

FIRST REGULAR SESSION

SENATE BILL NO. 300

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Read 1st time January 18, 1999, and 1,000 copies ordered printed.

S1014.051

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 139.031, RSMo Supp. 1998, relating to property taxation of utilities, and to 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Section A. Section 139.031, RSMo Supp. 1998, is repealed and two new sections enacted in lieu thereof, to be known as sections 139.031 and 153.035, to read as follows:

139.031. 1. Any taxpayer may protest all or any part of any taxes assessed against him, except taxes, **other than property taxes**, collected by the director of revenue of Missouri. Any such taxpayer desiring to pay any taxes under protest shall, at the time of paying such taxes, file with the collector a written statement setting forth the grounds on which his protest is based. The statement shall include the true value in money claimed by the taxpayer if disputed.

2. Upon receiving payment of taxes under protest pursuant to subsection 1 of this section or upon receiving notice of an appeal pursuant to section 138.430, RSMo, the collector shall disburse to the proper official all portions of taxes not disputed by the taxpayer and shall impound in a separate fund all portions of such taxes which are in dispute. Except as provided in subsection 3 of this section, every taxpayer protesting the payment of taxes shall, within ninety days after filing his protest, commence an action against the collector by filing a petition for the recovery of the amount protested in the circuit court of the county in which the collector maintains his office. If any taxpayer so protesting his taxes shall fail to commence an action in the circuit court for the recovery of the taxes protested within the time prescribed in this subsection, such protest shall become null and void and of no effect, and the collector shall then disburse to the proper official the taxes impounded, and any interest earned thereon, as provided above in this subsection.

3. No action against the collector shall be commenced by any taxpayer who has, for the tax year in issue, filed with the state tax commission a timely and proper appeal of the protested taxes. Such taxpayer shall notify the collector of the appeal in the written statement required by subsection 1 of this section. The taxes so protested shall be impounded in a separate fund and the commission may order all or any part of such taxes refunded to the taxpayer, or may authorize the collector to release and disburse all or any part of such taxes in its decision and order issued pursuant to chapter 138, RSMo.

4. Trial of the action in the circuit court shall be in the manner prescribed for nonjury civil proceedings, and, after determination of the issues, the court shall make such orders as may be just and equitable to refund to the taxpayer all or any part of the taxes paid under protest, together with any interest earned thereon, or to authorize the collector to release and disburse all or any part of the impounded taxes, and any interest earned thereon, to the appropriate officials of the taxing authorities. Either party to the proceedings may appeal the determination of the circuit court.

5. All the county collectors of taxes, and the collector of taxes in any city not within a county, shall, upon written application of a taxpayer, refund any real or tangible personal property tax mistakenly or erroneously paid in whole or in part to the collector, or shall credit against the taxpayer's tax liability in the following taxable year any real or personal property tax mistakenly or erroneously levied against the taxpayer and collected in whole or in part by the collector. Such application shall be filed within one year after the tax is mistakenly or erroneously paid. The governing body, or other appropriate body or official of the county or city not within a county, shall make available to the collector funds necessary to make refunds under this subsection by issuing warrants upon the fund to which the mistaken or erroneous payment has been credited, or otherwise.

6. No taxpayer shall receive any interest on any money paid in by him erroneously.

7. All protested taxes shall be invested by the collector in the same manner as assets specified in section 30.260, RSMo, for investment of state moneys. A taxpayer who is entitled to a refund of protested taxes shall also receive the interest earned on the investment thereof. If the collector is ordered to release and disburse all or part of the taxes paid under protest to the proper official, such taxes shall be disbursed along with the proportional amount of interest earned on the investment of the taxes due the particular taxing authority.

8. On or before March first next following the delinquent date of taxes paid under protest, the county collector shall notify any taxing authority of the taxes paid under protest which would be received by such taxing authority if the funds were not the subject of a protest. Any taxing authority may apply to the circuit court of the county or city not within a county in which a collector has impounded protested taxes under this section and, upon a satisfactory showing that such taxing authority would receive such impounded tax funds if they were not the subject of a

protest and that such taxing authority has the financial ability and legal capacity to repay such impounded tax funds in the event a decision ordering a refund to the taxpayer is subsequently made, the circuit court shall order, pendente lite, the disbursal of all or any part of such impounded tax funds to such taxing authority. The circuit court issuing an order under this subsection shall retain jurisdiction of such matter for further proceedings, if any, to compel restitution of such tax funds to the taxpayer. In the event that any protested tax funds refunded to a taxpayer were disbursed to a taxing authority under this subsection instead of being held and invested by the collector under subsection 7 of this section, such taxing authority shall pay the taxpayer entitled to the refund of such protested taxes the same amount of interest, as determined by the circuit court having jurisdiction in the matter, such protested taxes would have earned if they had been held and invested by the collector.

9. No appeal filed shall stay any order of refund, but the decision filed by any court of last review modifying the circuit court's or state tax commission's determination pertaining to the amount of refund shall be binding on the parties, and the decision rendered shall be complied with by the party affected by any modification within ninety days of the date of such decision. No taxpayer shall receive any interest on any additional award of refund, and the collector shall not receive any interest on any ordered return of refund in whole or in part.

153.035. 1. For all taxable years beginning on or after January 1, 2000, the valuation of all real and tangible personal property used directly in the generation and distribution of electric power, other than distributable property as defined in section 153.034, cooperatives formed pursuant to chapter 394, RSMo, and municipally owned utilities, shall be determined by the state tax commission in the manner specified in this section. The commission shall utilize a modified electric distribution formula based on an amount equal to the ratio, established for the base year 1999, which electric distributable assessed value distributed to each county bears to the total electric distributable assessed value in the state of Missouri. Adjustments to the base year calculation in subsequent years shall be made based on the change in the line miles of each county, calculated as a percentage, from the mileage base year of 1999 to the subsequent year. All distributable property, as defined in section 153.034, shall be subject to the provisions of this section on the first day of January following the passage of legislation allowing retail competition among utilities and certification by the public service commission that retail competition exists in the state.

2. The state tax commission shall ascertain the statewide average rate of property taxes levied the preceding year, based upon the total assessed valuation of all distributable real and tangible personal property and the total property taxes levied upon such property, including all existing levies and any new levies imposed by any newly created political subdivision. The commission shall report its determination of the average property tax rate for the preceding year, together with the property

valuation based upon the modified electric distribution formula, to the director of the department of revenue no later than October first of each year. The director of revenue shall extend the tax rate against the assessed value of the property for the current year. The state tax commission shall separately calculate an average subclass 3 surtax levied upon all distributable property which, once calculated, shall be imposed upon the commercial real estate portion of the modified electric assessed valuation, without further recalculation in subsequent years. Taxes on such property shall be collected by the director of the department of revenue on behalf of the counties and other local public taxing entities and shall be distributed to each taxing entity in the same proportion as the taxing entity's share of tax revenue from all distributable real and tangible personal property bears to the total amount of tax revenue from such property statewide in the base year 1999.

3. The provisions of subsection 1 of this section shall not apply to any real and tangible personal property which has a power production capacity of less than four megawatts. Property which increases the power production capacity to four megawatts or more shall be subject to the provisions of subsection 1 of this section.

4. The commission is authorized to adopt those rules that are reasonable and necessary to accomplish the limited duties specifically delegated within this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in this section shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.