

FIRST REGULAR SESSION

HOUSE BILL NO. 41

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LAVENDER.

0161H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 144, RSMo, by adding thereto two new sections relating to sales tax.

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

Section A. Chapter 144, RSMo, is amended by adding thereto two new sections, to be known as sections 144.900 and 144.901, to read as follows:

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

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

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

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

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

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

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

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

15 **3. Any appeal from the decision with respect to the cause of action under section**
16 **144.900 shall be made only to the state supreme court. The appeal shall be heard as**
17 **expeditiously as possible.**

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

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