

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 724
89TH GENERAL ASSEMBLY

Reported from the Committee on Ways & Means, April 16, 1998, with recommendation that the House Committee Substitute for Senate Substitute for Senate Bill No. 724 Do Pass.
ANNE C. WALKER, Chief Clerk
L3166.06C

AN ACT

To repeal section 143.183, RSMo 1994, and section 285.230, RSMo Supp. 1997, relating to state income tax revenue from certain nonresidents, and to enact in lieu thereof two new sections for the sole purpose of providing for state income tax revenues from nonresident entertainers and athletes.

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

Section A. Section 143.183, RSMo 1994, and section 285.230, RSMo Supp. 1997, are repealed and two new sections enacted in lieu thereof, to be known as sections 143.183 and 285.230, to read as follows:

143.183. 1. As used in this section, the following terms mean:

(1) "Nonresident entertainer", a person residing **or registered as a corporation** outside this state who, for compensation, performs any vocal, instrumental, musical, comedy, dramatic, dance or other performance in this state before a live audience and any other person traveling with and performing services on behalf of a nonresident entertainer, **including a nonresident entertainer who is paid compensation for providing entertainment as an independent contractor, a partnership that is paid compensation for entertainment provided by nonresident entertainers, a corporation that is paid compensation for entertainment provided by nonresident entertainers, or any other entity that is paid compensation for entertainment provided by nonresident entertainers;**

(2) "Nonresident member of a professional athletic team", a member of a professional athletic team residing outside this state, including any active player, any player on the disabled list if such player is in uniform on the day of the game at the site of the game, and any other person traveling with and performing services on behalf of a professional athletic team;

(3) "Personal service income" includes exhibition and regular season salaries and wages, guaranteed payments, strike benefits, deferred payments, severance pay, bonuses, and any other type of compensation paid to the nonresident entertainer or nonresident member of a professional athletic team, but does not include prizes, bonuses or incentive money received from competition in a livestock, equine or rodeo performance, exhibition or show;

(4) "Professional athletic team" includes, but is not limited to, any professional baseball,

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

basketball, football, soccer and hockey team.

2. Any person or entity who pays compensation to a nonresident entertainer shall deduct and withhold from such compensation as a prepayment of tax, an amount equal to two percent of the total compensation paid to the nonresident entertainer.

3. Any person or entity required to deduct and withhold tax pursuant to subsection 2 of this section, shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, remit the taxes withheld in such form or return as prescribed by the director of revenue and pay over to the director of revenue or to a depository designated by the director of revenue the taxes so required to be deducted and withheld.

4. Notwithstanding other provisions of this chapter to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, [1995] 1999, but none after December 31, [2004] 2008, shall annually estimate the amount of state income tax revenues collected [under] pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year [1996] 2000, and for each subsequent fiscal year for a period of nine years, the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri arts council trust fund, and an amount equal to [fifty] sixty percent of such estimate shall be transferred, subject to appropriation, from the general revenue fund to the Missouri arts council trust fund established in section 185.100, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year. Notwithstanding other provisions of this section, the Missouri arts council shall not be appropriated more than ten million dollars in any fiscal year. The director shall by rule establish the method of determining the portion of personal service income of such persons that is allocable to Missouri.

5. Notwithstanding the provisions of sections 186.050 to 186.067, RSMo, to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2008, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri humanities council trust fund, and an amount equal to ten percent of such estimate shall be transferred, subject to appropriation, from the general revenue fund to the Missouri humanities council trust fund established in section 186.055, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year.

6. Notwithstanding other provisions of section 182.812, RSMo, to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2008, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri state library networking fund, and an amount equal to ten percent of such estimate shall be transferred, subject to appropriation, from the general revenue fund to the secretary of state for distribution to public libraries for acquisition of library materials

as established in section 182.812, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year.

7. Notwithstanding other provisions of section 37.200, RSMo, to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2008, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri public television broadcasting corporation special fund, and an amount equal to ten percent of such estimate shall be transferred, subject to appropriation, from the general revenue fund to the Missouri public television broadcasting corporation special fund established in section 37.200, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year; provided, however, that twenty-five percent of such allocation shall be used for grants to public radio stations which were qualified by the corporation for public broadcasting as of November 1, 1996. Such grants shall be distributed to each of such public radio stations in this state after receipt of the station's certification of operating and programming expenses for the prior fiscal year. Certification shall consist of the most recent fiscal year financial statement submitted by a station to the corporation for public broadcasting. The grants shall be divided into two categories, an annual basic service grant and an operating grant. The basic service grant shall be equal to thirty-five percent of the total amount and shall be divided equally among the public radio stations receiving grants. The remaining amount shall be distributed as an operating grant to the stations on the basis of the proportion that the total operating expenses of the individual station in the prior fiscal year bears to the aggregate total of operating expenses for the same fiscal year for all Missouri public radio stations which are receiving grants.

8. Notwithstanding other provisions of section 253.402, RSMo, to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2008, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of nine years, the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri department of natural resources Missouri historic preservation revolving fund, and an amount equal to ten percent of such estimate shall be transferred, subject to appropriation, from the general revenue fund to the Missouri department of natural resources Missouri historic preservation revolving fund established in section 253.402, RSMo, and any amount transferred shall be in addition to such agency's budget base for each fiscal year. As authorized pursuant to subsection 2 of section 30.953, RSMo, it is the intention and desire of the general assembly that the state treasurer convey, to the Missouri investment trust on January 1, 1999, up to one hundred percent of the balances of the Missouri arts council trust fund established pursuant to section 185.100, RSMo, and the Missouri humanities council trust fund established pursuant to section 186.055, RSMo. The funds shall be reconveyed to the state treasurer by the investment trust as follows: the Missouri arts council trust fund, on January 2, 2009; and the Missouri humanities council trust fund, on January 2, 2009.

285.230. 1. As used in this section, "transient employer" means an employer as defined in sections 143.191, RSMo, 287.030, RSMo, and 288.032, RSMo, making payment of wages taxable under chapters 143, RSMo, 287, RSMo, and 288, RSMo, who is not domiciled in this state and who temporarily transacts any business within the state, but shall not include any employer who is not subject to Missouri income tax because of the provisions of 15 U.S.C. 381. The transaction of business shall be considered temporary at any time it cannot be reasonably expected to continue for a period of twenty-four consecutive months. Professional athletic teams and professional entertainers domiciled in a state other than Missouri shall be deemed a "transient employer" for the purposes of this section, **unless the person or entity who pays compensation to the nonresident entertainer has fully complied with the provisions of section 143.183, RSMo, in which case the nonresident entertainer shall not be considered a transient employer.**

2. Employers meeting the following criteria shall not be required to file a financial assurance instrument as required by this section:

(1) The principal place of business of the employer must be in a county of another state which is contiguous to the state of Missouri; and

(2) The employer must have been under contract to perform work in Missouri for at least sixty days cumulatively out of twelve months during each of the two calendar years immediately preceding the employer's initial application for exemption from the provisions of this section; and

(3) The employer must have in his possession a tax clearance from the department of revenue and the division of employment security stating that the employer has faithfully complied with the tax laws of this state during the period set out in subdivision (2) of this subsection. Within ninety days of August 13, 1988, such employers must obtain initial tax clearances in accordance with subdivision (3) of this subsection. Any tax clearance issued under the provisions of this section by the division of employment security shall be submitted to the department of revenue. On or before January thirty-first of each year, except January thirty-first following the year during which the employer first meets these criteria, the employer shall submit application to the department of revenue and division of employment security for a renewed tax clearance. Failure to submit such renewal applications or failure to comply with applicable Missouri taxing and employment security laws during the period between annual renewal dates or removal of the employer's principal place of business from a county in another state which is contiguous to Missouri to a state other than Missouri shall immediately subject the employer to all provisions of this section. An employer meeting the requirements of this subsection shall still be subject to the provisions of subsection 5 of this section.

3. Every transient employer shall file with the director of revenue a financial assurance instrument including, but not limited to, a cash bond, a surety bond, or an irrevocable letter of credit as defined in section 400.5-103, RSMo, issued by any state or federal financial institution. The financial assurance instrument shall be in an amount not less than the average estimated quarterly withholding tax liability of the applicant, but in no case less than five thousand dollars nor more than twenty-five thousand dollars. Any corporate surety shall be licensed to do such business in this state and approved by the director of revenue to act as a surety. The transient employer shall be the principal obligor and the state of Missouri shall be the obligee. The financial assurance instrument shall be conditioned upon the prompt filing of true reports and the payment by such employer to the director of revenue of any and all withholding taxes which are now or which hereafter may be levied or imposed by the state of Missouri, upon the employer, together with any and all penalties and interest thereon, and generally upon the faithful compliance with the provisions of chapters 143, RSMo, 287, RSMo, and 288, RSMo.

4. Any transient employer who is already otherwise required to file a financial assurance instrument as a condition of any contract, provided said financial assurance instrument guarantees payment of all applicable state taxes and all withholding taxes levied or imposed by the state and provided that such financial assurance instrument is delivered by certified mail to the department of revenue by the applicable awarding entity at least fourteen days before the execution of the contract for the performance of work, may use the same financial assurance instrument to comply with the provisions of this section. Before such financial assurance instrument is approved by the awarding entity, the director of revenue shall be satisfied that such financial assurance instrument is sufficient to cover all taxes imposed by this state and the director shall so notify the awarding entity of the decision within the fourteen days prior to the execution of the contract. Failure to do so by the director shall waive any right to disapprove such financial assurance instrument. Before a financial assurance instrument is released by the entity awarding the contract, a tax clearance shall be obtained from the director of revenue that such transient employer has faithfully complied with all the tax laws of this state.

5. Every transient employer shall certify to the director of revenue that such employer has sufficient workers' compensation insurance either through a self-insurance program or a policy of workers' compensation insurance issued by an approved workers' compensation carrier. The self-insurance program shall be approved by the division of workers' compensation pursuant to section 287.280, RSMo. The insurance policy shall be in a contract form approved by the department of insurance.

6. In the event that liability upon the financial assurance instrument thus filed by the transient employer shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the director of revenue any surety on a bond theretofore given or financial institution shall have become unsatisfactory or unacceptable, then the director of revenue may require the employer to file a new financial assurance instrument in the same form and amount. If such new financial assurance instrument shall be furnished by such employer as above provided, the director of revenue shall upon satisfaction of any liability that has accrued, release the surety on the old bond or financial institution issuing the irrevocable letter of credit.

7. Any surety on any bond or financial institution issuing an irrevocable letter of credit furnished by any transient employer as provided in this section shall be released and discharged from any and all liability to the state of Missouri accruing on such bond or irrevocable letter of credit after the expiration of sixty days from the date upon which such surety or financial institution shall have lodged with the director of revenue a written request to be released and discharged; but the request shall not operate to relieve, release or discharge such surety or financial institution from any liability already accrued or which shall accrue during and before the expiration of said sixty-day period. The director of revenue shall promptly on receipt of notice of such request notify the employer who furnished such bond or irrevocable letter of credit and such employer shall on or before the expiration of such sixty-day period file with the director of revenue a new financial assurance instrument satisfactory to the director of revenue in the amount and form provided in this section.

8. Notwithstanding the limitation as to the amount of any financial assurance instrument fixed by this section, if a transient employer becomes delinquent in the payment of any tax or tenders a check in payment of tax which check is returned unpaid because of insufficient funds, the director may demand an additional instrument of such employer in an amount necessary, in the judgment of the director, to protect the revenue of the state. The penal sum of the additional instrument and the instrument furnished under the provisions of the law requiring such instrument may not exceed two

quarters estimated tax liability.

9. For any period when a transient employer fails to meet the requirements of this section, there shall be added to any deficiency assessed against a transient employer, in addition to any other addition, interest, and penalties, an amount equal to twenty-five percent of the deficiency.

10. A taxpayer commits the crime of failure to file a financial assurance instrument if he knowingly fails to comply with the provisions of this section.

11. Failure to file a financial assurance instrument is a class A misdemeanor. Pursuant to section 560.021, RSMo, a corporation found guilty of failing to file a financial assurance instrument may be fined up to five thousand dollars or any higher amount not exceeding twice the amount the employer profited from the commission of the offense.

12. Failing to register with the department of revenue and execute the financial assurance instrument herein provided, prior to beginning the performance of any contract, shall prohibit the employer from performing on such contract until he complies with such requirements.

13. Each employer shall keep full and accurate records clearly indicating the names, occupations, and crafts, if applicable, of every person employed by him together with an accurate record of the number of hours worked by each employee and the actual wages paid. The payroll records required to be so kept shall be open to inspection by any authorized representative of the department of revenue at any reasonable time and as often as may be necessary and such records shall not be destroyed or removed from the state for a period of one year following the completion of the contract in connection with which the records are made.

14. The entering into of any contract for the performance of work in the state of Missouri by any such employer shall be deemed to constitute an appointment of the secretary of state as registered agent of such employer for purposes of accepting service of any process, or of any notice or demand required or permitted by law. The service of any such process, notice or demand, when served on the secretary of state shall have the same legal force and validity as if served upon the employer personally within the state.

15. In addition, any employer who fails to file a financial assurance instrument as required by this section shall be prohibited from contracting for or performing labor on any public works project in this state for a period of one year.

16. Whenever a transient employer ceases to engage in activity within the state it shall be the duty of such transient employer to notify the director of revenue in writing at least ten days prior to the time the discontinuance takes effect.