

FIRST REGULAR SESSION

# HOUSE BILL NO. 223

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MOON.

0780H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 144.190, RSMo, and to enact in lieu thereof one new section relating to refunds for businesses that were taxed as a result of a change in tax law interpretation.

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

Section A. Section 144.190, RSMo, repealed and one new section enacted in lieu thereof, to be known as section 144.190, to read as follows: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, 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 recovered in any action brought by the director of revenue against the person legally obligated

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

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

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

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

53 seller agrees that the refund is warranted or thirty days after the date the director notified the  
54 seller and the seller failed to respond.

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

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

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

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

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

87           (3) Within sixty days of receiving the customer's notice, the home service provider shall  
88 review its records and the electronic database or enhanced zip code to determine the customer's

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

97         8. For all refund claims submitted to the department of revenue on or after September  
98 1, 2003, notwithstanding any provision of this section to the contrary, if a person legally  
99 obligated to remit the tax levied pursuant to sections 144.010 to 144.525 has received a refund  
100 of such taxes for a specific issue and submits a subsequent claim for refund of such taxes on the  
101 same issue for a tax period beginning on or after the date the original refund check issued to such  
102 person, no refund shall be allowed. This subsection shall not apply and a refund shall be allowed  
103 if the refund claim is filed by a purchaser under the provisions of subsection 4 of this section, the  
104 refund claim is for use tax remitted by the purchaser, or an additional refund claim is filed by a  
105 person legally obligated to remit the tax due to any of the following:

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

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

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

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

119         10. If any tax was paid more than once, was incorrectly collected, or was incorrectly  
120 computed, such sum shall be credited on any taxes then due from the person legally obligated  
121 to remit the tax pursuant to sections 144.010 to 144.510 against any deficiency or tax due  
122 discovered through an audit of the person by the department of revenue through adjustment  
123 during the same tax filing period for which the audit applied.

124           **11. Notwithstanding any provision of law to the contrary, the director of revenue**  
125 **shall allow refund claims from businesses that paid sales and use tax assessments as a**  
126 **result of an audit by the department of revenue, between August 28, 2005, and August 28,**  
127 **2015, when the department expanded its interpretation of taxable items and the taxpayer**  
128 **did not collect the tax from the taxpayer's customers. The refund shall be allowed in an**  
129 **amount equal to the amount actually paid on such assessment by the taxpayer plus interest**  
130 **accrued on such tax payment. The amount of interest shall be calculated using the interest**  
131 **rate established under section 32.065 and using the period of time such tax payment was**  
132 **in the department's possession, as determined by the department. The total amount of**  
133 **refund claims and interest paid under this subsection shall not exceed five million dollars.**

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