

SECOND REGULAR SESSION

HOUSE BILL NO. 796

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JOHNSON (47).

Pre-filed December 2, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2715L.011

AN ACT

To repeal section 144.190, RSMo, and to enact in lieu thereof one new section relating to sales tax refunds, with an emergency clause.

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Section A. Section 144.190, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.190, to read as follows: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. Every claim for refund must be in writing and signed by the applicant, and must state the specific grounds upon which the claim is founded. Any refund or any portion thereof which is erroneously made, and any credit or any portion thereof which is erroneously allowed, may be

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

17 recovered in any action brought by the director of revenue against the person legally obligated
18 to remit the tax. In the event that a tax has been illegally imposed against a person legally
19 obligated to remit the tax, the director of revenue shall authorize the cancellation of the tax upon
20 the director's record.

21 4. Notwithstanding the provisions of this section, the director of revenue shall authorize
22 direct-pay agreements to purchasers which have annual purchases in excess of seven hundred
23 fifty thousand dollars pursuant to rules and regulations adopted by the director of revenue. For
24 the purposes of such direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 70,
25 92, 94, 162, 190, 238, 321, and 644, RSMo, shall be remitted based upon the location of the
26 place of business of the purchaser.

27 5. Special rules applicable to error corrections requested by customers of mobile
28 telecommunications service are as follows:

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

33 (2) Notwithstanding the provisions of this section, if a customer of mobile
34 telecommunications services believes that the amount of tax, the assignment of place of primary
35 use or the taxing jurisdiction included on a billing is erroneous, the customer shall notify the
36 home service provider, in writing, within three years from the date of the billing statement. The
37 customer shall include in such written notification the street address for the customer's place of
38 primary use, the account name and number for which the customer seeks a correction of the tax
39 assignment, a description of the error asserted by the customer and any other information the
40 home service provider reasonably requires to process the request;

41 (3) Within sixty days of receiving the customer's notice, the home service provider shall
42 review its records and the electronic database or enhanced zip code to determine the customer's
43 correct taxing jurisdiction. If the home service provider determines that the review shows that
44 the amount of tax, assignment of place of primary use or taxing jurisdiction is in error, the home
45 service provider shall correct the error and, at its election, either refund or credit the amount of
46 tax erroneously collected to the customer for a period of up to three years from the last day of
47 the home service provider's sixty-day review period. If the home service provider determines
48 that the review shows that the amount of tax, the assignment of place of primary use or the taxing
49 jurisdiction is correct, the home service provider shall provide a written explanation of its
50 determination to the customer.

51 6. For all refund claims submitted to the department of revenue on or after September
52 1, 2003, notwithstanding any provision of this section to the contrary, if a person legally

53 obligated to remit the tax levied pursuant to sections 144.010 to 144.525 has received a refund
54 of such taxes for a specific issue and submits a subsequent claim for refund of such taxes on the
55 same issue for a tax period beginning on or after the date the original refund check issued to such
56 person, no refund shall be allowed. This subsection shall not apply and a refund shall be allowed
57 if an additional refund claim is filed due to any of the following:

58 (1) Receipt of additional information or an exemption certificate from the purchaser of
59 the item at issue;

60 (2) A decision of a court of competent jurisdiction or the administrative hearing
61 commission; or

62 (3) Changes in regulations or policy by the department of revenue.

63 7. Notwithstanding any provision of law to the contrary, the director of revenue shall
64 respond to a request for a binding letter ruling filed in accordance with section 536.021, RSMo,
65 within sixty days of receipt of such request. If the director of revenue fails to respond to such
66 letter ruling request within sixty days of receipt by the director, the director of revenue shall be
67 barred from pursuing collection of any assessment of sales or use tax with respect to the issue
68 which is the subject of the letter ruling request. For purposes of this subsection, the term "letter
69 ruling" means a written interpretation of law by the director to a specific set of facts provided by
70 a specific taxpayer or his or her agent.

71 8. [If any tax was paid more than once, was incorrectly collected, or was incorrectly
72 computed, such sum shall be credited on any taxes then due from the person legally obligated
73 to remit the tax pursuant to sections 144.010 to 144.510, against any deficiency or tax due
74 discovered through an audit of the person by the department of revenue through adjustment
75 during the same tax filing period for which the audit applied.] **If any tax was paid more than
76 once, or was incorrectly collected or computed, such sum shall be credited on any taxes due
77 from the person legally obligated to remit the tax pursuant to this chapter, or refunded,
78 with interest as determined by section 32.068, RSMo, to the person legally obligated to
79 remit the tax if duplicate copies of a claim for refund are filed within three years from the
80 date of overpayment and:**

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

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

89 **(3) The person legally obligated to remit the tax submits a plan between the person**
90 **and the director to generally refund the amount of overpayment in equal installments to**
91 **the person's future customers by a mutually agreed to distribution of a fixed value coupon**
92 **to the customers.**

 Section B. Because immediate action is necessary to ensure the proper crediting of taxes
2 due for the overpayment of sales tax, section A of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace, and safety, and is hereby declared to be an
4 emergency act within the meaning of the constitution, and section A of this act shall be in full
5 force and effect upon its passage and approval.