

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute No. 2 for House Bill No. 1802, Page 14, Section 144.054,
2 Line 59, by inserting after all of said section and line the following:

3
4 "144.900. 1. Notwithstanding any other provision of law, any seller who does not have a
5 physical presence in this state who sells tangible personal property or products transferred
6 electronically shall be subject to this chapter, shall remit sales tax, and shall follow all applicable
7 procedures and requirements as if the seller had a physical presence in the state, provided that in
8 either the previous or current calendar year the seller has:

9 (1) At least one hundred thousand dollars in gross revenue from sales in this state; or

10 (2) At least two hundred or more separate transactions in this state.

11 2. A taxpayer complying with this section and section 144.901, voluntarily or otherwise,
12 may only seek a recovery of taxes, penalties, or interest by following the recovery procedures under
13 section 136.035. However, no claim shall be granted on the basis that the taxpayer lacked a
14 physical presence in the state and complied with this section voluntarily while complying with the
15 injunction of section 144.901. Nothing in this section limits the ability of any taxpayer to obtain a
16 refund for any other reason, including overpayment or erroneous payment.

17 3. No seller who remits sales tax voluntarily or otherwise under this section shall be liable
18 to a purchaser who claims that the sales tax was over-collected because a provision of this section is
19 later deemed unlawful.

20 4. Nothing in this section shall affect the obligation of any purchaser from this state to remit
21 use tax as to any applicable transaction in which the seller does not collect and remit or remit an
22 offsetting sales tax.

23 144.901. 1. Notwithstanding any other provision of law and regardless if the state initiates
24 an audit or other tax collection procedure, the state may bring a declaratory judgment action in any
25 circuit court to establish that the obligation to remit sales tax is applicable and valid under state and
26 federal law against any person who the state believes meets the criteria of section 144.900. The
27 circuit court shall act on this declaratory judgment action as expeditiously as possible. The court
28 shall presume that the matter shall be fully resolved through a motion to dismiss or a motion for
29 summary judgment. Attorney's fees shall not be awarded in any action brought under section
30 144.900.

31 2. The filing of the declaratory judgment action by the state shall operate as an injunction
32 during the pendency of the action, prohibiting any state entity from enforcing the obligation in
33 section 144.900 against any taxpayer who does not affirmatively consent or otherwise remit the
34 sales tax on a voluntary basis. The injunction shall not apply if there is a previous judgment against
35 a taxpayer that establishes the validity of the taxpayer's obligation under section 144.900.

36 3. Any appeal from the decision with respect to the cause of action under section 144.900

Action Taken _____ Date _____

1 shall only be made to the state supreme court. The appeal shall be heard as expeditiously as
2 possible.

3 4. If an injunction under this section is lifted or dissolved, in general or with respect to a
4 specific taxpayer, the state shall assess and apply the obligation established under section 144.900
5 from that date forward to any taxpayer affected by the injunction."; and

6
7 Further amend said bill by amending the title, enacting clause, and intersectional references
8 accordingly.