



Michael L. Parson

GOVERNOR
STATE OF MISSOURI

July 1, 2022

TO THE SECRETARY OF STATE
OF THE STATE OF MISSOURI
101st GENERAL ASSEMBLY
SECOND REGULAR SESSION

Herewith I return to you Senate Committee Substitute for House Bill 2090, entitled:

AN ACT

To repeal sections 33.100, 36.020, 36.030, 36.050, 36.060, 36.070, 36.080, 36.090, 36.100, 36.120, 36.140, 36.250, 36.440, 36.510, 37.010, 105.950, 105.1114, 136.370, and 288.220, RSMo, and to enact in lieu thereof twenty new sections relating to the payment of funds from the state treasury.

I disapprove of Senate Committee Substitute for House Bill 2090. My reasons for disapproval are as follows:

While I recognize and applaud the General Assembly in its effort to improve the laws governing state personnel matters and to provide Missourians with tax relief, I cannot approve this bill as presented to me.

Section 136.370 was designed to help certain individuals and businesses who refuse state tax liability. This proposal may inadvertently incentivize the withholding of complete and accurate information from the Department of Revenue which is normally collected in the process of determining one's tax liability. As written, the language in House Bill 2090 allows individuals and businesses to claim negligence of, or incorrect information was provided by, the Department of Revenue as a cause for taxpayer failure to collect and remit sales and use tax assessments that they would otherwise be responsible for. Further, the language does not provide any standards for what those terms mean. Current Missouri case law holds that statements by Department of Revenue employees do not bind the Director, who would be required to refund the taxpayer. This proposal directly conflicts with that legal precedent. *See Lynn v. Dir. of Revenue*, 689 S.W.2d 45, 48-49 (Mo. banc 1985). Section 136.370 may also violate Article III, Section 38(a) of the Missouri Constitution by "grant[ing] public money . . . to any private person, association or corporation[.]" While this section could be constitutional if it had a public purpose, *Fust v. Attorney General for the State of Mo.*, 947 S.W.2d 424, 429 (Mo. banc 1997), it only provides a direct payment to a

limited number of liable taxpayers. *Cf. id.* at 429–30; *State ex rel. Wagner v. St. Louis Port Auth.*, 604 S.W.2d 592, 597 (Mo. banc 1980); *Swallow Tail, LLC v. Mo. Dep't of Conservation*, 522 S.W.3d 309, 315 (Mo. App. W.D. 2017) (summarizing cases). I cannot support a law that incentivizes dishonesty on the backs of taxpayers acting in good faith.

Section 1 presents numerous issues, both legally and practically. Legally, it likely violates both the United States and Missouri Constitutions. By discriminating against nonresident taxpayers, this provision casts aside the Privileges and Immunities (U.S. CONST. art. IV, § 2, cl. 1; U.S. CONST. amend. XIV, § 1), Equal Protection (U.S. CONST. amend. XIV, § 1; MO. CONST. art. 1, § 2), and Dormant Commerce Clauses (U.S. CONST. art. I, § 8, cl. 3) prohibiting such conduct. *See, e.g., Lunding v. N.Y. Tax Appeals Tribunal*, 522 U.S. 287, 314 (1998); *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 548–51 (2015). Section 1 could also violate Article III, Section 38(a) of the Missouri Constitution as it specifically targets select individuals rather than promoting a broader public impact. On a practical note, this proposal was touted in both the House Budget Committee and on the House floor as assuring Missourians they would receive a \$500 or \$1,000 one-time tax credit depending on one's tax filing status; however, that reality would not have been ascertained with the amount of funding allocated to this credit by the General Assembly. Based upon projections from the Missouri Department of Revenue and the Office of Administration that were provided to members of the General Assembly and publicly discussed, in order to fund the credit as proposed, the General Assembly would have needed to allocate \$1.3 billion in funding. However, the General Assembly only allocated \$500 million, which would have resulted in a maximum credit of approximately \$205 or \$410 for either filing status, drastically lower than what taxpayers were told they would receive. This point was also made on the House floor by members of both political parties, as they realized that this proposal would not result in the outcome that was being publicized.

As a further practical concern, as written in this section and provided for in the budget, this provision cannot be administered under Article IV, Section 28 of the Missouri Constitution. *See State ex rel. S.S. Kresge Co. v. Howard*, 208 S.W.2d 247, 251 (Mo banc. 1947). While \$500 million in funding was allocated for the tax credit in House Bill 3020 (2022) by providing a transfer appropriation from General Revenue to the Tax Credit Offset Fund, a corresponding refund appropriation was not created in any of the appropriation bills for Fiscal Year 2023. Therefore, neither the Missouri Department of Revenue nor the Office of Administration have the appropriation authority needed to issue refunds related to this tax credit. In sum, while the appropriation was included in legislation and this section authorizes the credit, my administration would be prohibited from providing the refund as the General Assembly did not provide the necessary corresponding spending authority.

As a policy matter, this proposal also provides no benefit to low-income nor high-income earning Missouri citizens. That is, those who pay the most in state income taxes would have been excluded from receiving the benefit of the credit. Additionally, this proposal does little to assist the State's lowest income individuals and families, including those on fixed incomes such as disabled individuals, retirees, and social security recipients. I am committed to substantial tax relief for all Missourians. Unfortunately, House Bill 2090 does not achieve those goals and cannot be administered as currently provided for in this legislation and in the budget.

Also of concern, Section 2 puts vulnerable Missourians at risk. This section risks critical federal funding for Medicare and Medicaid services in Missouri by potentially violating Centers for Medicare & Medicaid Services' federal regulations. I have consistently opposed COVID-19 vaccination mandates, especially for State employees. Jeopardizing the State's Medicare and Medicaid services in this manner is unnecessary and could result in significant negative harm to Missourians.

Further, the subjects in this bill vary widely and cause concern relative to the constitutional requirement that legislation only consist of a single subject. As an example, there is no tenable connection between vaccine requirements and "payment of funds from the state treasury," violating Article III, Section 23 of the Missouri Constitution. *See Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 101-03 (Mo. banc 1994).

Regrettably, changes to pay periods for state employees and to the Personnel Advisory Board were included in this bill. These are useful provisions that create both meaningful change for our valuable state team members and efficiencies in state government overall that could result in cost savings to taxpayers. I hope to see these provisions in future legislation.

In accordance with the above stated reasons for disapproval, I am returning Senate Committee Substitute for House Bill 2090 without my approval.

Respectfully Submitted,



Michael L. Parson
Governor