

FIRST REGULAR SESSION

SENATE BILL NO. 280

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BLAND.

Read 1st time January 14, 1999, and 1,000 copies ordered printed.

L0727.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 143.191, 143.201, 143.211 and 143.241, RSMo 1994, and section 143.221, RSMo Supp. 1998, relating to taxation, and to enact in lieu thereof eighteen new sections for the purpose of establishing a general assembly scholarship program, with an effective date.

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

Section A. Sections 143.191, 143.201, 143.211 and 143.241, RSMo 1994, and section 143.221, RSMo Supp. 1998, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 143.191, 143.201, 143.211, 143.221, 143.241, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, to read as follows:

143.191. 1. Every employer maintaining an office or transacting any business within this state and making payment of any wages taxable **[under]** **pursuant to** sections 143.011 to **[143.998] 143.1012** to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period the amount provided in subsection 3 of this section.

2. The term "wages" referred to in subsection 1 of this section means wages as defined by section 3401(a) of the Internal Revenue Code of 1986, as amended. The term "employer" means any person, firm, corporation, association, fiduciary of any kind, or other type of organization for whom an individual performs service as an employee, except that if the person or organization for whom the individual performs service does not have control of the payment of compensation for such service, the term "employer" means the person having control of the payment of the compensation. The term includes the United States, this state, other states, and all agencies, instrumentalities, and subdivisions of any of them.

3. The method of determining the amount to be withheld shall be prescribed by regulations

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

of the director of revenue. The prescribed table, percentages, or other method shall result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under sections 143.011 to [143.998] **143.1012** with respect to the amount of such wages included in [his] **such employee's** Missouri adjusted gross income during the calendar year.

4. For purposes of this section an employee shall be entitled to the same number of personal and dependency withholding exemptions as the number of exemptions to which [he] **such employee** is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee provides the employer with a form claiming a different number of withholding exemptions in this state.

5. The director of revenue may enter into agreements with the tax departments of other states (which require income tax to be withheld from the payment of wages) so as to govern the amounts to be withheld from the wages of residents of such states [under] **pursuant to** this section. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under regulations prescribed by the director of revenue, may relieve employers in this state from withholding income tax on wages paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

6. The director of revenue shall enter into agreements with the Secretary of the Treasury of the United States or with the appropriate secretaries of the respective branches of the armed forces of the United States for the withholding, as required by subsections 1 and 2 of this section, of income taxes due the state of Missouri on wages or other payments for service in the armed services of the United States or on payments received as retirement or retainer pay of any member or former member of the armed forces entitled to such pay.

7. Subject to appropriations for the purpose of implementing this section, the director of revenue shall comply with provisions of the laws of the United States as amended and the regulations promulgated thereto in order that all residents of this state receiving monthly retirement income as a civil service annuitant from the federal government taxable by this state may have withheld monthly from any such moneys, whether pension, annuities or otherwise, an amount for payment of state income taxes as required by state law, but such withholding shall not be less than twenty-five dollars per quarter.

143.201. Every employer required to deduct and withhold tax [under] **pursuant to** sections 143.011 to [143.996] **143.1012** from the wages of an employee shall furnish to each employee in respect to the wages paid by such employer to such employee during the calendar year on or before January thirty-first of the succeeding year, or, if [his] **the employee's** employment is terminated before the close of such calendar year, within thirty days from the date on which the

last payment of wages is made, a written statement in a form prescribed by the director of revenue showing the amount of wages paid by the employer to the employee, the amount if any deducted and withheld as tax, and such other information as the director of revenue shall prescribe.

143.211. Any amount of tax actually deducted and withheld [under] **pursuant to** sections 143.011 to [143.996] **143.1012** in any calendar year shall be deemed to have been paid to the director of revenue on behalf of the person from whom withheld. Such person shall be credited with having paid that amount for [his] **the person's** taxable year beginning in such calendar year.

143.221. 1. Every employer required to deduct and withhold tax [under] **pursuant to** sections 143.011 to [143.996] **143.1012** shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding 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.

2. Where the aggregate amount required to be deducted and withheld by any employer exceeds fifty dollars for at least two of the preceding twelve months, the director, by regulation, may require a monthly return. The due dates of the monthly return and the monthly payment or deposit for the first two months of each quarter shall be by the fifteenth day of the succeeding month. The due dates of the monthly return and the monthly payment or deposit for the last month of each quarter shall be by the last day of the succeeding month. The director may increase the amount required for making a monthly employer withholding payment and return to more than fifty dollars or decrease such required amount, however, the decreased amount shall not be less than fifty dollars.

3. Where the aggregate amount required to be deducted and withheld by any employer is less than twenty dollars in each of the four preceding quarters, the employer shall file a withholding return for a calendar year. The director, by regulation, may also allow other employers to file annual returns. The return shall be filed and the taxes if any paid on or before January thirty-first of the succeeding year. The director may increase the amount required for making an annual employer withholding payment and return to more than twenty dollars or decrease such required amount, however, the decreased amount shall not be less than twenty dollars.

4. If the director of revenue finds that the collection of taxes required to be deducted and withheld by an employer may be jeopardized by delay, [he] **the director** may require the employer to pay over the tax or make a return at any time. A lien outstanding with regard to any tax administered by the director shall be a sufficient basis for this action.

143.241. 1. Every employer required to deduct and withhold tax [under] **pursuant to** sections 143.011 to [143.996] **143.1012** is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the director of

revenue, and any penalties, interest, and additions to tax with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld [under] **pursuant to** sections 143.011 to [143.996] **143.1012** shall be a special fund in trust for the director of revenue. No employee shall have any right of action against [his] **the employee's** employer in respect to any money deducted and withheld from [his] **such employee's** wages and paid over to the director of revenue in compliance or in good faith compliance with sections 143.011 to [143.996] **143.1012**.

2. Any officer, director, statutory trustee or employee of any corporation, including administratively dissolved corporations, or foreign corporations that have had their certificate of authority revoked, subject to the provisions of sections 143.191 to 143.265, who has the direct control, supervision or responsibility for filing returns and making payment of the amount of tax imposed in accordance with sections 143.191 to 143.265, and who fails to file and pay such return with the director of revenue shall be personally assessed for such amounts, including interest, additions to tax and penalties thereon. This assessment shall be imposed only in the event that the assessment on the corporation is final, and such corporation fails to pay such amounts to the director of revenue. Notice shall be given of the director of revenue's intent to make the assessment against such officers, directors, statutory trustees or employees. The personal liability of such officers, directors, statutory trustees or employees as provided in this section shall survive the administrative dissolution of the corporation or, if a foreign corporation, the revocation of the corporation's certificate of authority.

3. If any employer required to withhold and remit tax [under] **pursuant to** sections 143.191 to 143.265 or [his] **the employer's** successors shall sell all or substantially all of [his or their] **the employer's** business or shall quit the business, such employer or successor shall file a final return within fifteen days after the date of selling or quitting business.

4. If any employer required to withhold and remit tax [under] **pursuant to** sections 143.191 to 143.265 or [his] **the employer's** successors shall contract to sell all or substantially all of [his or their] **the employer's** business, the seller shall request from the director of revenue a statement or certificate as provided in subsection 6 of this section. The seller shall present such statement or certificate to the purchaser prior to consummation of the sale and secure the purchaser's signature thereon as validation of receipt. Failure to comply with this provision shall result in the seller being liable for an additional penalty equal to twenty-five percent of the seller's delinquency at the time of the sale. The provisions of this section to the contrary notwithstanding, this additional penalty shall be the sole liability of the seller and shall not be a liability of the purchaser.

5. Except as provided in subsections 6, 7, and 8 of this section, all successors, if any, shall be required to withhold an amount of the purchase money sufficient to cover the taxes, interest, additions to tax or penalties due and unpaid until such time as the former owner or predecessor,

whether immediate or not, shall produce a receipt from the director of revenue showing that the taxes have been paid, or a certificate stating that no taxes are due. If the purchaser of a business shall fail to withhold the purchase money as required by this section and remit at the time of purchase all amounts so withheld to the director to pay all unpaid taxes, interest, additions to tax and penalties due from the former owner or predecessor, the purchaser shall be personally liable for the payment of the taxes, interest, additions to tax and penalties accrued and unpaid by the former owner of the business.

6. The director of revenue shall, notwithstanding the provisions of section 32.057, RSMo, upon written request, furnish within fifteen days from the receipt of such a request by certified mail, return receipt requested, or such other methods as may be mutually agreed upon, to any owner, successor, secured creditor, purchaser, or in the case of a proposed purchaser, if joined in writing by the owner, a statement showing the amount of taxes, interest, additions to tax or penalties due and owing or a certificate showing that no taxes, interest, additions to tax or penalties are due **[under] pursuant to** this chapter, including the date for the last payment for such taxes, interest, additions to tax or penalties as shown by the records of the director of revenue.

7. A secured creditor who shall enforce a lien against a business subject to the provisions of this chapter shall be entitled to obtain from the director of revenue a statement of employer withholding tax due and the status of the employer withholding tax payments from the director of revenue in accordance with subsection 6 of this section. If the director of revenue does not respond within fifteen days from the date of receipt of such request by the secured creditor seeking to enforce its lien, it shall be conclusively presumed that all such employer withholding tax has been paid as to the secured creditor or any successor of the secured creditor, whether such successor be immediate or not. Nothing in this section shall eliminate the liability of the owner of the business owing employer withholding tax from the liability to pay such employer withholding tax. Any purchaser who acquires the business as a result of an enforcement action by a creditor shall be exempt from the liability set forth in subsection 5 of this section, whether such purchaser be immediate or subsequent thereto.

8. Any such creditor who shall enforce a lien against a business subject to the provisions of this section shall be entitled to be paid the principal sums due, all accrued interest to the date of the payment, and the expenses of enforcing the lien of the secured creditor including attorney's fees. The balance, if any, shall be paid to the creditors having a priority interest thereto under the laws of the state of Missouri or the United States of America. Any balance then remaining, up to the amount of the tax, interest, additions to tax and penalties then due, shall be remitted to the director of revenue as provided by this section. Nothing in this section shall affect the priority of any lien filed by the director of revenue against the former owner or predecessor.

9. Mailing of notices or requests, by first class mail, postage prepaid, certified with return

receipt requested, or such other methods as may be mutually agreed upon, shall be prima facie evidence that the party to whom it is addressed received the correspondence, notice or request.

Section 1. 1. An earnings tax is hereby imposed for every taxable year on the salaries, wages, commissions and other compensation earned by nonresidents for work done or services rendered or performed in this state.

2. An earnings tax is hereby imposed for every taxable year on the net profits of associations, businesses and other activities conducted in this state by nonresidents. Net profits shall be determined by deducting the necessary expenses of operation from the gross profits.

3. The director of revenue shall make all rules and regulations necessary for the enforcement of this section.

Section 2. The earnings tax on salaries, wages, commissions and other compensation of nonresidents and on the net profits of associations, businesses and other activities conducted by nonresidents pursuant to section 1 of this act shall be one percent per annum.

Section 3. Income received by any of the following shall be exempt from the earnings tax imposed pursuant to section 1 of this act:

(1) A corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(2) A civic organization not organized for profit but operated exclusively for the promotion of social welfare; and

(3) A club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member.

Section 4. The earnings or net profits subject to tax of any nonresident and of any association or business conducted by nonresidents pursuant to section 1 of this act, in which the work done or services performed are rendered both within and without this state, shall be ascertained by formulae, rules and regulations set forth and determined by the director of revenue.

Section 5. Every employer maintaining an office or transacting business within this state and making payment of any wages to a nonresident whose wages are subject to the earnings tax pursuant to section 1 of this act shall deduct and withhold from such wages for each payroll period pursuant to sections 143.191 to 143.265, RSMo.

Section 6. There is hereby created a "General Assembly Scholarship Program Fund". All revenues from the state earnings tax on nonresidents pursuant to sections 1 to 5 of this act shall be collected by the director of revenue and deposited in the state treasury to the credit of the general assembly scholarship program fund. The

provisions of section 33.080, RSMo, to the contrary notwithstanding, money in such fund shall not be transferred and placed to the credit of the general revenue fund. The fund shall be used by the coordinating board for higher education to provide all moneys necessary for the administration of, and the scholarships provided by, the general assembly scholarship program created pursuant to section 7 of this act.

Section 7. There is hereby established the "General Assembly Scholarship Program". The incidental fees and other required fees at any public college or university in the state shall be paid by the state on behalf of any student who enrolls in such a college or university to pursue an academic undergraduate degree if the student:

(1) Has been a resident of the state for twenty-four months preceding college enrollment, as evidenced by voter registration or possession of a Missouri motor vehicle operator's license;

(2) Has a parent or guardian who is a resident of this state;

(3) Has graduated within the two years preceding the application from a Missouri high school with a minimum cumulative grade point average of 2.5 calculated on a 4.0 scale and is enrolling as a first-time freshman;

(4) Has successfully completed twenty units of high school course work, ninth grade level or higher, which constitutes a core curriculum and meets standards for admission to the desired college or university;

(5) Has participated in extracurricular activities;

(6) Has a composite score on the American college test of at least eighteen on the 1989 version or an equivalent concordant value on a subsequent version of such test;

(7) Has no criminal record, other than misdemeanor traffic violations; and

(8) Establishes such student has financial need pursuant to section 8 of this act.

Section 8. Students from families with an annual adjusted gross income of less than twenty-five thousand dollars shall be eligible for a full scholarship pursuant to sections 6 to 13 of this act. Students from families with an annual adjusted gross income of more than twenty-five thousand, but less than thirty-five thousand dollars, shall be eligible for a partial scholarship on a sliding scale. Students whose families have an annual adjusted gross income of more than thirty-five thousand dollars shall not be eligible for scholarships pursuant to the provisions of sections 6 to 13 of this act without a showing of hardship because of large medical bills, as determined by the coordinating board for higher education.

Section 9. To maintain continued state payment of incidental fees and other required fees once enrolled in college or a university, a student shall meet all of the following requirements:

(1) Make steady academic progress toward a degree, earning not less than the

minimum number of hours of credit required for full-time standing in each academic period;

(2) Maintain continuous enrollment for not less than two semesters or three quarters in each successive academic year, unless granted an exemption for cause by the coordinating board for higher education;

(3) Have a cumulative grade point average of at least 2.5 calculated on a 4.0 scale at the end of the first academic year and thereafter maintain such a cumulative grade point average as evaluated at the end of each academic year, unless granted an exemption by the coordinating board;

(4) Have no criminal record, other than misdemeanor traffic violations;

(5) Participate in a work study program approved by the coordinating board.

Section 10. 1. The coordinating board for higher education shall, by rule, provide for:

(1) A mechanism for informing students in this state of the availability of the assistance provided pursuant to sections 6 to 13 of this act early enough in their schooling that a salutary motivational effect is possible;

(2) Applications, forms, financial audit procedures, eligibility, program audit procedures and other matters related to efficient operation of sections 6 to 13 of this act;

(3) A procedure for waiver through the 1997-98 academic year of the program eligibility requirement for successful completion of a specified core curriculum upon proper documentation by the applicant that failure to comply with such requirement is due solely to the fact that the required course or courses were not available to the applicant at the school attended.

2. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Section 11. All incidental fees and other fee payments shall be made directly to the institution to which such incidental fees or other fees are due after notice to the college or university that the state shall pay the required fees of a student and after notice from the college or university that the student has actually enrolled.

Section 12. The coordinating board may seek, accept and expend funds from any source, including private business, industry, foundations and other groups as well as any federal or other governmental funding available for the purposes set forth in sections 6 to 13 of this act.

Section 13. The coordinating board shall coordinate and approve work study programs for students receiving tuition and fee payments pursuant to sections 6 to 13 of this act.

Section B. Section A of this act shall become effective on January 1, 2000, and shall apply to all taxable years beginning after December 31, 1999.

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