

SB 829 Aids Taxpayers, but CPAs Should Proceed with Caution

By Randel A. Hilger, CPA

Several pieces of legislation were passed by Missouri lawmakers this spring impacting Missouri taxes, including the administration of those taxes by the Missouri Department of Revenue. Governor Nixon vetoed a number of those bills. One of the governor's vetoes on these tax bills was overridden during the regular session, and three were overridden in a special session in early September. This article focuses on one of those bills, Senate Bill 829, and its impact on Missouri taxpayers and the CPAs that represent them in Missouri tax matters.

Senate Bill 829 repealed the existing Section 136.300 RSMo, and enacted in lieu a new Section 136.300 relating to tax liability disputes. As revised, Section 136.300 now reads:

“1. With respect to any issue relevant to ascertaining the tax liability of a taxpayer all laws of the state imposing a tax shall be strictly construed against the taxing authority in favor of the taxpayer. The director of revenue shall have the burden of proof with respect to any factual issue relevant to ascertaining the liability of a taxpayer only if:

- (1) The taxpayer has produced evidence that establishes that there is a reasonable dispute with respect to the issue; and
- (2) The taxpayer has adequate records of its transactions and provides the department of revenue reasonable access to these records.

2. This section shall not apply to any issue with respect to the applicability of any tax credit.”

Prior to the repeal of the existing statute, the law contained subsection 1. (3) which read, “In the case of a partnership, corporation or trust, the net worth of the taxpayer does not exceed seven million dollars and the taxpayer does not have more than 500 employees at the time the final decision of the director of the department of revenue is issued.” Additionally, prior to the revision, subsection 2. did not apply to any tax exemption. Even if a taxpayer met all of the other criteria, the burden of proof with regard to an exemption remained with the taxpayer.

So as revised, the law applies to *all taxpayers*; it is not limited to just small corporations, partnerships and trusts like the prior version, and it applies to both the imposition of the tax and the qualification for an exemption. The Legislature sought to “level the playing field” by having the law apply to both small and large taxpayers. It is important to remember that this law,



both the previous version and the revised version, applies to all state taxes including individual and corporate income taxes, franchise and insurance gross premiums taxes, excise taxes like fuel and cigarette taxes, and sales and use taxes. The law also applies to local taxes imposed by Missouri law but administered by the Department such as local sales taxes and Community Improvement District or Transportation Development District sales taxes.

What does this change mean to Missouri CPAs advising their clients? There are a number of cases in which taxpayers invoked the old version of Section 136.300, with varying levels of success. Two relatively recent cases—*Shiffler v. Department of Revenue*, a 2011 Administrative Hearing Commission decision involving personal income taxes, and *Zimmerman, d/b/a/ Zimmerman Excavating v. Director of Revenue*, a 2011 Administrative Hearing Commission decision involving sales and use taxes—illustrate the limitations of Section 136.300 as interpreted by the courts. In *Shiffler*, the Commission ruled the taxpayer met condition (2), in that the Department had not requested any records from the taxpayer, but failed condition (1) in that the taxpayer failed at the hearing to establish there was a reasonable dispute with respect to the factual issue relevant to determining the taxpayer's proper tax liability. In *Zimmerman*, the Commission found the taxpayer did not provide evidence challenging the accuracy of the director's assessments; instead, he relied upon his legal argument that the burden of proof should be on the director. By failing to provide any evidence, there was no evidence establishing a reasonable dispute as to any factual issue upon which his tax liability was based. Therefore, the burden of proof remained with the taxpayer and was not shifted to the Director under Section 136.300.1.

While the potential application of Section 136.300 has broadened with the Legislature's inclusion of exemptions under the statute and removal of the large taxpayer exclusion, these decisions should serve as a reminder that the courts generally view the burden of proof shift under Section 136.300 narrowly. Taxpayers and their advisers should make sure they have clearly articulated and provided evidence establishing a reasonable dispute with regard to the issue(s), they have supporting records, and they have made those records available to the Department. Additionally, when responding to Notices of Deficiency or Information and Documentation Requests, working with Department auditors, or formally appealing an assessment, taxpayers should consider citing Section 136.300 RSMo if appropriate, and providing supporting commentary regarding the basis for the dispute and the availability of and access to records.

Randy Hilger is principal-in-charge of Ryan, LLC's St. Louis office, and he chairs the MSCPA's Taxation Committee. Randy can be contacted at randy.hilger@ryan.com.

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Sandra Mock Gantt
 Private Mortgage Banker
 Office: 341-872-5030
 Cell: 314-651-8195
sandra.m.gantt@wellsfargo.com
 NMSLR ID 442561



Matt Gallagher
 Private Mortgage Banker
 Office: 314-872-5029
mattgallagher@wellsfargo.com
 NMSLR ID 400492

