

SECOND REGULAR SESSION

SENATE BILL NO. 700

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

4182S.01I

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2 repealed and two new sections enacted in lieu thereof, to be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 not used for overnight accommodation for transient**
94 **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**

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

12. (1) Notwithstanding any provision of law to the contrary, and in addition to the refund claims allowed under subsection 11 of this section, the department of revenue shall allow refund claims until July 1, 2026, from businesses and individuals that offered wedding venues and that paid sales and use tax assessments relating to those wedding venues as a result of an audit by the department of revenue between January 1, 2018, and October 1, 2019. For the purposes of this subsection, the department shall allow refund claims from a taxpayer regardless of whether the taxpayer's business has been sold. The refund shall be allowed in an amount equal to the amount that was actually paid by the taxpayer on the portion of the assessment that directly relates to the taxpayer's wedding venue business, plus interest calculated using the Applicable Federal Rates 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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