

FIRST REGULAR SESSION

SENATE BILL NO. 21

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR FLOTRON.

Pre-filed December 1, 1998, and 1,000 copies ordered printed.

S0558.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 136.300, RSMo 1994, relating to the burden of proof in state tax cases, and enact in lieu thereof two new sections relating to the same subject.

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

Section A. Section 136.300, RSMo, 1994, is repealed and two new sections enacted in lieu thereof, to be known as sections 136.300 and 136.303, to read as follows:

136.300. [In any proceeding before the director of revenue or upon review by the administrative hearing commission, the burden of proof shall be on the taxpayer except for the following issues, as to which the burden of proof shall be on the director of revenue:

(1) Whether the taxpayer has been guilty of fraud with attempt to evade tax;
(2) Whether the petitioner is liable as the transferee of property of a taxpayer (but not to show that the taxpayer was liable for the tax); and

(3) Whether the taxpayer is liable for any increase in a deficiency where such increase is asserted initially after the notice of deficiency was mailed and protest filed, unless such increase in deficiency is the result of change or correction of federal taxable income required to be reported by the taxpayer, and of which change or correction the director of revenue had no knowledge or notice at the time he mailed the notice of deficiency.] **Notwithstanding any provisions of law to the contrary, all tax laws of the state shall be strictly construed against the taxing authority and in favor of the taxpayers, and the initial burden of coming forward with the proof shall be on the taxpayer, but the ultimate burden of proof shall be on the taxing authority.**

136.303. 1. A taxpayer shall be permitted to choose the method and time frame

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

used to reconstruct that taxpayer's income during an audit by the department of revenue, unless the department of revenue shows by a preponderance of the evidence that the method or time frame chosen by the taxpayer would result in a material misstatement of income equaling less than fifty percent of the amount of income which could be reconstructed by the department under any alternative method using generally accepted auditing principles.

2. All audit findings conducted by the department of revenue shall be accompanied, upon written request by the taxpayer under audit, by a statement from the lead auditor of the basis for such findings, including all relevant statutes, regulations, case law, and private letter rulings, if applicable. Such a statement shall be filed with the other audit records of that taxpayer and shall be binding upon the department of revenue in subsequent audits of that taxpayer involving substantially similar issues. Collection of any amount by the department of revenue based in whole or in part upon reliance of any rule or regulation of the department which has been held by a court of law to be contrary to statute shall be refunded to the taxpayer with interest from the date of collection, along with any attorney's fees incurred by the taxpayer.

3. Upon the commencement of an audit by the department of revenue, the auditor or auditors assigned to that audit shall commit no less than seventy-five percent of each auditor's work time to the completion of that audit. In calculating any performance-based awards or reviewing auditor performance, amounts found pursuant to audit which a taxpayer has overpaid shall be offset against any amounts found pursuant to the same audit which that taxpayer has underpaid.

4. Any taxpayer who pays a tax to another party which collects and remits that tax to the department of revenue, shall be permitted, if the tax is found to be refundable but the party collecting and remitting the tax does not file for refund and agree to pay the taxpayer, to receive the refund upon filing a timely application for refund of the tax accompanied by a copy of any invoice or other document indicating payment of the tax.

5. Upon proper determination that a refund is owed, the department of revenue shall refund the entire amount in a lump sum regardless of the filing status of the taxpayer.

6. Notwithstanding any provision of law to the contrary, the department of revenue shall process all tax refund requests and mail a written confirmation or denial of the request to the taxpayer within thirty days of receipt of the request.

7. Any taxpayer who has been determined to be an innocent spouse pursuant to section 6015 of the Internal Revenue Code and who filed a combined state income tax return for the same taxable year shall be considered an innocent spouse for state

income tax purposes, and shall be accorded the same protections and relief of liability as provided under the federal law.

8. All agents and employees of the department of revenue shall be subject to the provisions of the Fair Debt Collection Practices Act as made applicable to the Internal Revenue Service pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998. A taxpayer shall have standing to bring a civil action for damages against the department of revenue in the circuit court of the county in which the taxpayer resides for any collection practice which violates these provisions.

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