

FIRST REGULAR SESSION

HOUSE BILL NO. 1245

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BOSLEY.

2460H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 144, RSMo, by adding thereto two new sections relating to sales tax.

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

Section A. Chapter 144, RSMo, is amended by adding thereto two new sections, to be known as sections 144.900 and 144.901, to read as follows:

144.900. 1. Notwithstanding any provision of law to the contrary, any seller who does not have a physical presence in this state who sells tangible personal property or products transferred electronically shall be subject to this chapter, shall remit state sales tax, and shall follow all applicable procedures and requirements as if the seller had a physical presence in this state, provided that in either the current or immediately preceding calendar year the seller has:

(1) At least one hundred thousand dollars in gross revenue from sales in this state;
or

(2) At least two hundred or more separate transactions in this state.

2. A taxpayer complying with this section and section 144.901, voluntarily or otherwise, may only seek a recovery of taxes, penalties, or interest by following the recovery procedures under section 136.035. However, no claim shall be granted on the basis that the taxpayer lacked a physical presence in the state and complied with this section voluntarily while complying with the injunction of section 144.901. Nothing in this section limits the ability of any taxpayer to obtain a refund for any other reason, including overpayment or erroneous payment.

3. (1) All revenue generated under this section that exceeds the amount of revenue that would have been collected if this section were not effective shall be deposited in the

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.

19 online sales tax special fund created in this section and appropriated solely for the
20 approved purposes. The department of revenue shall track and report the collections
21 generated under this act.

22 (2) There is hereby created in the state treasury the "Online Sales Tax Special
23 Fund", which shall consist of moneys collected under this section. The state treasurer shall
24 be custodian of the fund. In accordance with sections 30.170 and 30.180, the state
25 treasurer may approve disbursements. The fund shall be a dedicated fund and, upon
26 appropriation, moneys in the fund shall be transferred every fiscal year as follows: first,
27 moneys shall be transferred to the department of elementary and secondary education in
28 the amount necessary to fully support student transportation in accordance with the
29 provisions of section 163.161, and second, all remaining moneys shall be transferred to the
30 state general revenue fund. The department of elementary and secondary education shall
31 be responsible for calculating how much of the fund's revenue is necessary as a supplement
32 to meet its student transportation needs in accordance with section 163.161. After making
33 this calculation, the department of elementary and secondary education shall be
34 responsible for submitting a funds request and explanation to the department of revenue;
35 such request and explanation shall be submitted no later than three months before the start
36 of the department of elementary and secondary education's fiscal year. Notwithstanding
37 the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the
38 end of the biennium shall not revert to the credit of the general revenue fund. The state
39 treasurer shall invest moneys in the fund in the same manner as other funds are invested.
40 Any interest and moneys earned on such investments shall be credited to the fund.

41 4. No seller who remits sales tax, voluntarily or otherwise, under this section shall
42 be liable to a purchaser who claims that the sales tax was over-collected because a
43 provision of this section is later deemed unlawful.

44 5. Nothing in this section shall affect the obligation of any purchaser from this state
45 to remit use tax as to any applicable transaction in which the seller does not collect and
46 remit or remit an offsetting sales tax.

144.901. 1. Notwithstanding any other provision of law and regardless if the state
2 initiates an audit or other tax collection procedure, the state may bring a declaratory
3 judgment action in any circuit court to establish that the obligation to remit sales tax is
4 applicable and valid under state and federal law against any person who the state believes
5 meets the criteria of section 144.900. The circuit court shall act on this declaratory
6 judgment action as expeditiously as possible. The court shall presume that the matter shall
7 be fully resolved through a motion to dismiss or a motion for summary judgment.
8 Attorney's fees shall not be awarded in any action brought under section 144.900.

9 **2. The filing of the declaratory judgment action by the state shall operate as an**
10 **injunction during the pendency of the action, prohibiting any state entity from enforcing**
11 **the obligation in section 144.900 against any taxpayer who does not affirmatively consent**
12 **or otherwise remit the sales tax on a voluntary basis. The injunction shall not apply if**
13 **there is a previous judgment against a taxpayer that establishes the validity of the**
14 **taxpayer's obligation under section 144.900.**

15 **3. Any appeal from the decision with respect to the cause of action under section**
16 **144.900 shall be made only to the state supreme court. The appeal shall be heard as**
17 **expeditiously as possible.**

18 **4. If an injunction under this section is lifted or dissolved, in general or with respect**
19 **to a specific taxpayer, the state shall assess and apply the obligation established under**
20 **section 144.900 from that date forward to any taxpayer affected by the injunction.**

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