

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2048

95TH GENERAL ASSEMBLY

4879L.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 105.716 and 144.083, RSMo, and to enact in lieu thereof six new sections relating to sales tax collection, with an emergency clause for a certain section.

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

Section A. Sections 105.716 and 144.083, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 32.088, 105.716, 144.018, 144.083, 1, and 2, to read as follows:

32.088. 1. Beginning January 1, 2012, the possession of a statement from the department of revenue stating no tax is due under sections 143.191 to 143.265 or sections 144.010 to 144.510, and sections 143.431 to 143.471 or sections 147.010 to 147.120 if an assessment for which tax is due under sections 143.431 to 143.471 and sections 147.010 to 147.120 has become final under section 143.621, and that no fees are due under sections 260.262 or 260.273, shall be a prerequisite to the issuance or renewal of any city or county occupation license or any state license required for conducting any business. The statement of no tax due shall be dated no longer than ninety days before the date of submission for application or renewal of the city or county license.

2. Beginning January 1, 2012, in lieu of the provisions of subsection 1 of this section, the director may enter into an agreement with any state agency responsible for issuing any state license for conducting any business requiring the agency to provide the director of revenue with the name and Missouri tax identification number of each applicant for licensure with, or licensee of, such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any taxes under sections 143.191 to 143.265 or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 sections 144.010 to 144.510, and sections 143.431 to 143.471 or sections 147.010 to 147.120
18 if an assessment for which tax is due under sections 143.431 to 143.471 and sections 147.010
19 to 147.120 has become final under section 143.621, or fees under sections 260.262 or
20 260.273, the director shall then send notice to each such entity and licensee. In the case of
21 such delinquency or failure to file, the licensee's license shall be suspended within ninety
22 days after notice of such delinquency or failure to file, unless the director of revenue
23 verifies that such delinquency or failure has been remedied or arrangements have been
24 made to achieve such remedy. The director of revenue shall, within ten business days of
25 notification to the governmental entity issuing the license that the delinquency has been
26 remedied or arrangements have been made to remedy such delinquency, send written
27 notification to the licensee that the delinquency has been remedied. Tax liability paid in
28 protest, timely appealed, remedied through a payment plan with the department or
29 disposed of through an offer and compromise settlement with the department, properly
30 under the state revenue code pending before a court of competent jurisdiction or
31 reasonably founded disputes with such liability shall be considered paid for the purposes
32 of this section.

105.716. 1. Any investigation, defense, negotiation, or compromise of any claim
2 covered by sections 105.711 to 105.726 shall be conducted by the attorney general; provided,
3 that in the case of any claim against the department of conservation, the department of
4 transportation or a public institution which awards baccalaureate degrees, or any officer or
5 employee of such department or such institution, any investigation, defense, negotiation, or
6 compromise of any claim covered by sections 105.711 to 105.726 shall be conducted by legal
7 counsel provided by the respective entity against which the claim is made or which employs the
8 person against whom the claim is made. In the case of any payment from the state legal expense
9 fund based upon a claim or judgment against the department of conservation, the department of
10 transportation or any officer or employee thereof, the department so affected shall immediately
11 transfer to the state legal expense fund from the department funds a sum equal to the amount
12 expended from the state legal expense fund on its behalf.

13 2. All persons and entities protected by the state legal expense fund shall cooperate with
14 the attorneys conducting any investigation and preparing any defense under the provisions of
15 sections 105.711 to 105.726 by assisting such attorneys in all respects, including the making of
16 settlements, the securing and giving of evidence, and the attending and obtaining witness to
17 attend hearings and trials. Funds in the state legal expense fund shall not be used to pay claims
18 and judgments against those persons and entities who do not cooperate as required by this
19 subsection.

20 3. The provisions of sections 105.711 to 105.726 notwithstanding, the attorney general
21 may investigate, defend, negotiate, or compromise any claim covered by sections 105.711 to
22 105.726 against any public institution which awards baccalaureate degrees whose governing
23 body has declared a state of financial exigency.

24 4. Notwithstanding the provisions of subsection 2 of section 105.711, funds in the state
25 legal expense fund may be expended prior to the payment of any claim or any final judgment to
26 pay costs of defense, including reasonable attorney's fees for retention of legal counsel, when the
27 attorney general determines that a conflict exists or particular expertise is required, and also to
28 pay for related legal expenses including medical examination fees, expert witness fees, court
29 reporter expenses, travel costs and ancillary legal expenses incurred prior to the payment of a
30 claim or any final judgment.

31 **5. Notwithstanding any other provisions of law to the contrary, no funds shall be**
32 **expended from the state legal expense fund for settlement of any liability claim except upon**
33 **the production of a no tax due statement from the department of revenue by the party**
34 **making claim or having judgment under section 105.711, which shall be satisfied from such**
35 **fund. Payments of less than ten thousand dollars from the fund for property damage**
36 **claims shall not require a no tax due statement for the department. If the party is found**
37 **by the director of revenue to owe a delinquent tax debt to the state of Missouri under the**
38 **revenue laws of this state, any funds to be paid to the party from the state legal expense**
39 **fund shall be offset to satisfy such tax debt before payment is made to the party making**
40 **claim or having judgment.**

144.018. 1. Notwithstanding any other provision of law to the contrary, when a
2 **purchase of tangible personal property or taxable service is made for the purpose of resale,**
3 **such purchase is exempt or excluded under this chapter if the subsequent sale is taxed in**
4 **this state or any other state, is for resale, is excluded from tax under this chapter, is subject**
5 **to tax but is exempt under this chapter, or is exempt from the sales tax laws of another**
6 **state if the subsequent sale is in such other state. The purchase of tangible personal**
7 **property by a taxpayer shall not be deemed to be for resale if such property is used or**
8 **consumed by the taxpayer in providing a nontaxable service except purchases made in**
9 **fulfillment of an obligation under a defense contract.**

10 **2. Notwithstanding any other provision of law to the contrary, for purposes of**
11 **subdivision (2) of subsection 1 of section 144.020, the operator of a place of amusement,**
12 **entertainment, or recreation, including games or athletic events, shall charge tax on the**
13 **amount of gross receipts the operator charges for admissions or seating accommodations**
14 **to such place of amusement, entertainment, or recreation. Any subsequent sale of such**
15 **admissions or seating accommodations by a purchaser shall not be subject to tax. This**

16 subsection shall not apply if the purchaser of such admissions or seating accommodations
17 is an entity that is exempt from payment of sales and use taxes under subsection 2 of
18 section 144.030.

19 **3. Notwithstanding any other provision of law to the contrary, for purposes of**
20 **subdivision (6) of subsection 1 of section 144.020, the operator of a hotel, motel, tavern, inn,**
21 **restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place**
22 **in which rooms, meals, or drinks are regularly served to the public shall charge tax on the**
23 **amount of gross receipts the operator charges for all rooms, meals, or drinks furnished at**
24 **such hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin,**
25 **tourist camp, or other place in which rooms, meals, or drinks are regularly served to the**
26 **public. Any subsequent sale of such rooms, meals, or drinks by a purchaser shall not be**
27 **subject to tax. This subsection shall not apply if the purchaser of such rooms, meals, or**
28 **drinks is an entity that is exempt from payment of sales and use taxes under subsection 2**
29 **of section 144.030.**

30 **4. The provisions of this section are intended to clarify the exemption or exclusion**
31 **of purchases for resale from sales and use taxes as originally enacted in chapter 144.**

144.083. 1. The director of revenue shall require all persons who are responsible for the
2 collection of taxes under the provisions of section 144.080 to procure a retail sales license at no
3 cost to the licensee which shall be prominently displayed at the licensee's place of business, and
4 the license is valid until revoked by the director or surrendered by the person to whom issued
5 when sales are discontinued. The director shall issue the retail sales license within ten working
6 days following the receipt of a properly completed application. Any person applying for a retail
7 sales license or reinstatement of a revoked sales tax license who owes any tax under sections
8 144.010 to 144.510 or sections 143.191 to 143.261, RSMo, must pay the amount due plus
9 interest and penalties before the department may issue the applicant a license or reinstate the
10 revoked license. All persons beginning business subsequent to August 13, 1986, and who are
11 required to collect the sales tax shall secure a retail sales license prior to making sales at retail.
12 Such license may, after ten days' notice, be revoked by the director of revenue only in the event
13 the licensee shall be in default for a period of sixty days in the payment of any taxes levied under
14 section 144.020 or sections 143.191 to 143.261, RSMo. Notwithstanding the provisions of
15 section 32.057, RSMo, in the event of revocation, the director of revenue may publish the status
16 of the business account including the date of revocation in a manner as determined by the
17 director.

18 2. The possession of a retail sales license and a statement from the department of revenue
19 that the licensee owes no tax due under [sections 144.010 to 144.510 or sections 143.191 to
20 143.261, RSMo,] **section 32.088** shall be a prerequisite to the issuance or renewal of any city or

21 county occupation license or any state license which is required for conducting any business
22 where goods are sold at retail. The date of issuance on the statement that the licensee owes no
23 tax due shall be no more than ninety days before the date of submission for application or
24 renewal of the local license. The revocation of a retailer's license by the director shall render the
25 occupational license or the state license null and void.

26 3. No person responsible for the collection of taxes under section 144.080 shall make
27 sales at retail unless such person is the holder of a valid retail sales license. After all appeals
28 have been exhausted, the director of revenue may notify the county or city law enforcement
29 agency representing the area in which the former licensee's business is located that the retail sales
30 license of such person has been revoked, and that any county or city occupation license of such
31 person is also revoked. The county or city may enforce the provisions of this section, and may
32 prohibit further sales at retail by such person.

33 4. In addition to the provisions of subsection 2 of this section, beginning January 1,
34 2009, **and ending on December 31, 2011**, the possession of a statement from the department
35 of revenue stating no tax is due under sections 143.191 to 143.265, RSMo, or sections 144.010
36 to 144.510 shall also be a prerequisite to the issuance or renewal of any city or county occupation
37 license or any state license required for conducting any business where goods are sold at retail.
38 The statement of no tax due shall be dated no longer than ninety days before the date of
39 submission for application or renewal of the city or county license.

40 5. Notwithstanding any law or rule to the contrary, sales tax shall only apply to the sale
41 price paid by the final purchaser and not to any off-invoice discounts or other pricing discounts
42 or mechanisms negotiated between manufacturers, wholesalers, and retailers.

**Section 1. There is hereby specifically exempted from the provisions of the local
2 sales tax law as defined, levied, assessed, payable, or calculated under section 32.085,
3 sections 144.010 to 144.525, sections 144.600 to 144.761, or section 238.235, all gratuities,
4 whether mandatory or voluntary, provided in conjunction with the receipt of property or
5 services regardless of whether such property or service may be subject to tax under the
6 provisions of chapter 144.**

**Section 2. Notwithstanding any other provision of law, any tax imposed or collected
2 by any municipality, any county or any taxing entity on or related to any transient
3 accommodations, whether imposed as a hotel tax, occupancy tax or otherwise, shall apply
4 solely to amounts actually received by the operator of a hotel, motel, tavern, inn, tourist
5 cabin, tourist camp or other place in which rooms are furnished to the public. Under no
6 circumstances shall a travel agent or intermediary be deemed an operator of a hotel. This
7 section shall not apply if the purchaser of such rooms is an entity that is exempt from
8 payment of the tax.**

Section B. Because immediate action is necessary to prevent the imposition of sales and
2 use taxes on items that are intended to be exempted or excluded from sales and use taxes, the
3 enactment of sections 144.018, 1, and 2 of section A of this act is deemed necessary for the
4 immediate preservation of the public health, welfare, peace, and safety, and is hereby declared
5 to be an emergency act within the meaning of the constitution, and the enactment of sections
6 144.018, 1, and 2 of section A of this act shall be in full force and effect upon its passage and
7 approval.

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