

FIRST REGULAR SESSION

SENATE BILL NO. 372

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

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TERRY L. SPIELER, Secretary.

1440S.011

AN ACT

To repeal section 32.050, RSMo 2000, relating to the department of revenue, and to enact in lieu thereof six new sections relating to the same subject.

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

Section A. Section 32.050, RSMo 2000, is repealed and six new sections enacted in lieu thereof, to be known as sections 32.050, 32.375, 32.378, 32.381, 32.384 and 32.387, to read as follows:

32.050. 1. The director of revenue shall:

(1) Prepare estimates of the requirements for appropriation for the department of revenue and for each division thereof which is under his supervision;

(2) Procure, either through the division of purchasing, or by other means authorized by law, supplies, material, equipment or contractual services for the department of revenue and for each division in the department;

(3) Prescribe, as far as practicable, a central system for payroll in the department of revenue;

(4) Prepare and submit to each regular session of the general assembly and to the governor a report of the activities of the department, including the activities of each division of the department;

(5) Prescribe a seal for the department of revenue.

2. With respect to all divisions in the department, the director shall:

(1) Order and supervise the exchange among the several divisions of employees, quarters, facilities and equipment, and to this end the heads of the respective divisions subject to the

approval of the director of revenue, shall cooperate with each other in the use of employees, quarters, facilities and equipment and with the director of revenue;

(2) Coordinate, consolidate and arrange the functions, procedures and facilities of the several divisions as is necessary to bring about economy and efficiency in the operation of the department of revenue and each division of the department;

(3) Decide questions of policy of the department of revenue and each of its divisions;

(4) Decide any question arising in the interpretation or carrying out of chapters 32 and 136, RSMo, between:

(a) The director of revenue and any other officer or employee in the department of revenue;

(b) The director of revenue and any officer or employee of any other state department;

(c) Officers and employees of any of the state departments.

The decision of the director of revenue is final;

(5) Administer the provisions of chapters 32 and 136, RSMo, and in case of any conflict in powers and duties between the director of revenue and any other administrator, director, officer or employee in the department of revenue and its several divisions, the powers and duties of the director of revenue are paramount;

(6) Approve all rules and regulations promulgated by all administrators, directors, officers or employees who have the authority under the provisions of chapters 32 and 136, RSMo, to make rules and regulations;

(7) Receive all appropriations to the department of revenue for the use of the department of revenue and its several divisions and is responsible for the disbursement and expenditure thereof.

3. The director of revenue may:

(1) Initiate, order and direct the arrangement and rearrangement of the employees, quarters, facilities and equipment in the department of revenue and each division of the department which is under his supervision;

(2) Employ and remove assistants, clerks and other employees in the department of revenue and each of the divisions of the department which are under his supervision as the work of the department and its divisions require, and fix their compensation within the limits of the appropriation;

(3) Decide any issue related to the Missouri state tax liability of a taxpayer, including, but not limited to, making decisions on and entering binding agreements on behalf of the state of Missouri for the abatement or compromise of all or part of a taxpayer's Missouri state tax liability pursuant to the provisions of sections 32.375 to 32.387.

32.375. 1. Sections 32.375 to 32.387 shall be known and may be cited as the "Prospective Tax Application Act".

2. For purposes of sections 32.375 to 32.387, the following words or phrases shall have the following meanings:

- (1) "Commission", the administrative hearing commission;**
- (2) "Department", the department of revenue;**
- (3) "Director", the director of the department of revenue; and**
- (4) "Other taxpayers", taxpayers other than the taxpayer involved in the dispute at issue, who are within the same industry and in the same or similar type of business or profession in this state as that of the taxpayer involved in the dispute at issue;**
- (5) "Taxpayer", the taxpayer involved in the dispute at issue.**

3. If the director finds that any taxpayer required to collect, account for, remit and pay over any income tax, franchise tax, or sales or use tax has, within the time and in the manner prescribed by laws or regulations, failed to collect, account for, remit or pay over any such tax, the director may notify such taxpayer. Any such notice shall:

- (1) Be in writing;**
- (2) Be hand delivered by the director or sent by certified mail to the last mailing address provided by the taxpayer;**
- (3) Provide a detailed description and accounting of the alleged failure to collect, account for, remit or pay over any such tax; including, but not limited to, a detailed description of the type of event or transaction for which the taxpayer has allegedly failed to collect, account for, remit or pay over tax due; and**
- (4) Provide notice of the taxpayer's rights by explicit citation to sections 32.375 to 32.387.**

4. Within sixty days of the receipt of any notice provided pursuant to subsection 3 of this section, the taxpayer may dispute the director's finding and may request that the director determine whether tax has been previously collected, accounted for, remitted and paid over on and for a particular type of event or transaction by other taxpayers. Any such request shall:

- (1) Be in writing;**
- (2) Be hand delivered to the director or mailed to the director by first class mail, postage pre-paid, and be postmarked within sixty days of the taxpayer's receipt of the director's notice;**
- (3) Provide a description of the industry and the type of business or profession in which the taxpayer engages;**
- (4) Provide a detailed response to the description and accounting provided by the director pursuant to subdivision (3) of subsection 3 of this section; including an explanation of the basis for the taxpayer's belief, if any, that the tax need not be collected, accounted for, remitted and paid over on the specific type of event or**

transaction; and, including copies of any previous policies of the department or information provided to the taxpayer by the department which support the taxpayer's position; and

(5) Request that the director make the determination described in this subsection.

5. Upon timely receipt of a request from a taxpayer pursuant to subsection 4 of this section, the director shall collect, compile and review all reasonably necessary information and shall make a determination on the issue. If the director determines that tax has been previously collected, accounted for, remitted and paid over on the particular type of event or transaction in question by other taxpayers, the director shall issue a decision assessing against the taxpayer all taxes, interest and penalties due on and for the disputed type of event or transaction. If the director determines that tax has not been previously collected, accounted for, remitted and paid over on the particular type of event or transaction in question by other taxpayers, the director shall consider such information when determining the appropriate resolution of the dispute with the taxpayer and the director may:

(1) Decide to abate the entire amount of the taxpayer's past liability for taxes otherwise due on and for the disputed type of event or transaction and to not assess interest and penalties on such abated taxes by agreeing with the taxpayer to an abatement of the disputed amount;

(2) Decide to abate a portion of the taxpayer's past liability for taxes, interest and penalties otherwise due on and for the disputed type of event or transaction by agreeing with the taxpayer to a compromise of the disputed amount; or

(3) Decide to assess against the taxpayer all taxes, interest and penalties due on and for the disputed type of event or transaction.

6. A taxpayer filing a timely appeal, pursuant to section 621.050, RSMo, of a decision which was issued by the director pursuant to subsection 5 of this section, has preserved all rights to and shall be entitled to an appeal on the director's decision issued pursuant to this subsection and on all issues addressed in the related director's decision issued pursuant to subsection 3 of this section, unless the taxpayer has waived the right to appeal pursuant to section 32.384.

32.378. 1. If the director decides, pursuant to subdivision (1) of subsection 5 of section 32.375, to abate the entire amount of the taxpayer's past liability for taxes otherwise due on and for the disputed type of event or transaction and to not assess interest and penalties on such abated taxes:

(1) The director and the taxpayer shall enter into a written agreement specifying the amount to be abated and any other terms to which the parties may agree;

(2) The amount of the abatement shall no longer be considered an indebtedness,

liability or obligation of the taxpayer, unless liability for said amount is revived pursuant to paragraph (b) of subdivision (7) of section 32.384; and

(3) The provisions of section 32.384 shall apply.

2. If the director decides, pursuant to subdivision (2) of subsection 5 of section 32.375, to abate a portion of the taxpayer's past liability for taxes, penalties and interest otherwise due on and for the disputed type of event or transaction by agreeing with the taxpayer to a compromise of the disputed amount:

(1) The director and the taxpayer shall enter into a written agreement specifying the amount to be abated, the principal amount and any interest to be paid by the taxpayer, and any other terms to which the parties may agree;

(2) The amount to be abated shall no longer be considered an indebtedness, liability or obligation of the taxpayer, unless liability for said amount is revived pursuant to paragraph (b) of subdivision (7) of section 32.384; and

(3) The provisions of section 32.384 shall apply.

3. If the director decides, pursuant to subdivision (3) of subsection 5 of section 32.375, to assess against the taxpayer all taxes, interest and penalties due on and for the disputed type of event or transaction:

(1) The entire amount of the disputed taxes, interest and penalties shall be and remain a liability of the taxpayer until paid;

(2) The taxpayer may appeal the director's decision to the commission pursuant to section 621.050, RSMo;

(3) If the taxpayer appeals the director's decision, the taxpayer shall be allowed to present evidence and testimony to the commission on the issue of whether tax has been previously collected, accounted for, remitted and paid over on and for a particular type of event or transaction by other taxpayers; and

(4) If the taxpayer appeals the director's decision, the commission shall have the authority to overturn or modify the director's decision or assessment and, if the commission finds that tax has not been previously collected, accounted for, remitted and paid over on the particular type of event or transaction in question by other taxpayers, the commission may abate the entire amount of the disputed liability or may abate a portion of the taxpayer's past liability for taxes, penalties and interest otherwise due on and for the disputed type of event or transaction by agreeing with the taxpayer to a compromise of the disputed amount.

32.381. 1. In addition to the authority granted to the director and the commission pursuant to sections 32.375 to 32.378, the director, or the commission on appeal of a decision of the director, may agree to abate or compromise any past taxes, interest, penalties, or additions to taxes assessed or collected by the director, based upon any of

the following grounds:

(1) Sufficient doubt as to the ability to collect the full amount due. Such doubt shall be presumed to exist in any case in which the amount assessed, including interest, additions to tax and penalties exceed the taxpayer's ability to pay as defined by regulations promulgated by the director;

(2) To promote effective and efficient administration of the tax laws of this state, based upon a belief that an abatement or compromise for the taxpayer will not undermine compliance with the tax laws by other taxpayers and that:

(a) Collection of the full amount due will result in significant economic hardship to the taxpayer; or

(b) Regardless of the economic circumstances of the taxpayer, exceptional circumstances exist such that collection of the full amount due will be detrimental to voluntary compliance with the tax laws by taxpayers. Such exceptional circumstances include, but are not limited to, instances where the taxpayer's failure to pay the full amount of the taxes assessed is a result of circumstances beyond the reasonable control of the taxpayer and is not the result of negligence on the part of the taxpayer, and instances where a reasonable person would not have expected the assessment based upon previous policy of the department or information provided to the taxpayer by the department.

2. If the director or the commission enters into agreement with a taxpayer for abatement or compromise pursuant to subsection 1 of this section, the provisions of section 32.384 shall apply.

32.384. In any case in which the director or the commission enters into agreement with a taxpayer for abatement or compromise of any amount due by the taxpayer, pursuant to any provision in sections 32.375 to 32.381:

(1) The taxpayer shall be prospectively liable to collect, account for, remit and pay over all due taxes arising from instances of the disputed type of event or transaction which occur after the date of the execution of the agreement;

(2) The taxpayer shall be solely and individually liable for the attorney fees and costs which the taxpayer incurred in the dispute of tax liability and the state of Missouri shall have no liability for such fees and costs incurred by the taxpayer or others;

(3) The taxpayer waives and releases the taxpayer's rights to contest or appeal, in court or otherwise, the director's or commission's decision on the issue in question and the amount of the original liability which was abated or compromised;

(4) The state of Missouri shall retain ownership of all payments made on and credits applied to the amounts due for the periods covered by the agreement;

(5) The state of Missouri shall retain ownership of all amounts otherwise due to the taxpayer as a result of overpayments of any tax or other liability to the state, including, but not limited to, interest, additions to tax and penalties, for periods ending before or as of the end of the calendar year in which the agreement is executed; except that the state shall not retain ownership of any amounts that, together with amounts already paid on the amounts otherwise due, exceed the amount of the taxpayer's original liability which was abated or compromised;

(6) The taxpayer waives and releases the taxpayer's rights to contest or appeal any decision of the director or the commission issued during the three year period beginning with the date of the execution of the agreement, with the exception of the right to claim that the imposition of any tax is in violation of the federal or state constitutions which right the taxpayer retains;

(7) Any statute of limitations applicable to the assessment or collection of the liability abated or compromised shall be tolled during the period beginning on the date of the execution of the agreement and ending either one year after the final payment is due under the agreement or three years after the date of the execution of the agreement, whichever is later;

(8) If the taxpayer defaults in payment of any principal, interest or penalties which are due pursuant to the terms of the agreement, or if the taxpayer violates any provision of this section, the director may:

(a) Proceed, by suit or otherwise, to collect the entire unpaid balance of the amount of the agreement, with interest on any unpaid balance from the date of default or violation; or

(b) Set aside the agreement and decision of abatement or compromise and re-assess the original amount of the taxes, interest, penalties or additions to tax and proceed, by suit or otherwise, to collect the re-assessed amount, with due consideration and set-off for any payments already received under the terms of the abatement or compromise, with interest on any unpaid balance from the date of default or violation.

32.387. 1. The decision of the director or the commission to accept or reject an offer of compromise shall be based upon due consideration of the totality of the circumstances, including, but not limited to, the taxpayer's history of compliance with the tax laws or regulations of this state or of any other jurisdiction.

2. Any taxpayer requesting a review pursuant to subsection 4 of section 32.375, or appealing a decision of the director to the commission pursuant to subdivision (2) of subsection 3 of section 32.378, or offering a compromise pursuant to subsection 2 of section 32.378, or requesting an abatement or compromise pursuant to section 32.381, shall provide any information reasonably requested by the director or the commission.

3. The director's or commission's remedies available in sections 32.375 to 32.384 are not mutually exclusive in nature and the director or the commission, in their respective discretion, may pursue any combination of such remedies together or consecutively in pursuit of satisfaction of the taxpayer's liability and consistent with the effective and efficient administration of the tax laws.

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