

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1890

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HILGEMANN, COOPER AND GAMBARO (Co-sponsors).

Read 1st time February 12, 2002, and 1000 copies ordered printed.

Read 2nd time February 13, 2002, and referred to the Committee on Ways and Means, February 21, 2002.

Reported from the Committee on Ways and Means March 13, 2002, with recommendation that the bill Do Pass by Consent.

Perfectured by Consent April 2, 2002.

TED WEDEL, Chief Clerk

4382L.01P

AN ACT

To repeal sections 32.087 and 144.190, RSMo, and to enact in lieu thereof three new sections relating to the sales tax and refund procedures related to mobile telecommunications services, with an effective date.

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

Section A. Sections 32.087 and 144.190, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 32.087, 144.013 and 144.190, to read as follows:

32.087. 1. Within ten days after the adoption of any ordinance or order in favor of
2 adoption of any local sales tax authorized under the local sales tax law by the voters of a taxing
3 entity, the governing body or official of such taxing entity shall forward to the director of revenue
4 by United States registered mail or certified mail a certified copy of the ordinance or order. The
5 ordinance or order shall reflect the effective date thereof.

6 2. Any local sales tax so adopted shall become effective on the first day of the second
7 calendar quarter after the director of revenue receives notice of adoption of the local sales tax,
8 except as provided in subsection 18 of this section.

9 3. Every retailer within the jurisdiction of one or more taxing entities which has imposed
10 one or more local sales taxes under the local sales tax law shall add all taxes so imposed along
11 with the tax imposed by the sales tax law of the state of Missouri to the sale price and, when
12 added, the combined tax shall constitute a part of the price, and shall be a debt of the purchaser
13 to the retailer until paid, and shall be recoverable at law in the same manner as the purchase
14 price. The combined rate of the state sales tax and all local sales taxes shall be the sum of the

15 rates, multiplying the combined rate times the amount of the sale.

16 4. The brackets required to be established by the director of revenue under the provisions
17 of section 144.285, RSMo, shall be based upon the sum of the combined rate of the state sales
18 tax and all local sales taxes imposed under the provisions of the local sales tax law.

19 5. The ordinance or order imposing a local sales tax under the local sales tax law shall
20 impose upon all sellers a tax for the privilege of engaging in the business of selling tangible
21 personal property or rendering taxable services at retail to the extent and in the manner provided
22 in sections 144.010 to 144.525, RSMo, and the rules and regulations of the director of revenue
23 issued pursuant thereto; except that the rate of the tax shall be the sum of the combined rate of
24 the state sales tax or state highway use tax and all local sales taxes imposed under the provisions
25 of the local sales tax law.

26 6. On and after the effective date of any local sales tax imposed under the provisions of
27 the local sales tax law, the director of revenue shall perform all functions incident to the
28 administration, collection, enforcement, and operation of the tax, and the director of revenue
29 shall collect in addition to the sales tax for the state of Missouri all additional local sales taxes
30 authorized under the authority of the local sales tax law. All local sales taxes imposed under the
31 local sales tax law together with all taxes imposed under the sales tax law of the state of Missouri
32 shall be collected together and reported upon such forms and under such administrative rules and
33 regulations as may be prescribed by the director of revenue.

34 7. All applicable provisions contained in sections 144.010 to 144.525, RSMo, governing
35 the state sales tax and section 32.057, the uniform confidentiality provision, shall apply to the
36 collection of any local sales tax imposed under the local sales tax law except as modified by the
37 local sales tax law.

38 8. All exemptions granted to agencies of government, organizations, persons and to the
39 sale of certain articles and items of tangible personal property and taxable services under the
40 provisions of sections 144.010 to 144.525, RSMo, as these sections now read and as they may
41 hereafter be amended, it being the intent of this general assembly to ensure that the same sales
42 tax exemptions granted from the state sales tax law also be granted under the local sales tax law,
43 are hereby made applicable to the imposition and collection of all local sales taxes imposed
44 under the local sales tax law.

45 9. The same sales tax permit, exemption certificate and retail certificate required by
46 sections 144.010 to 144.525, RSMo, for the administration and collection of the state sales tax
47 shall satisfy the requirements of the local sales tax law, and no additional permit or exemption
48 certificate or retail certificate shall be required; except that the director of revenue may prescribe
49 a form of exemption certificate for an exemption from any local sales tax imposed by the local
50 sales tax law.

51 10. All discounts allowed the retailer under the provisions of the state sales tax law for
52 the collection of and for payment of taxes under the provisions of the state sales tax law are
53 hereby allowed and made applicable to any local sales tax collected under the provisions of the
54 local sales tax law.

55 11. The penalties provided in section 32.057 and sections 144.010 to 144.525, RSMo,
56 for a violation of the provisions of those sections are hereby made applicable to violations of the
57 provisions of the local sales tax law.

58 12. (1) For the purposes of any local sales tax imposed by an ordinance or order under
59 the local sales tax law, all sales, except the sale of motor vehicles, trailers, boats, and outboard
60 motors, shall be deemed to be consummated at the place of business of the retailer unless the
61 tangible personal property sold is delivered by the retailer or his agent to an out-of-state
62 destination. In the event a retailer has more than one place of business in this state which
63 participates in the sale, the sale shall be deemed to be consummated at the place of business of
64 the retailer where the initial order for the tangible personal property is taken, even though the
65 order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing. A
66 sale by a retailer's agent or employee shall be deemed to be consummated at the place of business
67 from which he works.

68 (2) For the purposes of any local sales tax imposed by an ordinance or order under the
69 local sales tax law, all sales of motor vehicles, trailers, boats, and outboard motors shall be
70 deemed to be consummated at the residence of the purchaser and not at the place of business of
71 the retailer, or the place of business from which the retailer's agent or employee works.

72 **(3) For the purposes of any local tax imposed by an ordinance or under the local**
73 **sales tax law on charges for mobile telecommunications services, all sales of mobile**
74 **telecommunications service shall be imposed as provided in the Mobile**
75 **Telecommunications Sourcing Act, 4 U.S.C. Sections 116 through 124, as amended.**

76 13. Local sales taxes imposed pursuant to the local sales tax law on the purchase and sale
77 of motor vehicles, trailers, boats, and outboard motors shall not be collected and remitted by the
78 seller, but shall be collected by the director of revenue at the time application is made for a
79 certificate of title, if the address of the applicant is within a taxing entity imposing a local sales
80 tax under the local sales tax law.

81 14. The director of revenue and any of his deputies, assistants and employees who have
82 any duties or responsibilities in connection with the collection, deposit, transfer, transmittal,
83 disbursement, safekeeping, accounting, or recording of funds which come into the hands of the
84 director of revenue under the provisions of the local sales tax law shall enter a surety bond or
85 bonds payable to any and all taxing entities in whose behalf such funds have been collected
86 under the local sales tax law in the amount of one hundred thousand dollars for each such tax;

87 but the director of revenue may enter into a blanket bond covering himself and all such deputies,
88 assistants and employees. The cost of any premium for such bonds shall be paid by the director
89 of revenue from the share of the collections under the sales tax law retained by the director of
90 revenue for the benefit of the state.

91 15. The director of revenue shall annually report on his management of each trust fund
92 which is created under the local sales tax law and administration of each local sales tax imposed
93 under the local sales tax law. He shall provide each taxing entity imposing one or more local
94 sales taxes authorized by the local sales tax law with a detailed accounting of the source of all
95 funds received by him for the taxing entity. Notwithstanding any other provisions of law, the
96 state auditor shall annually audit each trust fund. A copy of the director's report and annual audit
97 shall be forwarded to each taxing entity imposing one or more local sales taxes.

98 16. Within the boundaries of any taxing entity where one or more local sales taxes have
99 been imposed, if any person is delinquent in the payment of the amount required to be paid by
100 him under the local sales tax law or in the event a determination has been made against him for
101 taxes and penalty under the local sales tax law, the limitation for bringing suit for the collection
102 of the delinquent tax and penalty shall be the same as that provided in sections 144.010 to
103 144.525, RSMo. Where the director of revenue has determined that suit must be filed against
104 any person for the collection of delinquent taxes due the state under the state sales tax law, and
105 where such person is also delinquent in payment of taxes under the local sales tax law, the
106 director of revenue shall notify the taxing entity to which delinquent taxes are due under the local
107 sales tax law by United States registered mail or certified mail at least ten days before turning
108 the case over to the attorney general. The taxing entity, acting through its attorney, may join in
109 such suit as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such
110 taxing entity. In the event any person fails or refuses to pay the amount of any local sales tax
111 due, the director of revenue shall promptly notify the taxing entity to which the tax would be due
112 so that appropriate action may be taken by the taxing entity.

113 17. Where property is seized by the director of revenue under the provisions of any law
114 authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed
115 by the state sales tax law, and where such taxpayer is also delinquent in payment of any tax
116 imposed by the local sales tax law, the director of revenue shall permit the taxing entity to join
117 in any sale of property to pay the delinquent taxes and penalties due the state and to the taxing
118 entity under the local sales tax law. The proceeds from such sale shall first be applied to all sums
119 due the state, and the remainder, if any, shall be applied to all sums due such taxing entity.

120 18. If a local sales tax has been in effect for at least one year under the provisions of the
121 local sales tax law and voters approve reimposition of the same local sales tax at the same rate
122 at an election as provided for in the local sales tax law prior to the date such tax is due to expire,

123 the tax so reimposed shall become effective the first day of the first calendar quarter after the
124 director receives a certified copy of the ordinance, order or resolution accompanied by a map
125 clearly showing the boundaries thereof and the results of such election, provided that such
126 ordinance, order or resolution and all necessary accompanying materials are received by the
127 director at least thirty days prior to the expiration of such tax. Any administrative cost or
128 expense incurred by the state as a result of the provisions of this subsection shall be paid by the
129 city or county reimposing such tax.

**144.013. Notwithstanding any other provision of this chapter, the tax imposed on
2 mobile telecommunications services pursuant to section 144.020 shall be imposed in
3 accordance with the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Sections
4 116 through 124, as amended. All terms used in this section shall have the same meaning
5 attributed to them by the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 124,
6 as amended.**

144.190. 1. If a tax has been incorrectly computed by reason of a clerical error or
2 mistake on the part of the director of revenue, such fact shall be set forth in the records of the
3 director of revenue, and the amount of the overpayment shall be credited on any taxes then due
4 from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and
5 the balance shall be refunded to the person legally obligated to remit the tax, such person's
6 administrators or executors, as provided for in section 144.200.

7 2. If any tax, penalty or interest has been paid more than once, or has been erroneously
8 or illegally collected, or has been erroneously or illegally computed, such sum shall be credited
9 on any taxes then due from the person legally obligated to remit the tax pursuant to sections
10 144.010 to 144.510, and the balance, with interest as determined by section 32.065, RSMo, shall
11 be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be
12 allowed unless duplicate copies of a claim for refund are filed within three years from date of
13 overpayment.

14 3. Every claim for refund must be in writing and signed by the applicant, and must state
15 the specific grounds upon which the claim is founded. Any refund or any portion thereof which
16 is erroneously made, and any credit or any portion thereof which is erroneously allowed, may be
17 recovered in any action brought by the director of revenue against the person legally obligated
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 this section, the director of revenue shall authorize
22 direct-pay agreements to purchasers which have annual purchases in excess of seven hundred
23 fifty thousand dollars pursuant to rules and regulations adopted by the director of revenue. For

24 the purposes of such direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 92
25 and 94, RSMo, shall be remitted based upon the location of the place of business of the
26 purchaser.

27 **5. Special rules applicable to error corrections requested by customers of mobile**
28 **telecommunications service, as defined by subdivision (5) of subsection 1 of section 144.010,**
29 **are as follows:**

30 **(1) For purposes of this subsection, the terms "customer", "home service**
31 **provider", "place of primary use", "electronic database", and "enhanced zip code" shall**
32 **have the same meanings as defined in the Mobile Telecommunications Sourcing Act**
33 **incorporated by reference in subdivision (14) of subsection 1 of section 144.010;**

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

43 **(3) Within sixty days of receiving the customer's notice, the home service provider**
44 **shall review its records and the electronic database or enhanced zip code to determine the**
45 **customer's correct taxing jurisdiction. If the home service provider determines that the**
46 **review shows that the amount of tax, assignment of place of primary use or taxing**
47 **jurisdiction is in error, the home service provider shall correct the error and, at its election,**
48 **either refund or credit the amount of tax erroneously collected to the customer for a period**
49 **of up to three years from the last day of the home service provider's sixty-day review**
50 **period. If the home service provider determines that the review shows that the amount of**
51 **tax, the assignment of place of primary use or the taxing jurisdiction is correct, the home**
52 **service provider shall provide a written explanation of its determination to the customer.**

Section B. The provisions of section A of this act shall become effective August 1, 2002.