

SECOND REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
**HOUSE BILL 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.

Taken up for Perfection February 12, 2002. House Committee Substitute for House Bill Nos. 1150, 1237 & 1327 ordered Perfected and printed, as amended.

TED WEDEL, Chief Clerk

2610L.03P

AN ACT

To amend chapter 32, RSMo, by adding thereto three new sections relating to assessment and collection procedures of the department of revenue, with an emergency clause for certain sections.

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

Section A. Chapter 32, RSMo, is amended by adding thereto three new sections, to be known as sections 32.375, 32.378, and 32.380, 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

11 reasonably believed that the transactions at issue were not subject to tax and that the
12 amounts in dispute were not owed;

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

15 (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.

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.

32.380. 1. Notwithstanding the provisions of any other law, with respect to taxes
2 due to the state of Missouri, an amnesty from the assessment or payment of all penalties,
3 additions to tax and interest shall apply with respect to unpaid taxes reported and paid in
4 full during the period from August 1, 2002, through and including September 30, 2002,
5 regardless of whether previously assessed, except for penalties, additions and interest

6 already paid before such date. This amnesty shall only apply to state tax liabilities due but
7 unpaid on or before December 31, 2001, and shall not extend to any taxpayer who at the
8 time of payment:

9 (a) Is a party to any criminal investigations or to any civil or criminal litigation that
10 is pending in any court of the United States or the state of Missouri for nonpayment,
11 delinquency, or fraud in relation to any state tax imposed by Missouri law;

12 (b) Is a party to an appeal with the Administrative Hearing Commission; or

13 (c) Is a party to a protest with the department of revenue.

14 2. Upon written application by the taxpayer, as prescribed by the director of
15 revenue, and upon compliance with the terms and provisions of this act, the department
16 shall not seek to collect any interest, nor any penalties that may be applicable. In addition,
17 the department shall not seek civil or criminal prosecution for any taxpayer for the taxable
18 period for which amnesty has been granted.

19 3. Amnesty will be granted only to those taxpayers who have applied for amnesty
20 within the period stated in this act, filed a tax return for each taxable period for which
21 amnesty is requested, have paid the entire balance due within 60 days of approval by the
22 department of revenue and agree to comply with Missouri tax laws for the next three years
23 from the date of the agreement. No taxpayer shall be entitled to a waiver of penalty or
24 interest pursuant to this section unless full payment of the tax due is made in accordance
25 with rules and procedures established by the director of revenue.

26 4. If a taxpayer elects to participate in the program established pursuant to this
27 section, as that election shall be evidenced by full payment of the tax due as established by
28 the director of revenue, then that election shall constitute an express and absolute
29 relinquishment of all administrative and judicial rights of appeal. No tax payment
30 pursuant to this section shall be eligible for refund or credit.

31 5. Nothing in this section shall be interpreted to disallow the department to adjust
32 a taxpayer's return as a result of a state or federal audit.

33 6. The department may promulgate such rules or regulations or issue
34 administrative guidelines as are necessary to administer the provisions of this section. No
35 rule or portion of a rule promulgated pursuant to the authority of this section shall become
36 effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

37 7. All new revenues resulting from the enactment of this section shall be deposited
38 in the state school moneys fund as provided in section 166.051, RSMo, other than revenues
39 earmarked by the state constitution.

Section B. Because there is a serious and immediate need for a tax amnesty program for
2 this state, the enactment of section 32.380 is deemed necessary for the immediate preservation

3 of the public health, welfare, peace and safety, and is hereby declared to be an emergency act
4 within the meaning of the constitution, and the enactment of section 32.380 shall be in full force
5 and effect upon its passage and approval.