

SECOND REGULAR SESSION

HOUSE BILL NO. 2294

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SPENCER.

5145H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 144.190, RSMo, and to enact in lieu thereof one new section relating to tax overpayments.

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Section A. Section 144.190, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.190, to read as follows: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 under chapter 144, 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 under chapter 144, and the balance, with interest as determined by section 32.065, 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 ten 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 recovered in any action brought by the director of revenue against the person legally obligated to remit the tax. In the event that a tax has been illegally imposed against a person legally

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.

18 obligated to remit the tax, the director of revenue shall authorize the cancellation of the tax upon
19 the director's record.

20 4. Notwithstanding the provisions of section 32.057, a purchaser that originally paid
21 sales or use tax to a vendor or seller may submit a refund claim directly to the director of revenue
22 for such sales or use taxes paid to such vendor or seller and remitted to the director, provided no
23 sum shall be refunded more than once, any such claim shall be subject to any offset, defense, or
24 other claim the director otherwise would have against either the purchaser or vendor or seller,
25 and such claim for refund is accompanied by either:

26 (1) A notarized assignment of rights statement by the vendor or seller to the purchaser
27 allowing the purchaser to seek the refund on behalf of the vendor or seller. An assignment of
28 rights statement shall contain the Missouri sales or use tax registration number of the vendor or
29 seller, a list of the transactions covered by the assignment, the tax periods and location for which
30 the original sale was reported to the director of revenue by the vendor or seller, and a notarized
31 statement signed by the vendor or seller affirming that the vendor or seller has not received a
32 refund or credit, will not apply for a refund or credit of the tax collected on any transactions
33 covered by the assignment, and authorizes the director to amend the seller's return to reflect the
34 refund; or

35 (2) In the event the vendor or seller fails or refuses to provide an assignment of rights
36 statement within sixty days from the date of such purchaser's written request to the vendor or
37 seller, or the purchaser is not able to locate the vendor or seller or the vendor or seller is no
38 longer in business, the purchaser may provide the director a notarized statement confirming the
39 efforts that have been made to obtain an assignment of rights from the vendor or seller. Such
40 statement shall contain a list of the transactions covered by the assignment, the tax periods and
41 location for which the original sale was reported to the director of revenue by the vendor or
42 seller.

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44 The director shall not require such vendor, seller, or purchaser to submit amended returns for
45 refund claims submitted under the provisions of this subsection. Notwithstanding the provisions
46 of section 32.057, if the seller is registered with the director for collection and remittance of sales
47 tax, the director shall notify the seller at the seller's last known address of the claim for refund.
48 If the seller objects to the refund within thirty days of the date of the notice, the director shall not
49 pay the refund. If the seller agrees that the refund is warranted or fails to respond within thirty
50 days, the director may issue the refund and amend the seller's return to reflect the refund. For
51 purposes of section 32.069, the refund claim shall not be considered to have been filed until the
52 seller agrees that the refund is warranted or thirty days after the date the director notified the
53 seller and the seller failed to respond.

54 5. Notwithstanding the provisions of section 32.057, when a vendor files a refund claim
55 on behalf of a purchaser and such refund claim is denied by the director, notice of such denial
56 and the reason for the denial shall be sent by the director to the vendor and each purchaser whose
57 name and address is submitted with the refund claim form filed by the vendor. A purchaser shall
58 be entitled to appeal the denial of the refund claim within sixty days of the date such notice of
59 denial is mailed by the director as provided in section 144.261. The provisions of this subsection
60 shall apply to all refund claims filed after August 28, 2012. The provisions of this subsection
61 allowing a purchaser to appeal the director's decision to deny a refund claim shall also apply to
62 any refund claim denied by the director on or after January 1, 2007, if an appeal of the denial of
63 the refund claim is filed by the purchaser no later than September 28, 2012, and if such claim is
64 based solely on the issue of the exemption of the electronic transmission or delivery of computer
65 software.

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

72 7. Special rules applicable to error corrections requested by customers of mobile
73 telecommunications service are as follows:

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

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

86 (3) Within sixty days of receiving the customer's notice, the home service provider shall
87 review its records and the electronic database or enhanced zip code to determine the customer's
88 correct taxing jurisdiction. If the home service provider determines that the review shows that
89 the amount of tax, assignment of place of primary use or taxing jurisdiction is in error, the home

90 service provider shall correct the error and, at its election, either refund or credit the amount of
91 tax erroneously collected to the customer for a period of up to three years from the last day of
92 the home service provider's sixty-day review period. If the home service provider determines
93 that the review shows that the amount of tax, the assignment of place of primary use or the taxing
94 jurisdiction is correct, the home service provider shall provide a written explanation of its
95 determination to the customer.

96 8. For all refund claims submitted to the department of revenue on or after September
97 1, 2003, notwithstanding any provision of this section to the contrary, if a person legally
98 obligated to remit the tax levied under chapter 144 has received a refund of such taxes for a
99 specific issue and submits a subsequent claim for refund of such taxes on the same issue for a
100 tax period beginning on or after the date the original refund check issued to such person, no
101 refund shall be allowed. This subsection shall not apply and a refund shall be allowed if the
102 refund claim is filed by a purchaser under the provisions of subsection 4 of this section, the
103 refund claim is for use tax remitted by the purchaser, or an additional refund claim is filed by a
104 person legally obligated to remit the tax due to any of the following:

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

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

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

110 9. Notwithstanding any provision of law to the contrary, the director of revenue shall
111 respond to a request for a binding letter ruling filed in accordance with section 536.021 within
112 sixty days of receipt of such request. If the director of revenue fails to respond to such letter
113 ruling request within sixty days of receipt by the director, the director of revenue shall be barred
114 from pursuing collection of any assessment of sales or use tax with respect to the issue which is
115 the subject of the letter ruling request. For purposes of this subsection, the term "letter ruling"
116 means a written interpretation of law by the director to a specific set of facts provided by a
117 specific taxpayer or his or her agent.

118 10. If any tax was paid more than once, was incorrectly collected, or was incorrectly
119 computed, such sum shall be credited on any taxes then due from the person legally obligated
120 to remit the tax under chapter 144 against any deficiency or tax due discovered through an audit
121 of the person by the department of revenue through adjustment during the same tax filing period
122 for which the audit applied.

123 **11. Notwithstanding the provisions of this section or any other provisions of law to**
124 **the contrary, beginning January 1, 2021, any person who remits electronically any tax due**
125 **under this chapter may elect to have any overpayments of the remittance of such tax**

126 **automatically credited against the person's tax liability under this chapter for the person's**
127 **next tax reporting period.**

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