

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1672

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GAMBARO, MYERS, RANSBALL, GREEN (73),
SHOEMYER (9), HILGEMANN, WHORTON, VILLA, HEGEMAN, FRASER, McKENNA (Co-sponsors),
TOWNLEY, LOWE, MAYER, BOYKINS, BRITT, TREADWAY AND PHILLIPS.

Read 1st time January 28, 2002, and 1000 copies ordered printed.

Read 2nd time January 29, 2002, and referred to the Committee on Ways and Means, February 7, 2002.

Reported from the Committee on Ways and Means February 19, 2002, with recommendation that the bill Do Pass.

Taken up for Perfection February 25, 2002. Bill ordered Perfected and printed, as amended.

TED WEDEL, Chief Clerk

4110L.01P

AN ACT

To repeal sections 32.052 and 143.183, RSMo, and to enact in lieu thereof two new sections relating to income tax revenues from nonresidents.

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

Section A. Sections 32.052 and 143.183, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 32.052 and 143.183, to read as follows:

32.052. 1. The provisions of this section shall apply to the following: employer
2 withholding tax as provided in **section 143.183, RSMo, and** sections 143.191 to 143.265,
3 RSMo, and sales and use tax, including local sales taxes, as provided in chapter 144, RSMo.

4 2. If the director of revenue determines that any person required to collect, account for,
5 and pay over any tax described in subsection 1 of this section has, at the time and in the manner
6 prescribed by law or regulations, failed to collect, truthfully account for, or pay over any such
7 tax, the director may notify such person in accordance with subsection 4 of this section and such
8 person shall:

9 (1) Collect, at the times and in the manner provided by law and regulations, all of the
10 taxes described in subsection 1 of this section which become collectible [by him] after receipt
11 of such notice;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 (2) Deposit the taxes so collected, not later than the end of the second business day after
13 collection, with a financial institution approved by the director of revenue, in a separate account
14 established in accordance with subsection 3 of this section; and

15 (3) Keep in such account the taxes so deposited until payment thereof is made to the state
16 of Missouri as required by the law and regulations in respect to such taxes.

17 3. The separate account referred to in subsection 2 of this section shall be established
18 under the designation, "(Name of person required to establish account), Trustee, Special Fund
19 in Trust for the State of Missouri under Chapter 32, RSMo". The taxes deposited in such
20 account shall constitute a fund in trust for the state of Missouri payable only to the director of
21 revenue on demand of the trustee. At no time shall the amount of funds so deposited in such
22 account exceed the maximum federally insured limit. It shall be the duty of such person upon
23 whom such notice is served to notify the director of revenue in writing the name and address of
24 the financial institution wherein such account is proposed to be kept.

25 4. Notice to any person requiring [his] compliance with [the provisions of] this section
26 shall be in writing and shall be hand delivered by the director of revenue or sent by certified mail
27 to the last mailing address provided by the taxpayer.

28 5. The director of revenue may relieve a person from the requirement to comply with [the
29 provisions of] this section whenever [he] **the director** is satisfied that such person will comply
30 with the tax laws of this state. Such notice of cancellation shall be made in writing and shall take
31 effect at such time as is specified in the written notice of cancellation.

32 6. Failure to comply with use of the trust account as required by this section shall be
33 presumed to be a willful failure to truthfully account for and pay over the tax with intent to
34 defraud.

143.183. 1. As used in this section, the following terms mean:

2 (1) "Nonresident entertainer", a person residing or registered as a corporation outside this
3 state who, for compensation, performs any vocal, instrumental, musical, comedy, dramatic,
4 dance or other performance in this state before a live audience and any other person traveling
5 with and performing services on behalf of a nonresident entertainer, including a nonresident
6 entertainer who is paid compensation for providing entertainment as an independent contractor,
7 a partnership that is paid compensation for entertainment provided by nonresident entertainers,
8 a corporation that is paid compensation for entertainment provided by nonresident entertainers,
9 or any other entity that is paid compensation for entertainment provided by nonresident
10 entertainers;

11 (2) "Nonresident member of a professional athletic team", a member of a professional
12 athletic team residing outside this state, including any active player, any player on the disabled
13 list if such player is in uniform on the day of the game at the site of the game, and any other

14 person traveling with and performing services on behalf of a professional athletic team;

15 (3) "Personal service income" includes exhibition and regular season salaries and wages,
16 guaranteed payments, strike benefits, deferred payments, severance pay, bonuses, and any other
17 type of compensation paid to the nonresident entertainer or nonresident member of a professional
18 athletic team, but does not include prizes, bonuses or incentive money received from competition
19 in a livestock, equine or rodeo performance, exhibition or show;

20 (4) "Professional athletic team" includes, but is not limited to, any professional baseball,
21 basketball, football, soccer and hockey team.

22 2. Any person, **venue**, or entity who pays compensation to a nonresident entertainer shall
23 deduct and withhold from such compensation as a prepayment of tax, an amount equal to two
24 percent of the total compensation paid to the nonresident entertainer.

25 3. Any person, **venue**, or entity required to deduct and withhold tax pursuant to
26 subsection 2 of this section, shall, for each calendar quarter, on or before the last day of the
27 month following the close of such calendar quarter, remit the taxes withheld in such form or
28 return as prescribed by the director of revenue and pay over to the director of revenue or to a
29 depository designated by the director of revenue the taxes so required to be deducted and
30 withheld.

31 4. **Any person, venue, or entity subject to this section shall be considered an**
32 **employer for purposes of section 143.191, and shall be subject to all penalties, interest, and**
33 **additions to tax provided in this chapter for failure to comply with this section.**

34 5. Notwithstanding other provisions of this chapter to the contrary, the commissioner of
35 administration, for all taxable years beginning on or after January 1, 1999, but none after
36 December 31, [2008] **2010**, shall annually estimate the amount of state income tax revenues
37 collected pursuant to this chapter which are received from nonresident members of professional
38 athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal
39 year for a period of [nine] **eleven** years, sixty percent of the annual estimate of taxes generated
40 from the nonresident entertainer and professional athletic team income tax shall be allocated
41 annually to the Missouri arts council trust fund, and shall be transferred, subject to appropriation,
42 from the general revenue fund to the Missouri arts council trust fund established in section
43 185.100, RSMo, and any amount transferred shall be in addition to such agency's budget base
44 for each fiscal year. Notwithstanding other provisions of this section, the Missouri arts council
45 shall not be appropriated more than ten million dollars in any fiscal year. The director shall by
46 rule establish the method of determining the portion of personal service income of such persons
47 that is allocable to Missouri.

48 [5.] 6. Notwithstanding the provisions of sections 186.050 to 186.067, RSMo, to the
49 contrary, the commissioner of administration, for all taxable years beginning on or after January

50 1, 1999, but for none after December 31, [2008] **2010**, shall estimate annually the amount of state
51 income tax revenues collected pursuant to this chapter which are received from nonresident
52 members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and
53 for each subsequent fiscal year for a period of [nine] **eleven** years, ten percent of the annual
54 estimate of taxes generated from the nonresident entertainer and professional athletic team
55 income tax shall be allocated annually to the Missouri humanities council trust fund, and shall
56 be transferred, subject to appropriation, from the general revenue fund to the Missouri
57 humanities council trust fund established in section 186.055, RSMo, and any amount transferred
58 shall be in addition to such agency's budget base for each fiscal year.

59 [6.] **7.** Notwithstanding other provisions of section 182.812, RSMo, to the contrary, the
60 commissioner of administration, for all taxable years beginning on or after January 1, 1999, but
61 for none after December 31, [2008] **2010**, shall estimate annually the amount of state income tax
62 revenues collected pursuant to this chapter which are received from nonresident members of
63 professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each
64 subsequent fiscal year for a period of [nine] **eleven** years, ten percent of the annual estimate of
65 taxes generated from the nonresident entertainer and professional athletic team income tax shall
66 be allocated annually to the Missouri state library networking fund, and shall be transferred,
67 subject to appropriation, from the general revenue fund to the secretary of state for distribution
68 to public libraries for acquisition of library materials as established in section 182.812, RSMo,
69 and any amount transferred shall be in addition to such agency's budget base for each fiscal year.

70 [7.] **8.** Notwithstanding other provisions of section 37.200, RSMo, to the contrary, the
71 commissioner of administration, for all taxable years beginning on or after January 1, 1999, but
72 for none after December 31, [2008] **2010**, shall estimate annually the amount of state income tax
73 revenues collected pursuant to this chapter which are received from nonresident members of
74 professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each
75 subsequent fiscal year for a period of [nine] **eleven** years, ten percent of the annual estimate of
76 taxes generated from the nonresident entertainer and professional athletic team income tax shall
77 be allocated annually to the Missouri public television broadcasting corporation special fund, and
78 shall be transferred, subject to appropriation, from the general revenue fund to the Missouri
79 public television broadcasting corporation special fund established in section 37.200, RSMo, and
80 any amount transferred shall be in addition to such agency's budget base for each fiscal year;
81 provided, however, that twenty-five percent of such allocation shall be used for grants to public
82 radio stations which were qualified by the corporation for public broadcasting as of November
83 1, 1996. Such grants shall be distributed to each of such public radio stations in this state after
84 receipt of the station's certification of operating and programming expenses for the prior fiscal
85 year. Certification shall consist of the most recent fiscal year financial statement submitted by

86 a station to the corporation for public broadcasting. The grants shall be divided into two
87 categories, an annual basic service grant and an operating grant. The basic service grant shall
88 be equal to thirty-five percent of the total amount and shall be divided equally among the public
89 radio stations receiving grants. The remaining amount shall be distributed as an operating grant
90 to the stations on the basis of the proportion that the total operating expenses of the individual
91 station in the prior fiscal year bears to the aggregate total of operating expenses for the same
92 fiscal year for all Missouri public radio stations which are receiving grants.

93 [8.] **9.** Notwithstanding other provisions of section 253.402, RSMo, to the contrary, the
94 commissioner of administration, for all taxable years beginning on or after January 1, 1999, but
95 for none after December 31, [2008] **2010**, shall estimate annually the amount of state income tax
96 revenues collected pursuant to this chapter which are received from nonresident members of
97 professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each
98 subsequent fiscal year for a period of [nine] **eleven** years, ten percent of the annual estimate of
99 taxes generated from the nonresident entertainer and professional athletic team income tax shall
100 be allocated annually to the Missouri department of natural resources Missouri historic
101 preservation revolving fund, and shall be transferred, subject to appropriation, from the general
102 revenue fund to the Missouri department of natural resources Missouri historic preservation
103 revolving fund established in section 253.402, RSMo, and any amount transferred shall be in
104 addition to such agency's budget base for each fiscal year. As authorized pursuant to subsection
105 2 of section 30.953, RSMo, it is the intention and desire of the general assembly that the state
106 treasurer convey, to the Missouri investment trust on January 1, 1999, up to one hundred percent
107 of the balances of the Missouri arts council trust fund established pursuant to section 185.100,
108 RSMo, and the Missouri humanities council trust fund established pursuant to section 186.055,
109 RSMo. The funds shall be reconveyed to the state treasurer by the investment trust as follows:
110 the Missouri arts council trust fund, on January 2, [2009] **2011**; and the Missouri humanities
111 council trust fund, on January 2, [2009] **2011**.