

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
**HOUSE BILLS NOS. 1150, 1237
& 1327**

91ST GENERAL ASSEMBLY

Reported from the Committee on Ways & Means, February 6, 2002, with recommendation that the House Committee Substitute for House Bills Nos. 1150, 1237 & 1327 Do Pass.

TED WEDEL, Chief Clerk

2610L.03C

AN ACT

To amend chapter 32, RSMo, by adding thereto two new sections relating to assessment and collection procedures of the department of revenue.

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

Section A. Chapter 32, RSMo, is amended by adding thereto two new sections, to be known as sections 32.375 and 32.378, to read as follows:

32.375. 1. Notwithstanding any provision of law to the contrary, in any dispute regarding the potential liability of a taxpayer for collection and remittance or payment of sales or use tax or related interest, additions to tax, or penalties, the director of revenue may, at the request of the taxpayer, consider the reasons for the taxpayer's failure to pay the amounts in dispute.

2. The director may abate all or any portion of any amount assessed or decide to not assess any such amount pursuant to this section if the director determines:

(1) The taxpayer took reasonable steps to determine whether the amounts were owed;

(2) Based on information reasonably available to the taxpayer, the taxpayer reasonably believed that the transactions at issue were not subject to tax and that the amounts in dispute were not owed;

(3) At the time of the transactions at issue, the department of revenue had not issued either:

(a) A regulation that indicated that the transactions at issue were subject to tax; or

16 (b) Any other written or oral communication that the taxpayer knew of or should
17 have known of stating that the transactions at issue were subject to tax; and

18 (4) In the discretion of the director, such abatement is in the best interest of the
19 state and will not undermine compliance by taxpayers with the tax laws of this state.

20 3. If the director determines that any amounts may be abated pursuant to this
21 section, as consideration for the abatement, the taxpayer shall agree that:

22 (1) The taxpayer shall bear the taxpayer's own costs, including any attorney fees;

23 (2) During the three-year period beginning with the date of the agreement, the
24 taxpayer shall comply with all sales and use tax obligations arising from the type of
25 transactions that were the basis of the amounts that are the subject of the agreement, and
26 the taxpayer shall not challenge or protest any such sales or use tax obligations arising
27 during the three-year period; except that any final decision of a court of competent
28 jurisdiction finding such transactions to be nontaxable and any statutory changes that
29 become effective during the three-year period shall apply to the taxpayer notwithstanding
30 any provision of the agreement; and

31 (3) The taxpayer shall not contest in court or otherwise any amount of the liability
32 sought to be abated.

33 4. If due to a disagreement concerning the amount to be abated the taxpayer does
34 not agree to the terms provided by subsection 3 of this section, or if the director determines
35 the amounts in dispute should not be abated, the director shall issue a final decision setting
36 forth the director's determination. Within sixty days after the date on which the director's
37 decision is delivered in person or is mailed to the taxpayer, whichever is earlier, the
38 taxpayer may file a petition for review of the final decision with the administrative hearing
39 commission.

40 5. On petition for review before the administrative hearing commission, the
41 commission shall consider whether the director's determination was reasonable based on
42 the factors set forth in subsection 2 of this section. The commission may:

43 (1) Issue an order to the director stating an amount to be abated by the director,
44 if the commission finds the director's decision unreasonable; or

45 (2) Issue an order denying the relief sought by the taxpayer, if the commission finds
46 the director's determination reasonable.

47 6. The provisions of subsection 3 of this section shall apply to any abatement
48 ordered by the commission.

49 7. A decision of the administrative hearing commission pursuant to this section
50 shall not be subject to appeal or petition for review by the taxpayer or the director.

32.378. 1. In addition to the authority granted to the director of revenue and the

2 administrative hearing commission pursuant to section 32.375, the director may agree to
3 compromise any tax, interest, penalties, or additions to tax assessed or collected by the
4 director on any of the following grounds:

5 (1) Doubt as to liability, which exists in any case where there is a genuine dispute
6 as to the existence or amount of the correct tax liability under the law;

7 (2) Doubt as to collectibility, which exists in any case where the amount assessed
8 including interest, additions to tax, and penalties exceeds the taxpayer's ability to pay as
9 defined by regulations promulgated by the director; or

10 (3) To promote effective tax administration such that compromise of the liability
11 will not undermine compliance by taxpayers with the tax laws and that:

12 (a) Collection of the full liability will result in severe economic hardship to the
13 taxpayer; or

14 (b) Regardless of the taxpayer's financial circumstances, exceptional circumstances
15 exist such that collection of the full liability will be detrimental to voluntary compliance by
16 taxpayers. Such exceptional circumstances include, but are not limited to, instances where
17 the taxpayer's failure to pay the taxes assessed is the result of circumstances beyond the
18 reasonable control of the taxpayer and is not the result of negligence on the part of the
19 taxpayer, or instances where a reasonable person would not have expected the assessment
20 based on previous policy of the department of revenue or information provided to the
21 taxpayer by the department of revenue.

22 2. As part of the consideration for any compromise of taxes that is based on
23 subdivision (2) or (3) of subsection 1 of this section, the taxpayer shall agree:

24 (1) That the state of Missouri shall keep all payments and other credits applied to
25 the tax, interest, penalties, or additions to tax for the periods covered by the compromise;

26 (2) That the state of Missouri shall keep any and all amounts otherwise due the
27 taxpayer as a result of overpayments of any tax or other liability, including interest,
28 additions to tax, and penalties, for periods ending before or as of the end of the calendar
29 year in which the offer is accepted; except that the state shall not keep any amounts that,
30 together with amounts already paid on the compromise, exceed the liability compromised;

31 (3) That the taxpayer shall have no right to contest in court or otherwise the
32 amount of the liability compromised;

33 (4) That the taxpayer shall bear the taxpayer's own costs, including any attorney
34 fees;

35 (5) That during the three-year period beginning with the date of the compromise,
36 the taxpayer shall comply with all tax obligations arising from issues or transactions
37 related to the issues or transactions that were the basis of the tax that is the subject of the

38 **compromise, and that the taxpayer shall not challenge or protest any such tax obligations**
39 **arising during the three-year period; however, any statutory changes that become effective**
40 **during the three-year period shall apply to the taxpayer notwithstanding this provision of**
41 **the compromise;**

42 **(6) That if there is a default in payment of any principal or interest due under**
43 **terms of the agreement of compromise, or if the taxpayer fails to comply with the**
44 **provisions of the agreement set forth in subdivision (5) of this subsection, the director may:**

45 **(a) Proceed immediately by suit to collect the entire unpaid balance of the amount**
46 **agreed upon; or**

47 **(b) Proceed immediately by suit to collect as liquidated damages an amount equal**
48 **to the liability compromised, minus any payments already received under the terms of the**
49 **agreement, with interest on the unpaid balance from the date of default; or**

50 **(c) Disregard the amount of the compromise and apply all amounts previously paid**
51 **under the agreement against the amount of the liability compromised and assess and collect**
52 **by levy or suit the balance of the liability. If the director chooses this option, the taxpayer**
53 **shall have the right to contest in court or otherwise the amount of the liability**
54 **compromised.**

55 **3. The director's remedies under this section are cumulative and the director may**
56 **pursue any combination of such remedies together or consecutively until the entire liability**
57 **is paid. No action or inaction by the director shall constitute a waiver or election not to**
58 **pursue any remedy granted by this section.**

59 **4. The taxpayer requesting to compromise payment of taxes, interest, additions to**
60 **tax, or penalties shall provide any information reasonably requested by the director in**
61 **order that the director may determine that the offer is made in good faith.**

62 **5. If compromise of taxes is agreed upon, any statute of limitations applicable to the**
63 **assessment and collection of the liability compromised shall be tolled during the period**
64 **beginning on the date of the compromise and ending one year after the last payment is due**
65 **pursuant to the agreement.**

66 **6. The director's decision to reject or accept an offer of compromise under this**
67 **section shall be based on consideration of all the facts and circumstances, including the**
68 **taxpayer's record of overall compliance with the tax laws. Notwithstanding any provision**
69 **of law to the contrary, the director's decision shall not be subject to review by the**
70 **administrative hearing commission or any court.**

71 **7. The director shall prescribe guidelines for employees of the Missouri department**
72 **of revenue to determine whether an offer-in-compromise is adequate and should be**
73 **accepted to resolve a dispute.**

74 **8. The director shall establish procedures for an independent administrative review**
75 **of any rejection of a proposed offer-in-compromise made by a taxpayer pursuant to this**
76 **section before such rejection is communicated to the taxpayer.**

77 **9. The provisions of this section shall not apply to the resolution of any dispute of**
78 **tax liability in accordance with section 32.375.**

79 **10. No rule or portion of a rule promulgated pursuant to the authority of this**
80 **section shall become effective unless it has been promulgated pursuant to chapter 536,**
81 **RSMo.**