivision must notify the department of revenue not
22 less than forty-five calendar days prior to the beginning date of
23 the sales tax holiday occurring in that year of any ordinance or
24 order rescinding an ordinance or order to opt out.

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

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

1 6. After the 2005 sales tax holiday, any political
2 subdivision may, by adopting an ordinance or order, choose to
3 prohibit future annual sales tax holidays from applying to its
4 local sales tax. After opting out, the political subdivision may
5 rescind the ordinance or order. The political subdivision must
6 notify the department of revenue not less than forty-five
7 calendar days prior to the beginning date of the sales tax
8 holiday occurring in that year of any ordinance or order
9 rescinding an ordinance or order to opt out.

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

14 144.080. 1. Every person receiving any payment or
15 consideration upon the sale of property or rendering of service,
16 subject to the tax imposed by the provisions of sections 144.010
17 to 144.525, is exercising the taxable privilege of selling the
18 property or rendering the service at retail and is subject to the
19 tax levied in section 144.020. The person shall be responsible
20 not only for the collection of the amount of the tax imposed on
21 the sale or service to the extent possible under the provisions
22 of section 144.285, but shall, on or before the last day of the
23 month following each calendar quarterly period of three months,
24 file a return with the director of revenue showing the person's
25 gross receipts and the amount of tax levied in section 144.020
26 for the preceding quarter, and shall remit to the director of
27 revenue, with the return, the taxes levied in section 144.020,
28 except as provided in subsections 2 and 3 of this section. The

1 director of revenue may promulgate rules or regulations changing
2 the filing and payment requirements of sellers, but shall not
3 require any seller to file and pay more frequently than required
4 in this section.

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

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

17 4. The seller of any property or person rendering any
18 service, subject to the tax imposed by sections 144.010 to
19 144.525, shall collect the tax from the purchaser of such
20 property or the recipient of the service to the extent possible
21 under the provisions of section 144.285, but the seller's
22 inability to collect any part or all of the tax does not relieve
23 the seller of the obligation to pay to the state the tax imposed
24 by section 144.020; except that the collection of the tax imposed
25 by sections 144.010 to 144.525 on motor vehicles and trailers
26 shall be made as provided in sections 144.070 and 144.440.

27 5. **[It shall be unlawful for]** Any person **[to]** may advertise
28 or hold out or state to the public or to any customer directly

1 [or indirectly] that the tax or any part thereof imposed by
2 sections 144.010 to 144.525, and required to be collected by the
3 person, will be assumed or absorbed by the person, [or that it
4 will not be separately stated and added to the selling price of
5 the] provided that the amount of tax assumed or absorbed shall be
6 stated on any invoice or receipt for the property sold or service
7 rendered [, or if added, that it or any part thereof will be
8 refunded]. Any person violating any of the provisions of this
9 section shall be guilty of a misdemeanor. This subsection shall
10 not apply to any retailer prohibited from collecting and
11 remitting sales tax under section 66.630.