

FIRST REGULAR SESSION

# SENATE BILL NO. 130

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0034S.011

## AN ACT

To repeal section 136.315, RSMo, and to enact in lieu thereof two new sections relating to attorneys' fees in proceedings regarding the assessment of certain types of taxes.

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

Section A. Section 136.315, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 136.315 and 143.735, to read as  
3 follows:

136.315. 1. As used in this section the following terms shall mean:

2 (1) "Party", a natural person or sole proprietorship [with a Missouri  
3 adjusted gross income of less than seventy-five thousand dollars in each of the  
4 two taxable years preceding the date of filing]; a corporation or partnership [with  
5 a federal taxable income of less than one hundred thousand dollars in each of the  
6 two taxable years preceding the date of filing]; or an association, labor union or  
7 not-for-profit organization [with less than fifty employees on the date of filing;  
8 provided, however, that a corporation that is a subsidiary or affiliate of a  
9 corporation with a federal taxable income of one hundred thousand dollars or  
10 more in each of the two taxable years preceding the date of filing is not a "party"  
11 under this section];

12 (2) "Prevail", to obtain disposition by final judgment or order, dismissal,  
13 or default which is favorable on all or substantially all issues;

14 (3) "Proceeding", a case before the administrative hearing commission or  
15 a court with respect to a tax imposed under chapter 143 or any sales or use tax  
16 imposed by chapter 144 or Section 43(a) of Article IV of the Missouri  
17 Constitution;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 (4) "Reasonable litigation expenses", those actual expenses[, not in excess  
19 of ten thousand dollars,] that the administrative hearing commission or court  
20 finds were reasonably incurred in opposing the department's action, including,  
21 but not limited to, court costs, attorneys' fees and fees for expert and other  
22 witnesses.

23 2. When a party prevails in a proceeding filed after January 1, 1984, the  
24 court or administrative hearing commission may award the party reasonable  
25 litigation expenses if it finds that the position of the state was vexatious or was  
26 not substantially justified. Fees and expenses shall not be awarded if the final  
27 disposition is substantially the same as a settlement previously offered by the  
28 department to the taxpayer.

29 3. A party seeking an award for fees and other expenses pursuant to this  
30 section shall, not later than thirty days after final disposition is made in the  
31 proceeding, submit to the court or administrative hearing commission an  
32 application which provides evidence of eligibility for an award pursuant to this  
33 section, alleges in what particulars the department was vexatious or not  
34 substantially justified in its position and which specifies the amount sought. If  
35 the amount sought includes an attorney's fee or the fee for an expert witness, the  
36 application shall include an itemized statement for each such fee indicating the  
37 actual time expended in service to the applicant and the rate at which the fees  
38 were computed. The burden of proof shall be on the party seeking an award  
39 under this section to demonstrate the facts required as a condition to recovery.

40 4. The court or administrative hearing commission, in its discretion, may  
41 reduce the amount to be awarded pursuant to this section, or deny an award, to  
42 the extent that the prevailing party, during the course of the proceedings,  
43 engaged in conduct which unduly and unreasonably protracted the final  
44 resolution of the matter in controversy or when an overriding public interest  
45 exists which would make an award unjust.

**143.735. Notwithstanding section 136.315 to the contrary, if the  
2 court or administrative hearing commission, in a proceeding with  
3 regard to the assessment of a tax imposed under this chapter, issues a  
4 judgment, order, dismissal, or default that is favorable on all or  
5 substantially all issues to the taxpayer, the court or commission shall  
6 order the department of revenue to pay the taxpayer's reasonable fees  
7 and expenses, as defined in section 536.085, incurred in opposing the  
8 department's action. Payment for the fees in accordance with an order**

9 from the court or commission shall be made from appropriations to the  
10 department and shall not be made from the state legal expense fund  
11 established under section 105.711.

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