SENATE BILL NO. 23

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR FLOTRON.

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

S0565.01I

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 144, RSMo, by adding thereto one new section relating to taxation.

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

Section A. Chapter 144, RSMo, is amended by adding thereto one new section, to be known as section 144.064, to read as follows:

144.064. 1. Notwithstanding any provision of law to the contrary, if a person required to collect tax demonstrates to the satisfaction of the director of revenue by June first of any year that, in any two quarterly periods within the most recent four consecutive quarterly periods, a person was a materialman primarily engaged in selling building materials to contractors, subcontractors or repairmen for the improvement of real property and authorized by law to file a mechanics lien upon such real property and improvement, then such person shall, with respect to such sales made through the quarterly period ending the succeeding May thirty-first, collect tax due on such sales, and on sales to such contractors, subcontractors or repairmen of services to such building materials, for such purpose and made during such June first through May thirty-first period, at the time and to the extent that such person receives the receipts from, or consideration for, such sales from such contractors, subcontractors or repairmen; provided, however, that if such person receives a portion of such receipts or consideration, such person shall collect the tax due on such portion at the time such portion is received. The taxes imposed by this chapter on such receipts and consideration shall be deemed not to be imposed, solely for purposes of determining when such person is required to collect and pay over such taxes to the director of revenue, until such person has received payment of such receipts or consideration in money, or money's worth, from such contractor, subcontractor or repairman. A contractor, subcontractor or repairman who purchases building materials or services

from such person pursuant to this subsection shall, at the time such contractor, subcontractor or repairman pays any portion of the purchase price, pay to such person the tax due on the portion of the purchase price so paid.

2.   In the event that a materialman finances any portion of the receipts or consideration from a sale described in subsection 1 of this section, including any tax due thereon, directly or indirectly, with any other person other than a contractor, subcontractor or repairman described in subsection 1 of this section, whether by assignment of the receivable or debt due, factoring, direct loan or any other means, then such materialman shall be deemed to have received payment of such receipts or consideration in money, or money's worth, from such contractor, subcontractor or repairman and shall be required to pay over tax on such sale with the next return due, with a credit against such tax for any tax already paid over with respect to such sale. Any such amount of tax paid over in accordance with the prior sentence shall be on account of the tax required to be collected on the sale to which it relates and such materialman may take a credit against any tax paid by such contractor, subcontractor or repairman in the future on such sale, to ensure that tax paid over with respect to such sale does not exceed the amount of tax imposed on such sale as if the entire purchase price had been paid at the time of sale.

3.   A materialman who had not collected the tax due on the full purchase price for a sale described in subsection 1 of this section from a contractor, subcontractor or repairman within one year of the date of such sale shall be required to pay over to the director of revenue the tax due on any balance of such full purchase price with such materialman's return for the period which includes the date which is one year after the date of such sale.

4.   The director of revenue may assess additional tax due with respect to a sale described in subsection 1 of this section within three years from the date the tax is required to be paid over to the director of revenue pursuant to this section; provided, however, that in the case of a willfully false or fraudulent return with intent to evade the tax, or where no return has been filed as prescribed by law, the tax may be assessed at any time.

5.   The other provisions of this chapter and any provision of law applicable to the taxes imposed by this chapter shall apply to the materialmen, contractors, subcontractors, repairmen, receipts and consideration described in this section, except to the extent that any such provision is inconsistent with this section.

6.   Every materialman shall, in addition to the records required to be kept by subsection 1 of this section, keep the following records with respect to each sale of building materials or services described in subsection 2 of this section to a contractor, subcontractor or repairman:

(1) The date of such sale;

(2) Proof that the sale meets the qualifications described in subsection 2 of this section;

(3) The amount of credit, if any, extended by such materialman to such contractor, subcontractor or repairman for each sale;

(4) The terms for payment of the purchase price or repayment of any credit; and

(5) The date or dates on which such purchase price is paid or such credit is repaid, in part or whole, and the amount of each such payment or repayment. The records referred to in this subsection shall be preserved by such materialman for a period of three years from the date the tax on each such sale is paid over to the director of revenue in full; provided, however, that the director of revenue may consent to their destruction within that period or may require that they be kept longer.

7. This section shall apply to sales made and uses occurring on or after September 1, 1999, including those made or occurring under a prior contract.

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