

April 21, 2014

The Honorable Tom Dempsey
President Pro Tem
Missouri Senate
State Capitol
Jefferson City, Missouri 65101

Re: Truly Agreed To and Finally Passed Senate Bills No. 509 and 496

Dear President Pro Tem Dempsey,

I have reviewed Senate Bills 509 and 496 as truly agreed to and finally passed by the Missouri Senate and the Missouri House of Representatives and presented to the Governor for his approval. More specifically, I have reviewed the language of Senate Bill 509 as it relates to the impact on the top tax rate on individuals as set out in Section 143.011, RSMo, as amended by Senate Bill 509. I have been apprised that unnamed persons may have raised a question on the effect and impact of the language in Section 143.011.2(4) upon the Missouri income tax. I have reviewed this language and the full text of Senate Bill 509 and the following is my opinion as to the effect of that subsection.

1. Section 143.011.1, RSMo imposes a tax on the “taxable income of every resident.” The tax “shall be determined by applying the tax table”. The table is set out below this language by amounts and percent. The word “bracket” does not appear. This subparagraph is not amended.

2. A new Section 143.011.2(1), RSMo, is added. That subparagraph provides that beginning in 2017 the “top rate” shall be reduced by one-tenth of a percent in each calendar year. It further provides: “The top rate of tax shall not be reduced below five and one-half percent.”

3. The clear intent of Sections 143.011.1 and 143.001.2(1), RSMo, is that a tax is imposed upon “every resident” in accordance with a tax “table” set out and that the top rate is to be “reduced” periodically to five and one-half percent, not eliminated all together.

4. Section 143.011.2(3), RSMo, refers to “modification” of tax rates not “elimination” of all tax rates or all taxes upon any particular income level.

5. Section 143.011.2(4), RSMo, provides that “The director of the department of revenue shall, by rule, adjust the tax tables under subsection 1 of this section to effectuate the provisions of this subsection. The bracket for income subject to the top rate of tax shall be eliminated once the top rate of tax has been reduced to five and one-half percent.” The paragraph uses both the terms “tables” and “bracket”. This requires that they have a different meaning and that eliminating the bracket does not

eliminate the entire "table". A bracket being something other than the table must refer to the line 24 "Over \$9,000"...provision only and that each income level and tax percentage is a "bracket".

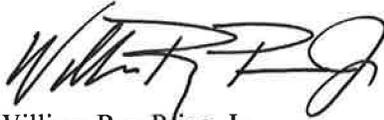
6. The effect of the second sentence of 143.011(4), RSMo, is to only delete lines 24 and 25 and the words "but not over \$9,000..." in line 22 and leave in place the words "\$260 plus 5.5% of excess over \$8,000." Thus all income over \$9,000...will be taxed at the modified rate.

7. Section 143.011.3, RSMo, further provides that the "the brackets of Missouri taxable income identified in subsection 1 of this section shall be adjusted annually by the percent increase in inflation." This language clearly indicates that the brackets are to be adjusted and remain in force and effect.

While it is true that taxing statutes are to be construed against the taxing authority, that construction must be reasonable and not against the legislature's intent. See, e.g., *Union Electric Co. v. Coale*, 146 S.W.2d 631, 635 (Mo. 1941) and *L. & R. Distributing Co., Inc. v. Missouri Department of Revenue*, 648 S.W.2d 91, 95 (Mo. banc 1983). In *Lane v. Lensmeyer*, 158 S.W.3d 218, 226 (Mo. banc 2005), the Supreme Court reaffirmed that taxing statutes should be "read as a whole and *in pari materia* with related sections."

Based upon the plain language of full Senate Bill 509, as discussed above, it is my opinion Missouri courts would find that, after full implementation of the reduction, the 5.5% tax rate would apply to all income over \$8,000 (as adjusted for C.P.I.).

Sincerely,



William Ray Price, Jr.

WRP:sah