

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1435

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE KOENIG.

4448H.01P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 144.190, RSMo, and to enact in lieu thereof one new section relating to sales tax refund claims.

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

Section A. Section 144.190, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.190, to read as follows:

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

2. If any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the balance, with interest as determined by section 32.065, shall be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from date of overpayment.

3. Every claim for refund must be in writing and signed by the applicant, and must state the specific grounds upon which the claim is founded. Any refund or any portion thereof which

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.

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] **director of revenue's** record.

21 4. Notwithstanding the provisions of section 32.057, a purchaser that originally paid  
22 sales or use tax to a vendor or seller may submit a refund claim directly to the director of revenue  
23 for such sales or use taxes paid to such vendor or seller and remitted to the director **of revenue**,  
24 provided no sum shall be refunded more than once, any such claim shall be subject to any offset,  
25 defense, or other claim the director **of revenue** otherwise would have against either the purchaser  
26 or vendor or seller **if such offset or claim has been assessed under section 144.240 or 144.670**  
27 **and such assessment is no longer subject to appeal**, and such claim for refund is accompanied  
28 by either:

29 (1) A notarized assignment of rights statement by the vendor or seller to the purchaser  
30 allowing the purchaser to seek the refund on behalf of the vendor or seller. An assignment of  
31 rights statement shall contain the Missouri sales or use tax registration number of the vendor or  
32 seller, a list of the transactions covered by the assignment, the tax periods and location for which  
33 the original sale was reported to the director of revenue by the vendor or seller, and a notarized  
34 statement signed by the vendor or seller affirming that the vendor or seller has not received a  
35 refund or credit, will not apply for a refund or credit of the tax collected on any transactions  
36 covered by the assignment, and authorizes the director **of revenue** to amend the seller's return  
37 to reflect the refund; or

38 (2) In the event the vendor or seller fails or refuses to provide an assignment of rights  
39 statement within [sixty] **thirty** days from the date of such purchaser's written request to the  
40 vendor or seller, or the purchaser is not able to locate the vendor or seller or the vendor or seller  
41 is no longer in business, the purchaser may provide the director **of revenue** a notarized statement  
42 confirming the efforts that have been made to obtain an assignment of rights from the vendor or  
43 seller. Such statement shall contain a list of the transactions covered by the assignment, the tax  
44 periods and location for which the original sale was reported to the director of revenue by the  
45 vendor or seller.

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47 The director **of revenue** shall not require such vendor, seller, or purchaser to submit amended  
48 returns for refund claims submitted under the provisions of this subsection. Notwithstanding the  
49 provisions of section 32.057, if the seller is registered with the director **of revenue** for collection  
50 and remittance of sales tax, the director **of revenue** shall notify the seller at the seller's last  
51 known address of the claim for refund. [If the seller objects to the refund within thirty days of

52 the date of the notice, the director shall not pay the refund. If the seller agrees that the refund is  
53 warranted or fails to respond within thirty days, the] **The director of revenue** may issue the  
54 refund and amend the seller's return to reflect the refund. For purposes of section 32.069, the  
55 refund claim shall [not] be considered to have been filed [until the seller agrees that the refund  
56 is warranted or] thirty days after the date the director **of revenue** notified the seller [and the seller  
57 failed to respond].

58 5. Notwithstanding the provisions of section 32.057, when a vendor files a refund claim  
59 on behalf of a purchaser and such refund claim is denied by the director **of revenue**, notice of  
60 such denial and the reason for the denial shall be sent by the director **of revenue** to the vendor  
61 and each purchaser whose name and address is submitted with the refund claim form filed by the  
62 vendor. A purchaser shall be entitled to appeal the denial of the refund claim within sixty days  
63 of the date such notice of denial is mailed by the director **of revenue** as provided in section  
64 144.261. The provisions of this subsection shall apply to all refund claims filed after August 28,  
65 2012. The provisions of this subsection allowing a purchaser to appeal the [director's] **director**  
66 **of revenue's** decision to deny a refund claim shall also apply to any refund claim denied by the  
67 director **of revenue** on or after January 1, 2007, if an appeal of the denial of the refund claim is  
68 filed by the purchaser no later than September 28, 2012, and if such claim is based solely on the  
69 issue of the exemption of the electronic transmission or delivery of computer software.

70 6. Notwithstanding the provisions of this section, the director of revenue shall authorize  
71 direct-pay agreements to purchasers which have annual purchases in excess of seven hundred  
72 fifty thousand dollars pursuant to rules and regulations adopted by the director of revenue. For  
73 the purposes of such direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 70,  
74 92, 94, 162, 190, 238, 321, and 644 shall be remitted based upon the location of the place of  
75 business of the purchaser.

76 7. Special rules applicable to error corrections requested by customers of mobile  
77 telecommunications service are as follows:

78 (1) For purposes of this subsection, the terms "customer", "home service provider",  
79 "place of primary use", "electronic database", and "enhanced zip code" shall have the same  
80 meanings as defined in the Mobile Telecommunications Sourcing Act incorporated by reference  
81 in section 144.013;

82 (2) Notwithstanding the provisions of this section, if a customer of mobile  
83 telecommunications services believes that the amount of tax, the assignment of place of primary  
84 use or the taxing jurisdiction included on a billing is erroneous, the customer shall notify the  
85 home service provider, in writing, within three years from the date of the billing statement. The  
86 customer shall include in such written notification the street address for the customer's place of  
87 primary use, the account name and number for which the customer seeks a correction of the tax

88 assignment, a description of the error asserted by the customer and any other information the  
89 home service provider reasonably requires to process the request;

90 (3) Within sixty days of receiving the customer's notice, the home service provider shall  
91 review its records and the electronic database or enhanced zip code to determine the customer's  
92 correct taxing jurisdiction. If the home service provider determines that the review shows that  
93 the amount of tax, assignment of place of primary use or taxing jurisdiction is in error, the home  
94 service provider shall correct the error and, at its election, either refund or credit the amount of  
95 tax erroneously collected to the customer for a period of up to three years from the last day of  
96 the home service provider's sixty-day review period. If the home service provider determines  
97 that the review shows that the amount of tax, the assignment of place of primary use or the taxing  
98 jurisdiction is correct, the home service provider shall provide a written explanation of its  
99 determination to the customer.

100 8. For all refund claims submitted to the department of revenue on or after September  
101 1, 2003, notwithstanding any provision of this section to the contrary, if a person legally  
102 obligated to remit the tax levied pursuant to sections 144.010 to 144.525 has received a refund  
103 of such taxes for a specific issue and submits a subsequent claim for refund of such taxes on the  
104 same issue for a tax period beginning on or after the date the original refund check issued to such  
105 person, no refund shall be allowed. This subsection shall not apply and a refund shall be allowed  
106 **if the refund claim is filed by a purchaser under the provisions of subsection 4 of this**  
107 **section, the refund claim is for use tax remitted by the purchaser, or** an additional refund  
108 claim is filed **by a person legally obligated to remit the tax** due to any of the following:

109 (1) Receipt of additional information or an exemption certificate from the purchaser of  
110 the item at issue;

111 (2) A decision of a court of competent jurisdiction or the administrative hearing  
112 commission; or

113 (3) Changes in regulations or policy by the department of revenue.

114 9. Notwithstanding any provision of law to the contrary, the director of revenue shall  
115 respond to a request for a binding letter ruling filed in accordance with section 536.021 within  
116 sixty days of receipt of such request. If the director of revenue fails to respond to such letter  
117 ruling request within sixty days of receipt by the director **of revenue**, the director of revenue  
118 shall be barred from pursuing collection of any assessment of sales or use tax with respect to the  
119 issue which is the subject of the letter ruling request. For purposes of this subsection, the term  
120 "letter ruling" means a written interpretation of law by the director **of revenue** to a specific set  
121 of facts provided by a specific taxpayer or his or her agent.

122 10. If any tax was paid more than once, was incorrectly collected, or was incorrectly  
123 computed, such sum shall be credited on any taxes then due from the person legally obligated

124 to remit the tax pursuant to sections 144.010 to 144.510 against any deficiency or tax due  
125 discovered through an audit of the person by the department of revenue through adjustment  
126 during the same tax filing period for which the audit applied.

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