

FIRST REGULAR SESSION

HOUSE BILL NO. 101

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JOHNSON (47).

Pre-filed December 18, 2002, and copies ordered printed.

TED WEDEL, Chief Clerk

0628L.011

AN ACT

To repeal section 144.190, RSMo, and to enact in lieu thereof one new section relating to refunds of incorrectly collected sales tax to original purchasers.

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

Section A. Section 144.190, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.190, to read as follows:

144.190. 1. If a tax has been incorrectly computed by reason of a clerical error or mistake on the part of the director of revenue, such fact shall be set forth in the records of the director of revenue, and the amount of the overpayment shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the balance shall be refunded to the person legally obligated to remit the tax, such person's administrators or executors, as provided for in section 144.200.

2. If any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the balance, with interest as determined by section 32.065, RSMo, shall be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from date of overpayment.

3. **(1) If any tax was paid more than once, or was incorrectly collected or computed, such sum shall be credited on any taxes due from the person legally obligated to remit the tax pursuant to this chapter, or refunded, with interest as determined by section 32.065,**

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

17 **RSMo, to the person legally obligated to remit the tax if duplicate copies of a claim for**
18 **refund are filed within three years from the date of overpayment and:**

19 **(a) The person legally obligated to remit the tax demonstrates to the satisfaction of**
20 **the director of revenue that all incorrectly collected or computed amounts were or will be**
21 **refunded or credited to every purchaser that originally paid the tax; or**

22 **(b) The person legally obligated to remit the tax submits to the director amended**
23 **sales tax returns showing the correct amount of gross receipts for each reporting period**
24 **originally filed and proves to the director's satisfaction that the tax originally reported and**
25 **remitted to the director was paid by such person claiming the refund or credit and was not**
26 **collected from purchasers; or**

27 **(c) The person legally obligated to remit the tax submits a plan between the person**
28 **and the director to generally refund the amount of overpayment in equal installments to**
29 **the person's future customers by a mutually agreed to distribution of a fixed value coupon**
30 **to the customers.**

31 **(2) Any amounts that are not claimed and refunded pursuant to this section shall**
32 **be deposited in the general revenue fund and subject to appropriation as provided by law.**

33 **4.** Every claim for refund must be in writing and signed by the applicant, and must state
34 the specific grounds upon which the claim is founded. Any refund or any portion thereof which
35 is erroneously made, and any credit or any portion thereof which is erroneously allowed, may be
36 recovered in any action brought by the director of revenue against the person legally obligated
37 to remit the tax. In the event that a tax has been illegally imposed against a person legally
38 obligated to remit the tax, the director of revenue shall authorize the cancellation of the tax upon
39 the director's record.

40 **[4.] 5.** Notwithstanding the provisions of this section, the director of revenue shall
41 authorize direct-pay agreements to purchasers which have annual purchases in excess of seven
42 hundred fifty thousand dollars pursuant to rules and regulations adopted by the director of
43 revenue. For the purposes of such direct-pay agreements, the taxes authorized pursuant to
44 chapters 66, 67, 70, 92, 94, 162, 190, 238, 321, and 644, RSMo, shall be remitted based upon
45 the location of the place of business of the purchaser.

46 **[5.] 6.** Special rules applicable to error corrections requested by customers of mobile
47 telecommunications service are as follows:

48 (1) For purposes of this subsection, the terms "customer", "home service provider",
49 "place of primary use", "electronic database", and "enhanced zip code" shall have the same
50 meanings as defined in the Mobile Telecommunications Sourcing Act incorporated by reference
51 in section 144.013;

52 (2) Notwithstanding the provisions of this section, if a customer of mobile

53 telecommunications services believes that the amount of tax, the assignment of place of primary
54 use or the taxing jurisdiction included on a billing is erroneous, the customer shall notify the
55 home service provider, in writing, within three years from the date of the billing statement. The
56 customer shall include in such written notification the street address for the customer's place of
57 primary use, the account name and number for which the customer seeks a correction of the tax
58 assignment, a description of the error asserted by the customer and any other information the
59 home service provider reasonably requires to process the request;

60 (3) Within sixty days of receiving the customer's notice, the home service provider shall
61 review its records and the electronic database or enhanced zip code to determine the customer's
62 correct taxing jurisdiction. If the home service provider determines that the review shows that
63 the amount of tax, assignment of place of primary use or taxing jurisdiction is in error, the home
64 service provider shall correct the error and, at its election, either refund or credit the amount of
65 tax erroneously collected to the customer for a period of up to three years from the last day of
66 the home service provider's sixty-day review period. If the home service provider determines
67 that the review shows that the amount of tax, the assignment of place of primary use or the taxing
68 jurisdiction is correct, the home service provider shall provide a written explanation of its
69 determination to the customer.