

FIRST EXTRAORDINARY SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2
96TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means and Fiscal Oversight, September 14, 2011, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0010S.02C

AN ACT

To repeal sections 32.028, 32.087, and 105.716, RSMo, and to enact in lieu thereof thirteen new sections relating to collection of state money, with penalty provisions.

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

Section A. Sections 32.028, 32.087, and 105.716, RSMo, are repealed and
2 thirteen new sections enacted in lieu thereof, to be known as sections 32.028,
3 32.058, 32.087, 32.383, 32.385, 32.410, 32.420, 32.430, 32.440, 32.450, 32.460,
4 105.716, and 140.910, to read as follows:

32.028. 1. There is hereby created a department of revenue in charge of
2 a director appointed by the governor, by and with the advice and consent of the
3 senate. The department shall collect all taxes and fees payable to the state as
4 provided by law **and may collect, upon referral by a state agency, debts**
5 **owed to any state agency subject to section 32.420.**

6 2. The powers, duties and functions of the department of revenue, chapter
7 32 and others, are transferred by type I transfer to the department of revenue.
8 All powers, duties and function of the collector of revenue are transferred to the
9 director of the department by type I transfer and the position of collector of
10 revenue is abolished.

11 3. The powers, duties and functions of the state tax commission, chapter
12 138 and others, are transferred by type III transfer to the department of revenue.

13 4. All of the powers, duties and functions of the state tax commission
14 relating to administration of the corporation franchise tax, chapter 152, and
15 others, are transferred by type I transfer to the department of revenue; provided,
16 however, that the provision of section 138.430 relating to appeals from decisions
17 of the director of revenue shall apply to these taxes.

18 5. All the powers, duties and functions of the highway reciprocity
19 commission, chapter 301, are transferred by type II transfer to the department
20 of revenue.

32.058. For all years beginning after January 1, 2012,
2 **notwithstanding the certified mail provisions contained in chapters 32,**
3 **140, 142, 143, 144, 147, 148, 149, and 302, the director of revenue may**
4 **choose to mail any document by first class mail.**

 32.087. 1. Within ten days after the adoption of any ordinance or order
2 in favor of adoption of any local sales tax authorized under the local sales tax law
3 by the voters of a taxing entity, the governing body or official of such taxing
4 entity shall forward to the director of revenue by United States registered mail
5 or certified mail a certified copy of the ordinance or order.

6 The ordinance or order shall reflect the effective date thereof.

7 2. Any local sales tax so adopted shall become effective on the first day
8 of the second calendar quarter after the director of revenue receives notice of
9 adoption of the local sales tax, except as provided in subsection 18 of this section.

10 3. Every retailer within the jurisdiction of one or more taxing entities
11 which has imposed one or more local sales taxes under the local sales tax law
12 shall add all taxes so imposed along with the tax imposed by the sales tax law of
13 the state of Missouri to the sale price and, when added, the combined tax shall
14 constitute a part of the price, and shall be a debt of the purchaser to the retailer
15 until paid, and shall be recoverable at law in the same manner as the purchase
16 price. The combined rate of the state sales tax and all local sales taxes shall be
17 the sum of the rates, multiplying the combined rate times the amount of the sale.

18 4. The brackets required to be established by the director of revenue
19 under the provisions of section 144.285 shall be based upon the sum of the
20 combined rate of the state sales tax and all local sales taxes imposed under the
21 provisions of the local sales tax law.

22 5. The ordinance or order imposing a local sales tax under the local sales
23 tax law shall impose upon all sellers a tax for the privilege of engaging in the
24 business of selling tangible personal property or rendering taxable services at
25 retail to the extent and in the manner provided in sections 144.010 to 144.525,
26 and the rules and regulations of the director of revenue issued pursuant thereto;
27 except that the rate of the tax shall be the sum of the combined rate of the state
28 sales tax or state highway use tax and all local sales taxes imposed under the
29 provisions of the local sales tax law.

30 6. On and after the effective date of any local sales tax imposed under the
31 provisions of the local sales tax law, the director of revenue shall perform all
32 functions incident to the administration, collection, enforcement, and operation
33 of the tax, and the director of revenue shall collect in addition to the sales tax for
34 the state of Missouri all additional local sales taxes authorized under the
35 authority of the local sales tax law. **The director shall retain one percent**
36 **of the amount of any local sales or use tax collected for cost of**
37 **collection.** All local sales taxes imposed under the local sales tax law together
38 with all taxes imposed under the sales tax law of the state of Missouri shall be
39 collected together and reported upon such forms and under such administrative
40 rules and regulations as may be prescribed by the director of revenue.

41 7. All applicable provisions contained in sections 144.010 to 144.525
42 governing the state sales tax and section 32.057, the uniform confidentiality
43 provision, shall apply to the collection of any local sales tax imposed under the
44 local sales tax law except as modified by the local sales tax law.

45 8. All exemptions granted to agencies of government, organizations,
46 persons and to the sale of certain articles and items of tangible personal property
47 and taxable services under the provisions of sections 144.010 to 144.525, as these
48 sections now read and as they may hereafter be amended, it being the intent of
49 this general assembly to ensure that the same sales tax exemptions granted from
50 the state sales tax law also be granted under the local sales tax law, are hereby
51 made applicable to the imposition and collection of all local sales taxes imposed
52 under the local sales tax law.

53 9. The same sales tax permit, exemption certificate and retail certificate
54 required by sections 144.010 to 144.525 for the administration and collection of
55 the state sales tax shall satisfy the requirements of the local sales tax law, and
56 no additional permit or exemption certificate or retail certificate shall be
57 required; except that the director of revenue may prescribe a form of exemption
58 certificate for an exemption from any local sales tax imposed by the local sales tax
59 law.

60 10. All discounts allowed the retailer under the provisions of the state
61 sales tax law for the collection of and for payment of taxes under the provisions
62 of the state sales tax law are hereby allowed and made applicable to any local
63 sales tax collected under the provisions of the local sales tax law.

64 11. The penalties provided in section 32.057 and sections 144.010 to
65 144.525 for a violation of the provisions of those sections are hereby made

66 applicable to violations of the provisions of the local sales tax law.

67 12. (1) For the purposes of any local sales tax imposed by an ordinance
68 or order under the local sales tax law, all sales, except the sale of motor vehicles,
69 trailers, boats, and outboard motors, shall be deemed to be consummated at the
70 place of business of the retailer unless the tangible personal property sold is
71 delivered by the retailer or his agent to an out-of-state destination. In the event
72 a retailer has more than one place of business in this state which participates in
73 the sale, the sale shall be deemed to be consummated at the place of business of
74 the retailer where the initial order for the tangible personal property is taken,
75 even though the order must be forwarded elsewhere for acceptance, approval of
76 credit, shipment or billing. A sale by a retailer's agent or employee shall be
77 deemed to be consummated at the place of business from which he works.

78 (2) For the purposes of any local sales tax imposed by an ordinance or
79 order under the local sales tax law, all sales of motor vehicles, trailers, boats, and
80 outboard motors shall be deemed to be consummated at the residence of the
81 purchaser and not at the place of business of the retailer, or the place of business
82 from which the retailer's agent or employee works.

83 (3) For the purposes of any local tax imposed by an ordinance or under the
84 local sales tax law on charges for mobile telecommunications services, all taxes
85 of mobile telecommunications service shall be imposed as provided in the Mobile
86 Telecommunications Sourcing Act, 4 U.S.C. Sections 116 through 124, as
87 amended.

88 13. Local sales taxes imposed pursuant to the local sales tax law on the
89 purchase and sale of motor vehicles, trailers, boats, and outboard motors shall not
90 be collected and remitted by the seller, but shall be collected by the director of
91 revenue at the time application is made for a certificate of title, if the address of
92 the applicant is within a taxing entity imposing a local sales tax under the local
93 sales tax law.

94 14. The director of revenue and any of his **or her** deputies, assistants and
95 employees who have any duties or responsibilities in connection with the
96 collection, deposit, transfer, transmittal, disbursement, safekeeping, accounting,
97 or recording of funds which come into the hands of the director of revenue under
98 the provisions of the local sales tax law shall enter a surety bond or bonds
99 payable to any and all taxing entities in whose behalf such funds have been
100 collected under the local sales tax law in the amount of one hundred thousand
101 dollars for each such tax; but the director of revenue may enter into a blanket

102 bond covering himself **or herself** and all such deputies, assistants and
103 employees. The cost of any premium for such bonds shall be paid by the director
104 of revenue from the share of the collections under the sales tax law retained by
105 the director of revenue for the benefit of the state.

106 15. The director of revenue shall annually report on his **or her**
107 management of each trust fund which is created under the local sales tax law and
108 administration of each local sales tax imposed under the local sales tax law. He
109 **or she** shall provide each taxing entity imposing one or more local sales taxes
110 authorized by the local sales tax law with a detailed accounting of the source of
111 all funds received by him for the taxing entity. Notwithstanding any other
112 provisions of law, the state auditor shall annually audit each trust fund. A copy
113 of the director's report and annual audit shall be forwarded to each taxing entity
114 imposing one or more local sales taxes.

115 16. Within the boundaries of any taxing entity where one or more local
116 sales taxes have been imposed, if any person is delinquent in the payment of the
117 amount required to be paid by him **or her** under the local sales tax law or in the
118 event a determination has been made against him **or her** for taxes and penalty
119 under the local sales tax law, the limitation for bringing suit for the collection of
120 the delinquent tax and penalty shall be the same as that provided in sections
121 144.010 to 144.525. Where the director of revenue has determined that suit must
122 be filed against any person for the collection of delinquent taxes due the state
123 under the state sales tax law, and where such person is also delinquent in
124 payment of taxes under the local sales tax law, the director of revenue shall
125 notify the taxing entity in the event any person fails or refuses to pay the amount
126 of any local sales tax due so that appropriate action may be taken by the taxing
127 entity.

128 17. Where property is seized by the director of revenue under the
129 provisions of any law authorizing seizure of the property of a taxpayer who is
130 delinquent in payment of the tax imposed by the state sales tax law, and where
131 such taxpayer is also delinquent in payment of any tax imposed by the local sales
132 tax law, the director of revenue shall permit the taxing entity to join in any sale
133 of property to pay the delinquent taxes and penalties due the state and to the
134 taxing entity under the local sales tax law. The proceeds from such sale shall
135 first be applied to all sums due the state, and the remainder, if any, shall be
136 applied to all sums due such taxing entity.

137 18. If a local sales tax has been in effect for at least one year under the

138 provisions of the local sales tax law and voters approve reimposition of the same
139 local sales tax at the same rate at an election as provided for in the local sales
140 tax law prior to the date such tax is due to expire, the tax so reimposed shall
141 become effective the first day of the first calendar quarter after the director
142 receives a certified copy of the ordinance, order or resolution accompanied by a
143 map clearly showing the boundaries thereof and the results of such election,
144 provided that such ordinance, order or resolution and all necessary accompanying
145 materials are received by the director at least thirty days prior to the expiration
146 of such tax. Any administrative cost or expense incurred by the state as a result
147 of the provisions of this subsection shall be paid by the city or county reimposing
148 such tax.

**32.383. 1. Notwithstanding the provisions of any other law to the
2 contrary, with respect to taxes administered by the department of
3 revenue and imposed in chapters 143 and 144, an amnesty from the
4 assessment or payment of all penalties, additions to tax, and interest
5 shall apply with respect to unpaid taxes or taxes due and owing
6 reported and paid in full from May 1, 2012, to June 30, 2012, regardless
7 of whether previously assessed, except for penalties, additions to tax,
8 and interest paid before May 1, 2012. The amnesty shall apply only to
9 state tax liabilities due or due but unpaid on or before December 31,
10 2010, and shall not extend to any taxpayer who at the time of payment
11 is a party to any criminal investigations or to any civil or criminal
12 litigation that is pending in any court of the United States or this state
13 for nonpayment, delinquency, or fraud in relation to any state tax
14 imposed by this state.**

**15 2. Upon written application by the taxpayer, on forms prescribed
16 by the director of revenue, and upon compliance with the provisions of
17 this section, the department of revenue shall not seek to collect any
18 penalty, addition to tax, or interest that may be applicable. The
19 department of revenue shall not seek civil or criminal prosecution for
20 any taxpayer for the taxable period for which the amnesty has been
21 granted, unless subsequent investigation or audit shows that the
22 taxpayer engaged in fraudulent or criminal conduct in applying for
23 amnesty.**

**24 3. Amnesty shall be granted only to those taxpayers who have
25 applied for amnesty within the period stated in this section, who have
26 filed a tax return for each taxable period for which amnesty is**

27 requested, who have paid the entire balance due within sixty days of
28 approval by the department of revenue, and who agree to comply with
29 state tax laws for the next eight years from the date of the agreement.
30 No taxpayer shall be entitled to a waiver of any penalty, addition to
31 tax, or interest under this section unless full payment of the tax due is
32 made in accordance with rules established by the director of revenue.

33 4. All taxpayers granted amnesty under this section shall comply
34 with this state's tax laws for the eight years following the date of the
35 amnesty agreement. If any such taxpayer fails to comply with all of
36 this state's tax laws at any time during the eight years following the
37 date of the agreement, all penalties, additions to tax, and interest that
38 were waived under the amnesty agreement shall become due and owing
39 immediately.

40 5. If a taxpayer elects to participate in the amnesty program
41 established in this section as evidenced by full payment of the tax due
42 as established by the director of revenue, that election shall constitute
43 an express and absolute relinquishment of all administrative and
44 judicial rights of appeal. No tax payment received under this section
45 shall be eligible for refund or credit.

46 6. Nothing in this section shall be interpreted to disallow the
47 department of revenue to adjust a taxpayer's tax return as a result of
48 any state or federal audit.

49 7. All tax payments received as a result of the amnesty program
50 established in this section, other than revenues earmarked by state law,
51 shall be deposited in the state general revenue fund.

52 8. The department may promulgate rules as are necessary to
53 implement the provisions of this section. Any rule or portion of a rule,
54 as that term is defined in section 536.010, that is created under the
55 authority delegated in this section shall become effective only if it
56 complies with and is subject to all of the provisions of chapter 536 and,
57 if applicable, section 536.028. This section and chapter 536 are
58 nonseverable and if any of the powers vested with the general assembly
59 under chapter 536 to review, to delay the effective date, or to
60 disapprove and annul a rule are subsequently held unconstitutional,
61 then the grant of rulemaking authority and any rule proposed or
62 adopted after effective date of this act, shall be invalid and void.

32.385. 1. The director of revenue and the commissioner of

2 administration may jointly enter into a reciprocal collection and offset
3 of indebtedness agreement with the federal government, under which
4 the state will offset from state tax refunds and from payments
5 otherwise due to vendors and contractors providing goods or services
6 to state departments, agencies, or other state agencies nontax debt
7 owed to the federal government; and the federal government will offset
8 from federal payments to vendors, contractors, and taxpayers debt
9 owed to the state of Missouri.

10 2. When used in this section, the following terms shall mean:

11 (1) "Federal official", a unit or official of the federal government
12 charged with the collection of nontax liabilities payable to the federal
13 government under 31 U.S.C. Section 3716, as amended;

14 (2) "Nontax liability due the state", a liability certified to the
15 director of revenue by a state agency which shall include, but shall not
16 be limited to, fines, fees, penalties, and other nontax assessments
17 imposed by, or payable to, any state agency that is finally determined
18 to be due and owing;

19 (3) "Offset agreement", the agreement authorized by this section;

20 (4) "Person", an individual, partnership, society, association, joint
21 stock company, corporation, public corporation, or any public
22 authority, estate, receiver, trustee, assignee, referee, any other person
23 acting in a fiduciary or representative capacity whether appointed by
24 a court or otherwise, or any combination thereof;

25 (5) "Refund", an amount described as a refund of tax under the
26 provisions of state tax law that authorized its payment;

27 (6) "State agency", any department, division, board, commission,
28 office, or other agency of the state of Missouri;

29 (7) "Vendor payment", any payment, other than a refund, made
30 by the state to any person or entity which shall include, but not be
31 limited to, any expense reimbursement to an employee of the state. The
32 term "vendor payment" shall not include a person's salary, wages, or
33 pension.

34 3. Under the offset agreement, a federal official may:

35 (1) Certify to the state of Missouri the existence of a person's
36 delinquent nontax liability owed by such person to the federal
37 government;

38 (2) Request that the state of Missouri withhold any refund or

39 vendor payment to which such person is entitled;

40 (3) Certify and request the state of Missouri to withhold a refund
41 or vendor payment only if the laws of the United States:

42 (a) Allow the state of Missouri to enter into a reciprocal
43 agreement with the United States, under which the federal official
44 would be authorized to offset federal payments to collect delinquent tax
45 and nontax debts owed to the state; and

46 (b) Provide for the payment of the amount withheld to the state;

47 (4) Retain a portion of the proceeds of any collection offset as
48 provided under the offset agreement.

49 4. Under the offset agreement, a certification by a federal official
50 to the state of Missouri shall include:

51 (1) The full name of the person and any other names known to
52 be used by such person;

53 (2) The social security number or federal tax identification
54 number of such person;

55 (3) The amount of the nontax liability; and

56 (4) A statement that the debt is past due and legally enforceable
57 in the amount certified.

58 5. If a person for whom a certification is received from a federal
59 official is due a refund of Missouri tax or a vendor payment, the
60 agreement may provide that the state of Missouri shall:

61 (1) Withhold such refund or vendor payment;

62 (2) In accordance with the provisions of the offset agreement,
63 notify such person of the amount withheld in satisfaction of a liability
64 certified by a federal official;

65 (3) Pay to the federal official the lesser of:

66 (a) The entire refund or vendor payment; or

67 (b) The amount certified; and

68 (4) Pay any refund or vendor payment in excess of the certified
69 amount to the person.

70 6. Under the agreement, the director of revenue shall:

71 (1) Certify to a federal official the existence of a person's
72 delinquent tax or nontax liability due the state;

73 (2) Request that the federal official withhold any eligible vendor
74 payment to which the person is entitled; and

75 (3) Provide for the payment of the amount withheld to the state.

76 7. Any certification by a state agency to the director of revenue,
77 or by the director of revenue to a federal official under the offset
78 agreement shall include:

79 (1) The full name and address of the person and any other names
80 known to be used by such person;

81 (2) The social security number or tax identification number of
82 such person;

83 (3) The amount of the tax or nontax liability;

84 (4) A statement that the debt is past due and legally enforceable
85 in the amount certified; and

86 (5) Any other information required by federal law or regulation
87 applicable to the collection of the debt by offset of federal payments.

88 8. Any other provisions of law to the contrary notwithstanding,
89 the director of revenue and the commissioner of administration shall
90 have the authority to enter into reciprocal agreements with any other
91 state which extends a like comity to this state to offset from state tax
92 refunds and from payments otherwise due to vendors and contractors
93 providing goods or services to state departments, agencies, or other
94 state agencies nontax debt for debts due such state.

 32.410. As used in sections 32.410 to 32.460, the following terms
2 shall mean:

3 (1) "Debt", an amount owed to the state directly or through a
4 state agency, on account of a fee, duty, lease, direct loan, loan insured
5 or guaranteed by the state, rent, service, sale of real or personal
6 property, overpayment, fine, assessment, penalty, restitution, damages,
7 interest, tax, bail bond, forfeiture, reimbursement, liability owed, an
8 assignment, recovery of costs incurred by the state, or any other source
9 of indebtedness to the state;

10 (2) "Debtor", an individual, a corporation, a partnership, an
11 unincorporated association, a limited liability company, a trust, an
12 estate, or any other public or private entity, including a state, local, or
13 federal government, or an Indian tribe, that is liable for a debt or
14 against whom there is a claim for a debt;

15 (3) "Department", the department of revenue;

16 (4) "State agency", any division, board, commission, office, or
17 other agency of the state of Missouri, including public community
18 college districts and any state or municipal court.

32.420. 1. Notwithstanding any other provision of law to the contrary, all state agencies may refer to the department for collection debts owed to them. The department may provide collection services on debts referred to the department by a state agency. This authority shall not supersede the authority granted to the attorney general pursuant to section 27.060 or any other statute.

2. A referring agency may refer the debt to the department for collection at any time after a debt becomes delinquent and uncontested and the debtor shall have no further administrative appeal of the amount of the debt. Methods and procedures for referral shall be governed by an agreement between the referring agency and the department.

3. The collection procedures and remedies under this chapter are in addition to any other procedure or remedy available by law. If the state agency's applicable state or federal law requires the use of a particular remedy or procedure for the collection of a debt, that particular remedy or procedure shall govern the collection of that debt to the extent the procedure or remedy is inconsistent with this chapter.

4. The state agency shall send notice to the debtor by United States mail at the debtor's last known address at least twenty days before the debt is referred to the department. The notice shall state the nature and amount of the debt, identify to whom the debt is owed, and inform the debtor of the remedies available under this chapter or the state agency's own procedures.

32.430. 1. Except as otherwise provided in this section, the department shall have the authority to use all general remedies afforded creditors of this state in collection of debt as well as any remedies afforded the state agency referring the debt and to the state in general as a creditor. The department shall not have authority to prosecute or defend civil actions on behalf of any other state agency, except as necessary to defend any challenges made to actions pursuant to section 143.902 or 140.910 for a debt referred by a state agency or to prosecute an action pursuant to subsection 10 of section 140.910.

2. In addition to the remedies identified in sections 32.410 to 32.460, the department may use the collection remedies afforded under sections 143.902 and 140.910 in the collection of any state debt referred to the department.

14 3. The department may employ department staff and attorneys,
15 and at the department's discretion, prosecuting attorneys and private
16 collection agencies as authorized in sections 136.150 and 140.850 in
17 seeking collection of debts referred to the department by a state
18 agency.

 32.440. 1. The department shall add to the amount of debt
2 referred to the department by a state agency the cost of collection
3 which shall be ten percent of the total debt referred by the state
4 agency. The department shall have the same authority to collect the
5 cost of collection as the department has in collecting the debt referred
6 by the state agency.

7 2. The cost of collection shall only be waived when:

8 (1) Within thirty days after the initial notice to the debtor by the
9 department, the debtor establishes to the department reasonable cause
10 for the failure to pay the debt prior to referral of the debt to the
11 department, enters into an agreement satisfactory to the department
12 to pay the debt in full, and fully abides by the terms of that agreement;

13 (2) A good faith dispute as to the legitimacy or the amount of the
14 debt exists, and payment is remitted or an agreement satisfactory to
15 the department to pay the debt in full is entered into within thirty days
16 after resolution of the dispute, and the debtor fully abides by the terms
17 of that agreement; or

18 (3) Collection costs have been added by the state agency and are
19 included in the amount of the referred debt.

20 3. If the department collects an amount less than the total due,
21 the payment shall be applied proportionally to collection costs and the
22 underlying debt unless the department has waived this requirement for
23 certain categories of debt. Collection costs collected by the department
24 under this section shall be deposited in the general revenue fund.

 32.450. The department may compromise state debt referred to
2 the department in accordance with section 32.378 and any agreement
3 with the referring agency.

 32.460. The department and state agencies, including the
2 judiciary, may exchange such information, including the debtor's Social
3 Security number, as is necessary for the successful collection of the
4 state debt referred. The referring state agency shall follow all
5 applicable federal and state laws regarding the confidentiality of

6 **information and records regarding the debtor. The confidentiality laws**
7 **applicable to the particular information received and retained by each**
8 **agency shall apply to the employees of such state agency and to the**
9 **department when such information has been forwarded to the**
10 **department.**

105.716. 1. Any investigation, defense, negotiation, or compromise of any
2 claim covered by sections 105.711 to 105.726 shall be conducted by the attorney
3 general; provided, that in the case of any claim against the department of
4 conservation, the department of transportation or a public institution which
5 awards baccalaureate degrees, or any officer or employee of such department or
6 such institution, any investigation, defense, negotiation, or compromise of any
7 claim covered by sections 105.711 to 105.726 shall be conducted by legal counsel
8 provided by the respective entity against which the claim is made or which
9 employs the person against whom the claim is made.

10 In the case of any payment from the state legal expense fund based upon a claim
11 or judgment against the department of conservation, the department of
12 transportation or any officer or employee thereof, the department so affected shall
13 immediately transfer to the state legal expense fund from the department funds
14 a sum equal to the amount expended from the state legal expense fund on its
15 behalf.

16 2. All persons and entities protected by the state legal expense fund shall
17 cooperate with the attorneys conducting any investigation and preparing any
18 defense under the provisions of sections 105.711 to 105.726 by assisting such
19 attorneys in all respects, including the making of settlements, the securing and
20 giving of evidence, and the attending and obtaining witness to attend hearings
21 and trials. Funds in the state legal expense fund shall not be used to pay claims
22 and judgments against those persons and entities who do not cooperate as
23 required by this subsection.

24 3. The provisions of sections 105.711 to 105.726 notwithstanding, the
25 attorney general may investigate, defend, negotiate, or compromise any claim
26 covered by sections 105.711 to 105.726 against any public institution which
27 awards baccalaureate degrees whose governing body has declared a state of
28 financial exigency.

29 4. Notwithstanding the provisions of subsection 2 of section 105.711, funds
30 in the state legal expense fund may be expended prior to the payment of any
31 claim or any final judgment to pay costs of defense, including reasonable

32 attorney's fees for retention of legal counsel, when the attorney general
33 determines that a conflict exists or particular expertise is required, and also to
34 pay for related legal expenses including medical examination fees, expert witness
35 fees, court reporter expenses, travel costs and ancillary legal expenses incurred
36 prior to the payment of a claim or any final judgment.

37 **5. Notwithstanding any other provision of law to the contrary,**
38 **except for payments of less than ten thousand dollars for property**
39 **damage, no funds shall be expended from the state legal expense fund**
40 **for settlement of any liability claim except upon the production of a no**
41 **tax due statement from the department of revenue by the party making**
42 **claim or having judgment under section 105.711, which shall be**
43 **satisfied from such fund. If the party is found by the director of**
44 **revenue to owe a delinquent tax debt to the state of Missouri under the**
45 **revenue laws of this state, after the payment of attorney fees and**
46 **expenses associated with liability of the fund to the party, any**
47 **remaining funds to be paid to the party from the state legal expense**
48 **fund shall be offset to satisfy such tax debt before payment is made to**
49 **the party making claim or having judgment.**

140.910. 1. In addition to any other remedy provided by law for
2 the collection of delinquent taxes due the state of Missouri, if the
3 director has filed a certificate of lien in the circuit court as provided
4 by section 143.902, 144.380, or 144.690, the director or his or her
5 designee may issue an order directing any person, after the payment of
6 attorney fees and expenses associated with creating the proceeds
7 belonging to, due to, or to become due to the taxpayer, to withhold and
8 pay over to the department assets belonging to, due, or to become due
9 the taxpayer. The director or his or her designee shall not issue the
10 administrative garnishment if the taxpayer has entered into a written
11 agreement with the department for an alternative payment
12 arrangement and the taxpayer is in compliance with the agreement.

13 **2. An order entered under this section shall be served on the**
14 **person or other legal entity either by regular mail or by certified mail,**
15 **return receipt requested, or may be issued through electronic means,**
16 **and shall be binding on the employer or other payor two weeks after**
17 **mailing or electronic issuance of such service. The person or other**
18 **entity in possession of assets belonging to, due, or to become due the**
19 **taxpayer may deduct an additional sum not to exceed six dollars per**

20 month as reimbursement for costs, except that the total amount
21 withheld shall not exceed the limitations contained in the federal
22 Consumer Credit Protection Act, 15 U.S.C. Section 1673, as amended.

23 3. A copy of the order shall be mailed to the taxpayer at the
24 taxpayer's last known address. The notice shall advise the taxpayer
25 that the administrative garnishment has commenced and the
26 procedures to contest such garnishment on the grounds that such
27 garnishment is improper due to a mistake of fact by requesting a
28 hearing within thirty days from mailing or electronic issuance of the
29 notice. At such a hearing the certified records of the department shall
30 constitute prima facie evidence that the director's order is valid and
31 enforceable. If a prima facie case is established, the obligor may only
32 assert as a defense mistake as to the identity of the taxpayer, mistake
33 as to payments made, or existence of an alternative payment agreement
34 for which no default has occurred. The taxpayer shall have the burden
35 of proof on such issues. The taxpayer may obtain relief from the
36 garnishment by paying the amount owed.

37 4. An employer or other payor shall withhold from the earnings
38 or other income of each taxpayer the amount specified in the
39 order. The employer or other payor shall transmit the payments as
40 directed in the order within ten business days of the date the earnings,
41 money due, or other income was payable to the taxpayer. For purposes
42 of this section, "business day" means a day that state offices are open
43 for regular business. The employer or other payor shall, along with the
44 amounts transmitted, provide the date the amount was withheld from
45 the taxpayer.

46 5. An order issued under subsection 1 of this section shall be a
47 continuing order and shall remain in effect and be binding upon any
48 employer or other payor upon whom it is directed until a further order
49 of the director. The director shall notify an employer or other payor
50 upon whom such an order has been directed whenever the deficiency
51 is paid in full.

52 6. If the order is served on a person other than an employer or
53 other payor, it shall be a lien against any money belonging to the
54 taxpayer that is in the possession of the person on the date of
55 service. The person other than an employer or other payor shall pay
56 over any assets within ten business days of the service date of the

57 order. A financial institution ordered to surrender an account shall be
58 entitled to collect its normally scheduled account activity surcharges
59 to maintain the account during the period of time the account is
60 garnished. For purposes of this section, the interest of the taxpayer in
61 any joint financial accounts shall be presumed to be equal to all other
62 joint owners.

63 7. An order issued under subsection 1 of this section shall have
64 priority over any other legal process under state law against the same
65 income or other asset, except that where the other legal process is an
66 order issued under section 452.350, 454.505, or 454.507, the withholding
67 for child support shall have priority.

68 8. No person who complies with an order entered under this
69 section shall be liable to the taxpayer, or to any other person claiming
70 rights derived from the taxpayer, for wrongful withholding. A person
71 who fails or refuses to withhold or pay the amounts as ordered under
72 this section shall be liable to the state in a sum equal to the value of
73 the wages or property not surrendered, but not to exceed the amount
74 of tax deficiency. The director is hereby authorized to bring an action
75 in circuit court to determine the liability of a person for failure to
76 withhold or pay the amounts as ordered. If a court finds that a
77 violation has occurred, the court may fine the person in an amount not
78 to exceed five hundred dollars. The court may also enter a judgment
79 against the person or other legal entity for the amounts to be withheld
80 or paid, court costs, and reasonable attorney's charges.

81 9. The remedy provided by this section shall be available where
82 the state or any of its political subdivisions is the employer or other
83 payor of the taxpayer in the same manner and to the same extent as
84 where the employer or other payor is a private party.

85 10. An employer shall not discharge, or refuse to hire or
86 otherwise discipline, an employee as a result of an order to withhold
87 and pay over certain money authorized by this section. If any such
88 employee is discharged within thirty days of the date upon which an
89 order to withhold and pay over certain money is to take effect, there
90 shall arise a rebuttable presumption that such discharge was a result
91 of such order. This presumption shall be overcome only by clear,
92 cogent and convincing evidence produced by the employer that the
93 employee was not terminated because of the order to withhold and pay

94 over certain money. The director or his or her designee is hereby
95 authorized to bring an action in circuit court to determine whether the
96 discharge constitutes a violation of this subsection. If the court finds
97 that a violation has occurred, the court may enter an order against the
98 employer requiring reinstatement of the employee and may fine the
99 employer in an amount not to exceed five hundred dollars. Further, the
100 court may enter judgment against the employer for the back wages,
101 costs, attorney's surcharges, and for the amount of taxes that should
102 have been withheld and paid over during the period of time the
103 employee was wrongfully discharged.

104 11. If a taxpayer for whom an order to withhold has been issued
105 under subsection 1 of this section terminates the taxpayer's
106 employment, the employer shall, within ten days of the termination,
107 notify the department of the termination, shall provide to the
108 department the last known address of the taxpayer, if known to the
109 employer, and shall provide to the department the name and address
110 of the taxpayer's new employer, if known. The director or his or her
111 designee may issue an order to the new employer as provided in
112 subsection 1 of this section.

113 12. For purposes of this section, "assets" include, but are not
114 limited to, currency, any financial account or other liquid asset, and
115 any income or other periodic form of payment due to a taxpayer
116 regardless of source, including, but not limited to, wages, salaries,
117 commissions, bonuses, workers' compensation benefits, disability
118 benefits, payments pursuant to a pension or a retirement program, and
119 interest.

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