

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1031-02
Bill No.: SCS for SB 174
Subject: Revenue Department; State Departments; Taxation and Revenue - Income;
Taxation and Revenue - Sales and Use
Type: Original
Date: April 5, 2013

Bill Summary: This proposal would reduce the corporate income tax rate and modify provisions relating to who is required to collect sales and use tax.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	Unknown	(\$15,357,000) to Unknown	(\$15,357,000) to Unknown
Total Estimated Net Effect on General Revenue Fund	Unknown	(\$15,357,000) to Unknown	(\$15,357,000) to Unknown

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Conservation Commission	Unknown	Unknown	Unknown
Parks, and Soil and Water	Unknown	Unknown	Unknown
School District Trust	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown	Unknown	Unknown

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	3	3	3
Total Estimated Net Effect on FTE	3	3	3

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	More than \$100,000	More than \$100,000	More than \$100,000

FISCAL ANALYSIS

ASSUMPTION

Section 143.071, RSMo. - Coporate Income Tax Rate

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this provision would not result in any additional costs or savings to their organization.

BAP officials note this provision would reduce the corporate income tax rate from 6.25% to 6% for 2014 and beyond. In FY 2012, \$275.6 million in net corporate tax was received. Based on this data, and notwithstanding any inflationary growth, this provision would reduce General and Total State Revenues by \$11 million in FY 2015.

Officials from the **University of Missouri - Economic and Policy Analysis Research Center (EPARC)** noted this provision would, if enacted, reduce the corporate income tax rate.

This provision would reduce the corporate income tax rate from 6.25% to 6% in 2014. The latest 2010 corporate income tax data indicates an aggregate liability of \$383.905 million. Using that figure as our baseline and reducing the corporate tax rate to 6%, we estimate the corporate tax liability would be reduced to \$368.548 million for 2014, a reduction of \$15.357 million.

Officials from the **Department of Revenue (DOR)** note this provision would, beginning January 1, 2014, reduce the tax imposed upon corporate income from 6 1/4 percent to 6 percent of Missouri taxable income, and assume the provision would reduce revenue by \$13.96 million dollars.

ASSUMPTION (continued)

Oversight notes DOR officials did not indicate any cost for this provision and assumes any cost associated with this provision would be minimal and could be absorbed with existing resources.

Oversight will use the EPARC estimate of revenue reduction and notes the provision would be effective for 2014. Although a corporation could reduce their estimated tax payments for 2015 as a result of this proposal, only two of the four estimated tax payments for 2014 would be paid in FY 2014. Oversight notes that tax returns for 2014 would be filed beginning January 2015 (FY 2015) and will assume for fiscal note purposes that all of the impact for the change in corporate income tax rate would apply to FY 2015.

Sections 144.010, 144.030, and 144.605, RSMo. - Sales and Use Tax

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume these provisions would not result in additional costs or savings to their organization.

BAP officials assume these provisions would expand the definition of "seller" and other related definitions, under sales tax law to include more out-of-state vendors doing business inside the state. BAP officials also noted that various studies have suggested Missouri is losing hundreds of millions of dollars in sales taxes on sales by out-of-state vendors, often via e-commerce. These changes would allow DOR to begin capturing taxes from some vendors that are currently unidentified. It would also make it easier to comply with the Streamlined Sales Tax Agreement.

BAP estimates these provisions would increase Total State Revenues by \$10 million annually, of which \$7 million would be deposited in the General Revenue Fund.

Officials from the **University of Missouri - Economic and Policy Analysis Research Center (EPARC)** noted these provisions would, if enacted, modify who is required to collect sales and use tax. Specifically, these provisions would redefine "vendor" and "maintains a place of business in this state" within the sales tax law.

EPARC officials stated they were unable to determine the impact these definitions could have on sales tax collections.

ASSUMPTION (continued)

Officials from the **Department of Conservation (MDC)** assume these provisions would have an unknown fiscal impact, but greater than \$100,000 to their organization. MDC officials noted that Conservation Sales Tax funds are derived from a one - eighth of one percent sales and use tax pursuant to the Missouri Constitution and these provisions would expand the definition of "engaging in business" and "maintaining a business" within the state. MDC officials noted that any increase in sales and use tax collected would increase revenue to the Conservation Sales Tax funds, and assume the Department of Revenue would be better able to estimate the fiscal impact for this proposal.

Officials from the **Department of Natural Resources (DNR)** assume these provisions would modify existing law relating to Sales Tax and Compensating Use Tax. A presumption would be created that a vendor engages in business activities within this state if any person with a substantial nexus to Missouri performs certain activities in relation to the vendor within this state.

These provisions would void any agreement between the executive branch and any person, that would exempt that person from the collection of sales and use tax unless that agreement is approved by the General Assembly.

DNR officials noted that Parks and Soils Sales Tax Funds are derived from a one - tenth of one percent sales and use tax pursuant to the Missouri Constitution. DNR officials also noted that these provisions appear to expand who is required to collect the sales and use tax, potentially resulting in increased revenue for the Parks and Soils Sales Tax Funds.

DNR officials deferred to the Department of Revenue for an estimate of anticipated fiscal impact for the Parks and Soils Sales Tax Fund.

Officials from the **Department of Revenue (DOR)** assume these provisions would modify the current definition of "engaging in business" in this state for sales and use tax purposes. These provisions would require approval by the General Assembly for any ruling, agreement, or contract between a person and this state's agencies exempting any person from collecting sales and use tax despite the presence of a warehouse, distribution center, or fulfillment center in this state that is owned or operated by the person or an affiliated person. An "affiliated person" would mean any person that is a member of the same "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code as the vendor.

ASSUMPTION (continued)

A vendor would be presumed to "engage in business activities within this state" if any person, other than a common carrier acting in its capacity as such, that has substantial nexus with this state:

- 1) sells a similar line of products as the vendor and does so under the same or a similar business name,
- 2) maintains an office, distribution facility, warehouse, or storage place, or similar place of business in the state to facilitate the delivery of property or services sold by the vendor to the vendor's customers,
- 3) delivers, installs, assembles, or performs maintenance services for the vendor's customers within the state,
- 4) facilitates the vendor's delivery of property to customers in the state by allowing the vendor's customers to pick up property sold by the vendor at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in the state; or
- 5) conducts any other activities in the state that are significantly associated with the vendor's ability to establish and maintain a market in the state.

These provisions would allow for the rebuttal of those presumptions by demonstrating that the person's activities in the state are not significantly associated with the vendor's ability to establish or maintain a market in this state for the vendor's sales.

A vendor would also be presumed to engage in business in the state if that vendor enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, if the cumulative gross receipts from sales under such arrangements exceed ten thousand dollars during the preceding twelve months. The provision would allow for the rebuttal of this presumption by submitting sworn written statements from all of the residents with whom the vendor has such an agreement.

Fiscal impact

DOR officials assume these provisions would generate increased revenue from sellers located outside the state.

ASSUMPTION (continued)

Administrative impact

DOR officials assume Collections and Tax Assistance (CATA) would require one additional FTE Revenue Processing Technician I (Range 10, Step L) per 8,300 additional registrations / maintenance to business tax accounts in Business Tax Registration; one additional FTE Revenue Processing Technician I (Range 10, Step L) per 24,000 additional contacts annually to the registration phone line, with CARES equipment and agent license; and one additional FTE Revenue Processing Technician I (Range 10, Step L) per 4,800 contacts annually to the field offices, with CARES equipment and agent license.

The DOR response included three additional FTE along with the associated benefits, equipment, and expense, and totaled \$123,042 for FY 2014, \$122,613 for FY 2015, and \$123,903 for FY 2016.

Oversight assumes the DOR estimate of expense and equipment cost for the new FTE could be overstated. If DOR is able to use existing desks, file cabinets, chairs, etc., the estimate for equipment could be reduced by roughly \$6,000 per additional employee.

Oversight has, for fiscal note purposes only, changed the starting salary for the additional employees to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees, and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. Oversight has also adjusted the DOR estimate of equipment and expense in accordance with OA budget guidelines. Finally, Oversight assumes a limited number of additional employees could be accommodated in existing office space.

Oversight has not been able to locate any reliable information as to the potential impact of sales and use tax changes in these provisions other than the estimates provided by the Office of Administration - Division of Budget and Planning and the Department of Revenue. For fiscal note purposes, Oversight will assume that revenues from this provision would generate more new sales and use tax revenue than would be needed to provide the additional employees requested by the Department of Revenue. If additional revenues are not adequate to support the costs of collections, Oversight assumes the program would be terminated.

ASSUMPTION (continued)

Accordingly, **Oversight** will indicate additional revenues greater than DOR costs for the General Revenue Fund. Oversight will indicate revenues greater than \$100,000 per year for local governments and unknown additional revenues for the other state funds which receive general sales tax revenues. Oversight assumes the law changes in this provision would not have an impact on motor vehicle or motor fuel sales and will not include any fiscal impact for transportation funds.

Officials from **St. Louis County** assume these provisions would have the potential for additional revenue for their organization but were not able to determine a specific amount.

Bill as a whole

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials from the **Office of the Attorney General** assume that any potential costs arising from this provision could be absorbed with existing resources.

Officials from the **Joint Committee on Administrative Rules** assume that this provision would not have a fiscal impact to their organization in excess of existing resources.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE FUND			
<u>Additional revenue - DOR</u>			
Sales tax Sections 144.010, 144.030, and 144.605 RSMo.	More than \$112,424	More than \$107,294	More than \$108,497
<u>Revenue reduction - DOR</u>			
Corporate income tax Section 143.071	\$0	(\$15,357,000)	(\$15,357,000)
<u>Cost - Department of Revenue</u> Sections 144.010, 144.030, and 144.605 RSMo.			
Salaries and wages (3 FTE)	(\$57,840)	(\$69,408)	(\$70,102)
Benefits	(\$29,351)	(\$35,221)	(\$35,573)
Equipment and expense	<u>(\$25,233)</u>	<u>(\$2,665)</u>	<u>(\$2,732)</u>
<u>Total costs - DOR</u>	<u>(\$112,424)</u>	<u>(\$107,294)</u>	<u>(\$108,407)</u>
FTE change - DOR	3 FTE	3 FTE	3 FTE
		(\$15,357,000)	(\$15,357,000)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>Unknown</u>	<u>Unknown</u> to	<u>Unknown</u> to
Estimated Net FTE Impact on General Revenue Fund	3 FTE	3 FTE	3 FTE
CONSERVATION COMMISSION FUND			
<u>Additional revenue - sales tax</u> Sections 144.010, 144.030, and 144.605 RSMo.			
	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
PARKS, AND SOIL AND WATER FUND			
<u>Additional revenue</u> - sales tax Sections 144.010, 144.030, and 144.605 RSMo.	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON PARKS, AND SOIL AND WATER FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
SCHOOL DISTRICT TRUST FUND			
<u>Additional revenue</u> - sales tax Sections 144.010, 144.030, and 144.605 RSMo.	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2014 (10 Mo.)	 FY 2015	 FY 2016
LOCAL GOVERNMENTS			
<u>Additional revenue</u> - sales tax Sections 144.010, 144.030, and 144.605 RSMo.	More than <u>\$100,000</u>	More than <u>\$100,000</u>	More than <u>\$100,000</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	More than <u>\$100,000</u>	More than <u>\$100,000</u>	More than <u>\$100,000</u>

FISCAL IMPACT - Small Business

The sale tax provisions could have a direct fiscal impact to small businesses which meet the statutory definitions for collection of sales and use taxes, and the corporate income tax provisions would have a direct fiscal impact to any incorporated small business.

FISCAL DESCRIPTION

This proposal would reduce the corporate income tax rate from six and one - fourth percent of taxable income to six percent for years beginning on or after January 1, 2014.

This proposal also would modify current sales and use tax provisions. The term "engaging in business" would be changed. The use of media to exploit Missouri's market, control by the same interests as a seller engaged in a similar line of business, and the use of a common carrier in Missouri would no longer be considered to meet the definition.

The proposal would remove the current exemption for vendors whose gross receipts are less than certain amounts, do not maintain a place of business in Missouri, and have no selling agents in Missouri. This proposal would also require approval by both chambers of the General Assembly for any agreement by the executive branch to exempt any person from collection of sales tax.


The proposal would create a presumption that a vendor engages in business activities within this state if any person with a substantial nexus to Missouri performs certain activities in relation to the vendor within this state. That presumption could be rebutted by showing that the person's activities are not significantly associated with the vendor's ability to maintain a market in Missouri.

The proposal would create a second presumption that a vendor engages in business activities within this state if the vendor enters into an agreement with a resident of Missouri to refer customers to the vendor and the sales generated by that agreement exceeded \$10,000 in the preceding twelve months. This second presumption could be rebutted by showing that the Missouri resident did not engage in activity within Missouri that was significantly associated with the vendor's market in Missouri in the preceding twelve months.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Secretary of State
Office of the Attorney General
Joint Committee on Administrative Rules
Office of Administration - Division of Budget and Planning
Department of Conservation
Department of Natural Resources
Department of Revenue
University of Missouri - Economic and Policy Analysis Research Center
St. Louis County



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