

SECOND REGULAR SESSION

HOUSE BILL NO. 2112

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES EMERY (Sponsor), ROBB, SMITH (14), DAVIS, BIVINS, WILSON (119), JONES (89), WELLS, NIEVES, SATER, MEINERS, FISHER, MAY, SCHOELLER, YATES AND SANDER (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

4496L.01I

AN ACT

To amend chapter 144, RSMo, by adding thereto one new section relating to the Fair Tax Act of 2008.

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 144.001, to read as follows:

144.001. 1. This section shall be known and may be cited as the "Fair Tax Act of 2008".

2. As used in this section, the following terms mean:

(1) "Basic interest rate":

(a) In the case of a debt instrument, investment, financing lease, or account with a term of not over three years, the applicable interest rate shall be a short-term rate based on the average market yield during any one month on outstanding marketable obligations of the United States with remaining periods to maturity of three years or fewer;

(b) In the case of a debt instrument, investment, financing lease, or account with a term of over three years but not over nine years, the applicable interest rate shall be a mid-term rate based on the average market yield during any one month on outstanding marketable obligations of the United States with remaining periods to maturity of more than three years but not over nine years;

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

- 14 (c) In the case of a debt instrument, investment, financing lease, or account with a
15 term of over nine years, the applicable interest rate shall be a long-term rate based on the
16 average market yield during any one month on outstanding marketable obligations of the
17 United States with remaining periods to maturity of over nine years;
- 18 (2) "Business purpose", purchased by a person engaged in a trade or business and
19 used in that trade or business for resale, to produce, provide, render, or sell taxable
20 property or services, or in furtherance of other bona fide business purposes;
- 21 (3) "Business use conversion", the use of taxable property or services upon which
22 tax was imposed under this section and actually paid that commenced to be ninety-five
23 percent or more used for business purposes;
- 24 (4) "Department", the department of revenue;
- 25 (5) "Education and training", tuition for primary, secondary, or postsecondary
26 level education, and job-related training courses. "Education and training" shall not
27 include room, board, sports activities, recreational activities, hobbies, games, arts or crafts,
28 or cultural activities;
- 29 (6) "Explicitly charged fees", includes:
- 30 (a) Brokerage fees;
- 31 (b) Explicitly stated banking, loan origination, processing, documentation, credit
32 check fees, or other similar fees;
- 33 (c) Safe deposit box fees;
- 34 (d) Insurance premiums, to the extent such premiums are not allocable to the
35 investment account of the underlying insurance policy;
- 36 (e) Trustees' fees; and
- 37 (f) Other financial services fees, including mutual fund management, sales, and exit
38 fees;
- 39 (7) "Family members", any resident of this state with a valid Social Security
40 number who is:
- 41 (a) An individual;
- 42 (b) The individual's spouse
- 43 (c) All lineal ancestors and descendants of such individual and of such individual's
44 spouse;
- 45 (d) All legally adopted children of such individual and of such individual's spouse;
- 46 (e) All children under legal guardianship of such individual or of such individual's
47 spouse;
- 48 (f) All children living away from home. For purposes of this paragraph, "children
49 living away from home" means any person who was a registered student during not fewer

50 than five months in a calendar year while living away from the common residence of a
51 qualified family but who receives over fifty percent of such person's support during a
52 calendar year from members of the qualified family. For purposes of this section, children
53 living away from home whose parents are divorced or legally separated shall be treated as
54 part of the qualified family of the custodial parent, and in cases of joint custody, the
55 custodial parent shall be the parent that has custody of the child for more than one-half
56 of the time during a given calendar year. A parent entitled to be treated as the custodial
57 parent under this section may release such claim to the other parent if such release is in
58 writing;

59 (8) "Financial intermediation services", the sum of:

60 (a) Explicitly charged fees for financial intermediation services; and

61 (b) Implicitly charged fees for financial intermediation services;

62 (9) "Government enterprise", any entity owned or operated by a federal, state, or
63 local governmental unit or political subdivision that receives gross payments from private
64 persons, except that a government-owned entity shall not be deemed a government
65 enterprise under this section unless in any quarter it has revenues from selling taxable
66 property or services that exceed two thousand five hundred dollars;

67 (10) "Gross imputed amount":

68 (a) With respect to any underlying interest-bearing investment or account, the
69 product of:

70 a. The excess of the basic interest rate over the rate paid on such investment; and

71 b. The amount of the investment or account;

72 (b) With respect to any underlying interest-bearing debt, the product of:

73 a. The excess of the rate paid on such debt over the basic interest rate; and

74 b. The amount of the debt;

75 (11) "Implicitly charged fees", includes the gross imputed amount in relation to any
76 underlying interest-bearing investment, account, or debt;

77 (12) "Intangible property", includes copyrights, trademarks, patents, goodwill,
78 financial instruments, securities, commercial paper, debts, notes and bonds, and other
79 property deemed intangible under state law. "Intangible property" does not include
80 tangible personal property or rents or leaseholds of any term thereon, real property or
81 rents or leaseholds of any term thereon, or computer software;

82 (13) "Investment purpose", property purchased exclusively for purposes of
83 appreciation or the production of income but not entailing more than minor personal
84 efforts;

85 (14) "Mixed use property", a taxable property or taxable service used for both
86 taxable use or consumption and for a business purpose;

87 (15) "Nonprofit organization", any nonprofit organization, no part of the net
88 earnings of which inures to the benefit of any private shareholder or individual, that is
89 organized and operated exclusively:

90 (a) For religious, charitable, scientific, testing for public safety, literary, or
91 educational purposes;

92 (b) As a civic league or social welfare organization;

93 (c) As a labor, agricultural, or horticultural organization;

94 (d) As a chamber of commerce, business league, or trade association; or

95 (e) As a fraternal beneficiary society, order, or association;

96 (16) "Person", any natural person, and unless the context clearly does not allow it,
97 any corporation, partnership, limited liability company, trust, estate, government, agency,
98 administration, organization, association, or other legal domestic or foreign entity;

99 (17) "Produce, provide, render, or sell taxable property or services", includes the
100 following:

101 (a) A taxable property or service is used to produce, provide, render, or sell a
102 taxable property or service if such property or service is purchased by a person engaged
103 in a trade or business for the purpose of employing or using such taxable property or
104 service in the production, provision, rendering, or sale of other taxable property or services
105 in the ordinary course of that trade or business;

106 (b) Taxable property or services used in a trade or business for the purpose of
107 research, experimentation, testing, and development shall be treated as used to produce,
108 provide, render, or sell taxable property or services;

109 (c) Taxable property or services purchased by an insurer on behalf of an insured
110 shall be treated as used to produce, provide, render, or sell taxable property or services if
111 the premium for the insurance contract giving rise to the insurer's obligation was subject
112 to tax on financial intermediation services under this section;

113 (d) Education and training shall be treated as services used to produce, provide,
114 render, or sell taxable property or services;

115 (18) "Qualified family", one or more family members sharing a common residence.
116 All family members sharing a common residence shall be considered as part of one
117 qualified family;

118 (19) "Taxable employer", includes, but is not limited to, the following:

119 (a) Any household employing domestic servants; and

120 (b) Any government except for government enterprises.

121 **"Taxable employer" shall not include any employer that is:**

122 **(a) Engaged in a trade or business;**

123 **(b) A nonprofit organization; or**

124 **(c) A government enterprise;**

125 **(20) "Taxable property or service":**

126 **(a) Any property, including but not limited to the following:**

127 **a. Property purchased for business use but subsequently converted to personal use,**
128 **which shall be subject to the tax imposed by this section at the fair market value of the**
129 **converted property as of the date of conversion;**

130 **b. Leaseholds of any term;**

131 **c. Rents with respect to such property;**

132 **d. Property exchanged in barter transactions, which shall be taxed as if the**
133 **transaction was made in cash;**

134 **e. Mixed use property, to the extent that the property is not used for a personal and**
135 **not a business purpose; and**

136 **(b) Any service, including any financial intermediation services, and including any**
137 **service performed by an employee for which the employee is paid wages by a taxable**
138 **employer, or any service performed by an employee for which the employee is paid wages:**

139 **a. By an employer in the regular course of the employer's trade or business;**

140 **b. By an employer that is a nonprofit organization;**

141 **c. By an employer that is a government enterprise; or**

142 **d. By taxable employers to employees directly providing education and training.**

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144 **"Taxable property or service" shall not include any intangible property or used property,**
145 **any taxable property or service purchased for a business purpose in a trade or business,**
146 **any taxable property or service purchased for an investment purpose and held exclusively**
147 **for an investment purpose, or any state government functions that do not constitute the**
148 **final consumption of property or services;**

149 **(21) "Used property", property on which the tax imposed under this section has**
150 **been collected and for which no credit has been allowed, or property that was held other**
151 **than for a business purpose on December 31, 2009;**

152 **(22) "Wages", all compensation paid for employment service including salaries,**
153 **cash compensation, employee benefits, disability insurance, or wage replacement insurance**
154 **payments, unemployment compensation insurance, workers' compensation insurance, and**
155 **the fair market value of any other consideration paid by an employer to an employee in**
156 **consideration for employment services rendered.**

157 **3. For all taxable years beginning on or after January 1, 2010, no tax shall be**
158 **imposed upon any income derived from any source within this state, and all revenues lost**
159 **as a result of the prohibition on the taxation of income under this section shall be replaced**
160 **by the levy and imposition of a tax upon all use or consumption of taxable property or**
161 **services in this state.**

162 **4. No later than January 1, 2009, the department of revenue shall submit a report**
163 **to the general assembly recommending the repeal of any provision of law imposing a tax**
164 **on any income derived from any source within this state, the repeal and reenactment of any**
165 **provision of law relating to sales and use tax to comply with this section, and the enactment**
166 **of any provision of law relating to implementing the provisions of this section. Such report**
167 **shall include, at a minimum, the following:**

- 168 **(1) The method for eliminating individual and corporate income taxation;**
- 169 **(2) The method for eliminating withholding taxes;**
- 170 **(3) The method for eliminating all tax exemptions and deductions;**
- 171 **(4) The method for eliminating the estate tax;**
- 172 **(5) The sales tax rate necessary to replace the revenues lost as a result of the**
173 **prohibition on the taxation of income under this section;**
- 174 **(6) A method for allowing each collector of the sales tax to retain one-fourth of one**
175 **percent of the amount collected;**
- 176 **(7) The method for reporting monthly sales and tax collected on such sales by**
177 **sellers;**
- 178 **(8) The method for collecting the sales tax;**
- 179 **(9) Record-keeping requirements for all sellers;**
- 180 **(10) The method for retaining one-fourth of one percent by the department of**
181 **revenue for the administration of the sales tax;**
- 182 **(11) The method for providing each taxpayer with a payment to offset the burden**
183 **on taxation of necessities;**
- 184 **(12) Provisions for credits for business use conversion, a portion of bad debt,**
185 **insurance proceeds, overpayments of the sales tax due, inventory held on December 31,**
186 **2009, but sold before December 31, 2010, and mixed use property;**
- 187 **(13) Provisions for phasing out the elimination of income taxation while allowing**
188 **existing tax credits to be issued until they have expired;**
- 189 **(14) Provisions for reporting wages to the Social Security Administration;**
- 190 **(15) The statutory changes necessary to effect this section;**
- 191 **(16) The proposed promulgation of rules to effect this section;**
- 192 **(17) Any other recommendation or provision necessary to effect this section.**

193 **5. The department of revenue shall determine a method for setting and annually**
194 **adjusting the sales tax rate adopted under this section to provide for the funding of all**
195 **budgetary demands existing at the time the income tax is eliminated and the sales tax is**
196 **adopted under this section and to comply with sections 16 to 24 of Article X of the**
197 **Constitution of Missouri.**

198 **6. The department shall determine a method for providing a monthly sales tax**
199 **rebate for each qualified family. The sales tax rebate shall be distributed to each qualified**
200 **family on or before the first business day of the month for which the sales tax rebate is**
201 **being provided. The amount of the sales tax rebate shall be equal to the product of the rate**
202 **of sales tax established under this section and one-twelfth of the annual poverty guidelines**
203 **updated periodically in the Federal Register by the U.S. Department of Health and Human**
204 **Services under the authority of 42 U.S.C. 9902(2), as amended.**

205 **7. The department shall promulgate rules to implement the provisions of this**
206 **section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
207 **that is created under the authority delegated in this section shall become effective only if**
208 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
209 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
210 **and if any of the powers vested with the general assembly under chapter 536, RSMo, to**
211 **review, to delay the effective date, or to disapprove and annul a rule are subsequently held**
212 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
213 **after August 28, 2008, shall be invalid and void.**

214 **8. The passage and approval of the prohibition on the taxation of income and the**
215 **levy and imposition of a tax upon all use or consumption of taxable property or services**
216 **under this section shall not become effective unless such passage and approval is submitted**
217 **to the qualified voters of this state for approval or rejection at the election which shall be**
218 **held and conducted on the Tuesday immediately following the first Monday in November,**
219 **2008, under the laws and constitutional provisions of this state applicable to general**
220 **elections and the submission of referendum measures by initiative petition, and it shall**
221 **become effective when approved by a majority of the votes cast thereon at such election**
222 **and not otherwise.**

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