

FIRST REGULAR SESSION

# SENATE BILL NO. 353

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

0194S.02I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 144.020 and 144.190, RSMo, and to enact in lieu thereof two new sections relating to sales tax, with an emergency clause.

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

Section A. Sections 144.020 and 144.190, RSMo, are  
2 repealed and two new sections enacted in lieu thereof, to be  
3 known as sections 144.020 and 144.190, to read as follows:

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

11 (1) Upon every retail sale in this state of tangible  
12 personal property, excluding motor vehicles, trailers,  
13 motorcycles, mopeds, motortricycles, boats and outboard  
14 motors required to be titled under the laws of the state of  
15 Missouri and subject to tax under subdivision (9) of this  
16 subsection, a tax equivalent to four percent of the purchase  
17 price paid or charged, or in case such sale involves the  
18 exchange of property, a tax equivalent to four percent of

19 the consideration paid or charged, including the fair market  
20 value of the property exchanged at the time and place of the  
21 exchange, except as otherwise provided in section 144.025;

22 (2) A tax equivalent to four percent of the amount  
23 paid for admission and seating accommodations, or fees paid  
24 to, or in any place of amusement, entertainment or  
25 recreation, games and athletic events, except amounts paid  
26 for any instructional class;

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

31 (4) (a) A tax equivalent to four percent on the basic  
32 rate paid or charged on all sales of local and long distance  
33 telecommunications service to telecommunications subscribers  
34 and to others through equipment of telecommunications  
35 subscribers for the transmission of messages and  
36 conversations and upon the sale, rental or leasing of all  
37 equipment or services pertaining or incidental thereto;  
38 except that, the payment made by telecommunications  
39 subscribers or others, pursuant to section 144.060, and any  
40 amounts paid for access to the internet or interactive  
41 computer services shall not be considered as amounts paid  
42 for telecommunications services;

43 (b) If local and long distance telecommunications  
44 services subject to tax under this subdivision are  
45 aggregated with and not separately stated from charges for  
46 telecommunications service or other services not subject to  
47 tax under this subdivision, including, but not limited to,  
48 interstate or international telecommunications services,  
49 then the charges for nontaxable services may be subject to  
50 taxation unless the telecommunications provider can identify

51 by reasonable and verifiable standards such portion of the  
52 charges not subject to such tax from its books and records  
53 that are kept in the regular course of business, including,  
54 but not limited to, financial statement, general ledgers,  
55 invoice and billing systems and reports, and reports for  
56 regulatory tariffs and other regulatory matters;

57 (c) A telecommunications provider shall notify the  
58 director of revenue of its intention to utilize the  
59 standards described in paragraph (b) of this subdivision to  
60 determine the charges that are subject to sales tax under  
61 this subdivision. Such notification shall be in writing and  
62 shall meet standardized criteria established by the  
63 department regarding the form and format of such notice;

64 (d) The director of revenue may promulgate and enforce  
65 reasonable rules and regulations for the administration and  
66 enforcement of the provisions of this subdivision. Any rule  
67 or portion of a rule, as that term is defined in section  
68 536.010, that is created under the authority delegated in  
69 this section shall become effective only if it complies with  
70 and is subject to all of the provisions of chapter 536 and,  
71 if applicable, section 536.028. This section and chapter  
72 536 are nonseverable and if any of the powers vested with  
73 the general assembly pursuant to chapter 536 to review, to  
74 delay the effective date, or to disapprove and annul a rule  
75 are subsequently held unconstitutional, then the grant of  
76 rulemaking authority and any rule proposed or adopted after  
77 August 28, 2019, shall be invalid and void;

78 (5) A tax equivalent to four percent of the basic rate  
79 paid or charged for all sales of services for transmission  
80 of messages of telegraph companies;

81 (6) A tax equivalent to four percent on the amount of  
82 sales or charges for all rooms, meals and drinks furnished

83 at any hotel, motel, tavern, inn, restaurant, eating house,  
84 drugstore, dining car, tourist cabin, tourist camp or other  
85 place in which rooms, meals or drinks are regularly served  
86 to the public. The tax imposed under this subdivision shall  
87 not apply to:

88       **(a)** Any automatic mandatory gratuity for a large group  
89 imposed by a restaurant when such gratuity is reported as  
90 employee tip income and the restaurant withholds income tax  
91 under section 143.191 on such gratuity; **or**

92       **(b) The amount of sales or charges for the rental of**  
93 **any rooms at an establishment that does not offer overnight**  
94 **accommodation for transient guests.**

95       (7) A tax equivalent to four percent of the amount  
96 paid or charged for intrastate tickets by every person  
97 operating a railroad, sleeping car, dining car, express car,  
98 boat, airplane and such buses and trucks as are licensed by  
99 the division of motor carrier and railroad safety of the  
100 department of economic development of Missouri, engaged in  
101 the transportation of persons for hire;

102       (8) A tax equivalent to four percent of the amount  
103 paid or charged for rental or lease of tangible personal  
104 property, provided that if the lessor or renter of any  
105 tangible personal property had previously purchased the  
106 property under the conditions of sale at retail or leased or  
107 rented the property and the tax was paid at the time of  
108 purchase, lease or rental, the lessor, sublessor, renter or  
109 subrenter shall not apply or collect the tax on the  
110 subsequent lease, sublease, rental or subrental receipts  
111 from that property. The purchase, rental or lease of motor  
112 vehicles, trailers, motorcycles, mopeds, motortricycles,  
113 boats, and outboard motors shall be taxed and the tax paid  
114 as provided in this section and section 144.070. In no

115 event shall the rental or lease of boats and outboard motors  
116 be considered a sale, charge, or fee to, for or in places of  
117 amusement, entertainment or recreation nor shall any such  
118 rental or lease be subject to any tax imposed to, for, or in  
119 such places of amusement, entertainment or recreation.

120 Rental and leased boats or outboard motors shall be taxed  
121 under the provisions of the sales tax laws as provided under  
122 such laws for motor vehicles and trailers. Tangible  
123 personal property which is exempt from the sales or use tax  
124 under section 144.030 upon a sale thereof is likewise exempt  
125 from the sales or use tax upon the lease or rental thereof;

126 (9) A tax equivalent to four percent of the purchase  
127 price, as defined in section 144.070, of new and used motor  
128 vehicles, trailers, boats, and outboard motors purchased or  
129 acquired for use on the highways or waters of this state  
130 which are required to be registered under the laws of the  
131 state of Missouri. This tax is imposed on the person  
132 titling such property, and shall be paid according to the  
133 procedures in section 144.440.

134 2. All tickets sold which are sold under the  
135 provisions of sections 144.010 to 144.525 which are subject  
136 to the sales tax shall have printed, stamped or otherwise  
137 endorsed thereon, the words "This ticket is subject to a  
138 sales tax."

144.190. 1. If a tax has been incorrectly computed by  
2 reason of a clerical error or mistake on the part of the  
3 director of revenue, such fact shall be set forth in the  
4 records of the director of revenue, and the amount of the  
5 overpayment shall be credited on any taxes then due from the  
6 person legally obligated to remit the tax under chapter 144,  
7 and the balance shall be refunded to the person legally

8 obligated to remit the tax, such person's administrators or  
9 executors, as provided for in section 144.200.

10 2. If any tax, penalty or interest has been paid more  
11 than once, or has been erroneously or illegally collected,  
12 or has been erroneously or illegally computed, such sum  
13 shall be credited on any taxes then due from the person  
14 legally obligated to remit the tax under chapter 144, and  
15 the balance, with interest as determined by section 32.065,  
16 shall be refunded to the person legally obligated to remit  
17 the tax, but no such credit or refund shall be allowed  
18 unless duplicate copies of a claim for refund are filed  
19 within ten years from date of overpayment.

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

31 4. Notwithstanding the provisions of section 32.057, a  
32 purchaser that originally paid sales or use tax to a vendor  
33 or seller may submit a refund claim directly to the director  
34 of revenue for such sales or use taxes paid to such vendor  
35 or seller and remitted to the director, provided no sum  
36 shall be refunded more than once, any such claim shall be  
37 subject to any offset, defense, or other claim the director  
38 otherwise would have against either the purchaser or vendor

39 or seller, and such claim for refund is accompanied by  
40 either:

41 (1) A notarized assignment of rights statement by the  
42 vendor or seller to the purchaser allowing the purchaser to  
43 seek the refund on behalf of the vendor or seller. An  
44 assignment of rights statement shall contain the Missouri  
45 sales or use tax registration number of the vendor or  
46 seller, a list of the transactions covered by the  
47 assignment, the tax periods and location for which the  
48 original sale was reported to the director of revenue by the  
49 vendor or seller, and a notarized statement signed by the  
50 vendor or seller affirming that the vendor or seller has not  
51 received a refund or credit, will not apply for a refund or  
52 credit of the tax collected on any transactions covered by  
53 the assignment, and authorizes the director to amend the  
54 seller's return to reflect the refund; or

55 (2) In the event the vendor or seller fails or refuses  
56 to provide an assignment of rights statement within sixty  
57 days from the date of such purchaser's written request to  
58 the vendor or seller, or the purchaser is not able to locate  
59 the vendor or seller or the vendor or seller is no longer in  
60 business, the purchaser may provide the director a notarized  
61 statement confirming the efforts that have been made to  
62 obtain an assignment of rights from the vendor or seller.  
63 Such statement shall contain a list of the transactions  
64 covered by the assignment, the tax periods and location for  
65 which the original sale was reported to the director of  
66 revenue by the vendor or seller.

67 The director shall not require such vendor, seller, or  
68 purchaser to submit amended returns for refund claims  
69 submitted under the provisions of this subsection.

70 Notwithstanding the provisions of section 32.057, if the  
71 seller is registered with the director for collection and  
72 remittance of sales tax, the director shall notify the  
73 seller at the seller's last known address of the claim for  
74 refund. If the seller objects to the refund within thirty  
75 days of the date of the notice, the director shall not pay  
76 the refund. If the seller agrees that the refund is  
77 warranted or fails to respond within thirty days, the  
78 director may issue the refund and amend the seller's return  
79 to reflect the refund. For purposes of section 32.069, the  
80 refund claim shall not be considered to have been filed  
81 until the seller agrees that the refund is warranted or  
82 thirty days after the date the director notified the seller  
83 and the seller failed to respond.

84 5. Notwithstanding the provisions of section 32.057,  
85 when a vendor files a refund claim on behalf of a purchaser  
86 and such refund claim is denied by the director, notice of  
87 such denial and the reason for the denial shall be sent by  
88 the director to the vendor and each purchaser whose name and  
89 address is submitted with the refund claim form filed by the  
90 vendor. A purchaser shall be entitled to appeal the denial  
91 of the refund claim within sixty days of the date such  
92 notice of denial is mailed by the director as provided in  
93 section 144.261. The provisions of this subsection shall  
94 apply to all refund claims filed after August 28, 2012. The  
95 provisions of this subsection allowing a purchaser to appeal  
96 the director's decision to deny a refund claim shall also  
97 apply to any refund claim denied by the director on or after  
98 January 1, 2007, if an appeal of the denial of the refund  
99 claim is filed by the purchaser no later than September 28,  
100 2012, and if such claim is based solely on the issue of the



101 exemption of the electronic transmission or delivery of  
102 computer software.

103         6. Notwithstanding the provisions of this section, the  
104 director of revenue shall authorize direct-pay agreements to  
105 purchasers which have annual purchases in excess of seven  
106 hundred fifty thousand dollars pursuant to rules and  
107 regulations adopted by the director of revenue. For the  
108 purposes of such direct-pay agreements, the taxes authorized  
109 under chapters 66, 67, 70, 92, 94, 162, 190, 238, 321, and  
110 644 shall be remitted based upon the location of the place  
111 of business of the purchaser.

112         7. Special rules applicable to error corrections  
113 requested by customers of mobile telecommunications service  
114 are as follows:

115             (1) For purposes of this subsection, the terms  
116 "customer", "home service provider", "place of primary use",  
117 "electronic database", and "enhanced zip code" shall have  
118 the same meanings as defined in the Mobile  
119 Telecommunications Sourcing Act incorporated by reference in  
120 section 144.013;

121             (2) Notwithstanding the provisions of this section, if  
122 a customer of mobile telecommunications services believes  
123 that the amount of tax, the assignment of place of primary  
124 use or the taxing jurisdiction included on a billing is  
125 erroneous, the customer shall notify the home service  
126 provider, in writing, within three years from the date of  
127 the billing statement. The customer shall include in such  
128 written notification the street address for the customer's  
129 place of primary use, the account name and number for which  
130 the customer seeks a correction of the tax assignment, a  
131 description of the error asserted by the customer and any

132 other information the home service provider reasonably  
133 requires to process the request;

134         (3) Within sixty days of receiving the customer's  
135 notice, the home service provider shall review its records  
136 and the electronic database or enhanced zip code to  
137 determine the customer's correct taxing jurisdiction. If  
138 the home service provider determines that the review shows  
139 that the amount of tax, assignment of place of primary use  
140 or taxing jurisdiction is in error, the home service  
141 provider shall correct the error and, at its election,  
142 either refund or credit the amount of tax erroneously  
143 collected to the customer for a period of up to three years  
144 from the last day of the home service provider's sixty-day  
145 review period. If the home service provider determines that  
146 the review shows that the amount of tax, the assignment of  
147 place of primary use or the taxing jurisdiction is correct,  
148 the home service provider shall provide a written  
149 explanation of its determination to the customer.

150         8. For all refund claims submitted to the department  
151 of revenue on or after September 1, 2003, notwithstanding  
152 any provision of this section to the contrary, if a person  
153 legally obligated to remit the tax levied under chapter 144  
154 has received a refund of such taxes for a specific issue and  
155 submits a subsequent claim for refund of such taxes on the  
156 same issue for a tax period beginning on or after the date  
157 the original refund check issued to such person, no refund  
158 shall be allowed. This subsection shall not apply and a  
159 refund shall be allowed if the refund claim is filed by a  
160 purchaser under the provisions of subsection 4 of this  
161 section, the refund claim is for use tax remitted by the  
162 purchaser, or an additional refund claim is filed by a

163 person legally obligated to remit the tax due to any of the  
164 following:

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

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

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

171 9. Notwithstanding any provision of law to the  
172 contrary, the director of revenue shall respond to a request  
173 for a binding letter ruling filed in accordance with section  
174 536.021 within sixty days of receipt of such request. If  
175 the director of revenue fails to respond to such letter  
176 ruling request within sixty days of receipt by the director,  
177 the director of revenue shall be barred from pursuing  
178 collection of any assessment of sales or use tax with  
179 respect to the issue which is the subject of the letter  
180 ruling request. For purposes of this subsection, the term  
181 "letter ruling" means a written interpretation of law by the  
182 director to a specific set of facts provided by a specific  
183 taxpayer or his or her agent.

184 10. If any tax was paid more than once, was  
185 incorrectly collected, or was incorrectly computed, such sum  
186 shall be credited on any taxes then due from the person  
187 legally obligated to remit the tax under chapter 144 against  
188 any deficiency or tax due discovered through an audit of the  
189 person by the department of revenue through adjustment  
190 during the same tax filing period for which the audit  
191 applied.

192 **11. Notwithstanding any provision of law to the**  
193 **contrary, the department of revenue shall allow refund**  
194 **claims until July 1, 2026, from businesses and individuals**

195 that paid sales and use tax assessments as a result of an  
196 audit by the department of revenue between August 28, 2005,  
197 and August 28, 2015, when the department expanded its  
198 interpretation of taxable items and the taxpayer did not  
199 collect the tax from the taxpayer's customers. The refund  
200 shall be allowed in an amount equal to the amount actually  
201 paid on such assessment by the taxpayer, plus interest  
202 calculated using the Applicable Federal Rates as published  
203 by the Internal Revenue Service under 26 U.S.C. Section  
204 274. The total amount of refund claims paid under this  
205 subsection shall not exceed one hundred thousand dollars and  
206 shall be issued on a first-come, first-served basis. If the  
207 total amount of refund claims exceeds one hundred thousand  
208 dollars, the department shall request an appropriation from  
209 the general assembly in later fiscal years to satisfy such  
210 unpaid claims.

211 12. (1) Notwithstanding any provision of law to the  
212 contrary, and in addition to the refund claims allowed under  
213 subsection 11 of this section, the department of revenue  
214 shall allow refund claims until July 1, 2026, from  
215 businesses and individuals that offered wedding venues and  
216 that paid sales and use tax assessments relating to those  
217 wedding venues as a result of an audit by the department of  
218 revenue between January 1, 2018, and October 1, 2019. For  
219 the purposes of this subsection, the department shall allow  
220 refund claims from a taxpayer regardless of whether the  
221 taxpayer's business has been sold. The refund shall be  
222 allowed in an amount equal to the amount that was actually  
223 paid by the taxpayer on the portion of the assessment that  
224 directly relates to the taxpayer's wedding venue business,  
225 plus interest calculated using the Applicable Federal Rates  
226 as published by the Internal Revenue Service under 26 U.S.C.

227 Section 1274. The total amount of refund claims paid under  
228 this subsection shall not exceed two hundred thousand  
229 dollars and shall be issued on a first-come, first-served  
230 basis. If the total amount of refund claims exceeds two  
231 hundred thousand dollars, the department shall request an  
232 appropriation from the general assembly in later fiscal  
233 years to satisfy such unpaid claims.

234 (2) Notwithstanding any provision of law to the  
235 contrary, in any action in which a taxpayer incurs  
236 attorney's fees in a legal proceeding relating to a tax  
237 assessment or audit of the taxpayer's wedding venue  
238 business, during the time period and as otherwise described  
239 under subdivision (1) of this subsection, the taxpayer shall  
240 be entitled to recover the full amount of such attorney's  
241 fees.

Section B. Because of the importance of sales tax  
2 relief, section A of this act is deemed necessary for the  
3 immediate preservation of the public health, welfare, peace,  
4 and safety, and is hereby declared to be an emergency act  
5 within the meaning of the constitution, and section A of  
6 this act shall be in full force and effect upon its passage  
7 and approval.

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