

SENATE SUBSTITUTE
FOR
HOUSE BILL NO. 1435

AN ACT

To repeal section 144.190, RSMo, and to enact in lieu thereof one new section relating to sales tax refunds.

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

1 Section A. Section 144.190, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 144.190,
3 to read as follows:

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

13 2. If any tax, penalty or interest has been paid more than
14 once, or has been erroneously or illegally collected, or has been
15 erroneously or illegally computed, such sum shall be credited on
16 any taxes then due from the person legally obligated to remit the
17 tax pursuant to sections 144.010 to 144.525, and the balance,
18 with interest as determined by section 32.065, shall be refunded
19 to the person legally obligated to remit the tax, but no such

1 credit or refund shall be allowed unless duplicate copies of a
2 claim for refund are filed within three years from date of
3 overpayment.

4 3. Every claim for refund must be in writing and signed by
5 the applicant, and must state the specific grounds upon which the
6 claim is founded. Any refund or any portion thereof which is
7 erroneously made, and any credit or any portion thereof which is
8 erroneously allowed, may be recovered in any action brought by
9 the director of revenue against the person legally obligated to
10 remit the tax. In the event that a tax has been illegally
11 imposed against a person legally obligated to remit the tax, the
12 director of revenue shall authorize the cancellation of the tax
13 upon the director's record.

14 4. Notwithstanding the provisions of section 32.057, a
15 purchaser that originally paid sales or use tax to a vendor or
16 seller may submit a refund claim directly to the director of
17 revenue for such sales or use taxes paid to such vendor or seller
18 and remitted to the director, provided no sum shall be refunded
19 more than once, any such claim shall be subject to any offset,
20 defense, or other claim the director otherwise would have against
21 either the purchaser or vendor or seller, and such claim for
22 refund is accompanied by either:

23 (1) A notarized assignment of rights statement by the
24 vendor or seller to the purchaser allowing the purchaser to seek
25 the refund on behalf of the vendor or seller. An assignment of
26 rights statement shall contain the Missouri sales or use tax
27 registration number of the vendor or seller, a list of the
28 transactions covered by the assignment, the tax periods and

1 location for which the original sale was reported to the director
2 of revenue by the vendor or seller, and a notarized statement
3 signed by the vendor or seller affirming that the vendor or
4 seller has not received a refund or credit, will not apply for a
5 refund or credit of the tax collected on any transactions covered
6 by the assignment, and authorizes the director to amend the
7 seller's return to reflect the refund; or

8 (2) In the event the vendor or seller fails or refuses to
9 provide an assignment of rights statement within sixty days from
10 the date of such purchaser's written request to the vendor or
11 seller, or the purchaser is not able to locate the vendor or
12 seller or the vendor or seller is no longer in business, the
13 purchaser may provide the director a notarized statement
14 confirming the efforts that have been made to obtain an
15 assignment of rights from the vendor or seller. Such statement
16 shall contain a list of the transactions covered by the
17 assignment, the tax periods and location for which the original
18 sale was reported to the director of revenue by the vendor or
19 seller.

20
21 The director shall not require such vendor, seller, or purchaser
22 to submit amended returns for refund claims submitted under the
23 provisions of this subsection. Notwithstanding the provisions of
24 section 32.057, if the seller is registered with the director for
25 collection and remittance of sales tax, the director shall notify
26 the seller at the seller's last known address of the claim for
27 refund. If the seller objects to the refund within thirty days
28 of the date of the notice, the director shall not pay the refund.

1 If the seller agrees that the refund is warranted or fails to
2 respond within thirty days, the director may issue the refund and
3 amend the seller's return to reflect the refund. For purposes of
4 section 32.069, the refund claim shall not be considered to have
5 been filed until the seller agrees that the refund is warranted
6 or thirty days after the date the director notified the seller
7 and the seller failed to respond.

8 5. Notwithstanding the provisions of section 32.057, when a
9 vendor files a refund claim on behalf of a purchaser and such
10 refund claim is denied by the director, notice of such denial and
11 the reason for the denial shall be sent by the director to the
12 vendor and each purchaser whose name and address is submitted
13 with the refund claim form filed by the vendor. A purchaser
14 shall be entitled to appeal the denial of the refund claim within
15 sixty days of the date such notice of denial is mailed by the
16 director as provided in section 144.261. The provisions of this
17 subsection shall apply to all refund claims filed after August
18 28, 2012. The provisions of this subsection allowing a purchaser
19 to appeal the director's decision to deny a refund claim shall
20 also apply to any refund claim denied by the director on or after
21 January 1, 2007, if an appeal of the denial of the refund claim
22 is filed by the purchaser no later than September 28, 2012, and
23 if such claim is based solely on the issue of the exemption of
24 the electronic transmission or delivery of computer software.

25 6. Notwithstanding the provisions of this section, the
26 director of revenue shall authorize direct-pay agreements to
27 purchasers which have annual purchases in excess of seven hundred
28 fifty thousand dollars pursuant to rules and regulations adopted

1 by the director of revenue. For the purposes of such direct-pay
2 agreements, the taxes authorized pursuant to chapters 66, 67, 70,
3 92, 94, 162, 190, 238, 321, and 644 shall be remitted based upon
4 the location of the place of business of the purchaser.

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

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

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

24 (3) Within sixty days of receiving the customer's notice,
25 the home service provider shall review its records and the
26 electronic database or enhanced zip code to determine the
27 customer's correct taxing jurisdiction. If the home service
28 provider determines that the review shows that the amount of tax,

1 assignment of place of primary use or taxing jurisdiction is in
2 error, the home service provider shall correct the error and, at
3 its election, either refund or credit the amount of tax
4 erroneously collected to the customer for a period of up to three
5 years from the last day of the home service provider's sixty-day
6 review period. If the home service provider determines that the
7 review shows that the amount of tax, the assignment of place of
8 primary use or the taxing jurisdiction is correct, the home
9 service provider shall provide a written explanation of its
10 determination to the customer.

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

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

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

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

3 9. Notwithstanding any provision of law to the contrary,
4 the director of revenue shall respond to a request for a binding
5 letter ruling filed in accordance with section 536.021 within
6 sixty days of receipt of such request. If the director of
7 revenue fails to respond to such letter ruling request within
8 sixty days of receipt by the director, the director of revenue
9 shall be barred from pursuing collection of any assessment of
10 sales or use tax with respect to the issue which is the subject
11 of the letter ruling request. For purposes of this subsection,
12 the term "letter ruling" means a written interpretation of law by
13 the director to a specific set of facts provided by a specific
14 taxpayer or his or her agent.

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