

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4820-04
Bill No.: Truly Agreed To and Finally Passed CCS for SCS for SB 612
Subject: Arts and Humanities; Entertainment, Sports and Amusements; Libraries and Archives; Taxation and Revenue - Income
Type: Original
Date: June 12, 2014

Bill Summary: This proposal modifies provisions relating to taxation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	(Could exceed \$15,200,000)	(Could exceed \$15,200,000)	(Could exceed \$23,120,000)
Total Estimated Net Effect on General Revenue Fund	(Could exceed \$15,200,000)	(Could exceed \$15,200,000)	(Could exceed \$23,120,000)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 19 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Arts Council Trust	\$0	\$0	\$4,800,000
Humanities Council Trust	\$0	\$0	\$800,000
Library Networking	\$0	\$0	\$800,000
Public Television Broadcasting Corporation Special	\$0	\$0	\$800,000
Historic Preservation Revolving	\$0	\$0	\$720,000
Conservation Commission	(Could exceed \$100,000)	(Could exceed \$100,000)	(Could exceed \$100,000)
Parks, Soil and Water	(Could exceed \$100,000)	(Could exceed \$100,000)	(Could exceed \$100,000)
School District Trust	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(More than \$100,000)	(More than \$100,000)	Less than \$7,920,000

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on FTE	0	0	0

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 2015	FY 2016	FY 2017
Local Government	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Section 143.183, RSMO - Nonresident Entertainer and Athlete Income Tax:

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

BAP officials assume this proposal would extend the allocation of non-resident athlete and entertainers' income taxes through 2019, and assume the proposal would have no impact on Total State Revenues.

Officials from the **Department of Natural Resources (DNR)** assume this portion of the proposal would extend the current December 31, 2015, expiration date of the allocation of the Nonresident Entertainers and Professional Athletes Income Tax to December 31, 2020. DNR officials noted that subject to appropriation, ten percent of this tax is allocated annually and transferred from the General Revenue Fund to the Historic Preservation Revolving Fund to be made available for historic preservation efforts. DNR officials assume this proposal would allow the department to continue historic preservation efforts in Missouri.

Officials at the **Department of Revenue (DOR)** assume there would be no fiscal impact to their organization from this provision.

Oversight notes that current provisions for this program are in effect for tax years beginning on or after January 1, 1999 but not after December 31, 2015, and assumes that tax revenues from a return filed for a year which began on January 1, 2016, would not currently be subject to the program. Since tax returns for years beginning on or after January 1, 2016, would be filed beginning January 1, 2017, this proposal would have a fiscal impact for FY 2017.

Current provisions require the Commissioner of Administration to estimate each year the amount of state income tax revenues collected pursuant to the Nonresident Entertainers and Professional Athletes Income Tax. The amounts collected are required, subject to appropriation, to be transferred from the General Revenue Fund to the following funds, allocated as shown in the following chart.

ASSUMPTION (continued)

Oversight assumes this proposal would extend the sunset on the program, and extending the program would extend the current fiscal impact. Oversight notes the amounts actually appropriated and transferred have varied from year to year, and for fiscal note purposes will use the amounts appropriated for FY 2014 as shown below.

Fund	Percentage of estimated revenue	Amounts Appropriated for FY 2014
Missouri Arts Council Trust	60	\$4,800,000
Missouri Humanities Council Trust	10	\$800,000
Missouri State Library Networking	10	\$800,000
Missouri Public Television Broadcasting Corporation Special	10	\$800,000
Missouri Department of Natural Resources Missouri Historic Preservation Revolving	10	\$720,000

Section 143.451, RSMo - Allocation of Interstate Income for Corporate Income Tax:

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this provision would provide an additional method for allocating corporate taxable income. BAP officials noted the Department of Revenue provided information which indicated a revenue reduction up to \$15 million per year for this provision.

Officials from the **Department of Revenue (DOR)** stated this language would modify how a corporation computes the portion of income from all sources which is taxable in Missouri.

ASSUMPTION (continued)

Fiscal impact

DOR officials assume the new provisions would primarily apply to services and a Cost of Goods Sold at or below 50% would indicate a service business. The DOR estimate of impact for this provision was calculated by eliminating the portion of sales for corporations currently reported as "partially" in Missouri for those corporations based in Missouri which had a cost of sales percentage under 50%. DOR officials assumed those corporations were service businesses and their sales and would be reported as "outside" Missouri under the proposed language.

The DOR estimate indicated the loss to Total State Revenue could be \$15 million annually but DOR officials noted the proposed methodology could also be used by Limited Liability Corporations for individual pass-through income, and that possibility could result in additional revenue reductions. DOR officials did not provide an estimate of the potential revenue reduction for pass-through income.

DOR officials noted their calculation used information from 2011 because that is the last year for which the Department has the most complete information, and that corporations which would have paid additional taxes using the proposed methodology were excluded from the estimate.

Administrative Impact

DOR officials assume Corporate Tax would be required to make form changes and programming changes. In addition, Corporate Tax would require one additional Revenue Processing Technician I (Range 10, Step L) for every 7,800 of additional errors that are generated and one (1) Revenue Processing Technician I (Range 10, Step L) for every 2,600 pieces of additional correspondence that are generated.

The DOR estimate of cost to implement this proposal included two additional employees; with the related equipment and expenses, the estimate totaled \$80,066 for FY 2015, \$82,710 for FY 2016, and \$83,570 for FY 2017.

ASSUMPTION (continued)

Oversight notes this provision includes revised definitions to use in allocating the taxable income from multi-state transactions for Missouri corporations. Oversight does not have information regarding the number or amount of transactions which might be subject to those definitions; however, Oversight assumes virtually all corporate income tax returns are prepared by corporate officers or tax professionals and will assume for fiscal note purposes the proposal could be implemented with existing DOR resources. Oversight will indicate a reduction in income tax revenues up to the Department of Revenue estimate of \$15 million.

Section 144.021, RSMO - Notice of Sales Tax Law Changes:

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this provision would require the Department of Revenue to notify sellers of any change in sales tax law that results from a decision by the DOR, the Administrative Hearing Commission or a court. This will relieve the seller of any obligation to collect and remit tax until such notification is received, and may allow for refunds if a taxpayer had previously collected such taxes. BAP officials noted, that DOR provided an estimate indicating this would reduce Total State Revenue by at least \$100 million annually, of which \$75 million would be General Revenue.

Officials from the **Department of Revenue (DOR)** assume this provision would require DOR to notify all affected businesses if DOR, the Administrative Hearing Commission, or a court of competent jurisdiction changes the sales tax due on tangible personal property or taxable services under pursuant to sections 144.010 to 144.510.

DOR officials assume there would be no tax liability until the seller receives notification of a tax decision unless the seller had not been selling the product or service at the time of the decision, and stated this provision would allow any seller of a new product, or a product for which no express decision of taxability has been made, to avoid sales tax liability until notified of the collection requirements.

Fiscal impact

DOR officials assumed the notification requirement would reduce Total State Revenue by \$100 million or more, and would result in additional costs for personnel and postage.

ASSUMPTION (continued)

Oversight notes that in response to similar legislation this year, TAFP SB 662, DOR noted that the impact to Total State Revenue would be unknown. Oversight will show the impact therefore, as unknown.

Oversight does not have any way to estimate the number of decisions or the amount of sales tax due that might be affected by this provision; however, the proposed waiver of liability for taxes would only apply to sellers actively selling the type of tangible personal property or service affected by the decision on the date the decision is made or handed down. The waiver would not apply to any seller that has previously remitted tax on the tangible personal property or taxable services subject to the decision, nor to any seller that had prior notice that the seller must collect and remit the tax.

Oversight assumes the notification requirement would result in some reduction in revenues and for fiscal note purposes will include an unknown revenue reduction for the General Revenue Fund, for other state funds that receive sales tax revenues, and for local governments.

Administrative impact

DOR officials assumes Collections and Tax Assistance (CATA) would have additional customer contacts with questions on letters received, and would require two additional Revenue Processing Technicians I (Range 10, Step L) for additional contacts to the registration section and tax assistance offices. Each technician would require CARES equipment and license.

DOR officials noted the Department does not maintain information regarding items sold by each business, and assume Sales Tax would need to notify approximately 140,000 businesses registered for sales and use tax in Missouri any time the state sales tax requirements change. DOR officials assume the notifications may be required up to five times per year, depending on the types of cases heard by the courts. The Department is unsure how it would notify businesses that are not currently registered for sales tax or use tax, but sell taxable tangible personal property or services.

DOR officials estimated the annual cost of notifications as $(140,000 \text{ businesses} \times 5 \text{ notices per year}) = 700,000 \text{ mailing per year}$, and $(700,000 \text{ mailings per year} \times \$0.555 \text{ cost per notice}) = \$388,500$.

ASSUMPTION (continued)

DOR officials assume Sales Tax would not need additional staff to issue the notifications, but up to 40 hours of overtime may be required, and the Department would need computer programming by ITSD to create a notifications process.

Finally, DOR officials assume the notifications may result in additional contacts from taxpayers.

The DOR estimate of cost to implement this provision including two additional employees, the related benefits, equipment and expense, and the cost of mailing notifications to businesses totaled \$473,180 for FY 2015, \$471,210 for FY 2016, and \$472,070 for FY 2017.

Oversight does not have information as to the number of decisions by the Department of Revenue, the Administrative Hearing Commission, or the courts regarding sales tax issues, but assumes the mandatory notification requirement would result in significant additional cost to DOR. Oversight also assumes existing communication with sellers of goods and taxable services would reduce the cost of notifying those merchants. Accordingly, Oversight will indicate a cost in excess of \$100,000 per year to include full-time and temporary employees, benefits, and expense and equipment for DOR to implement this proposal.

Oversight assumes DOR would not be required to directly contact unregistered businesses regarding sales or use tax decisions; the Department could notify unregistered merchants of sales tax program changes through notifications for other DOR programs, in publications, and on the DOR website.

IT impact

DOR officials provided an estimate of the IT cost to implement this provision of \$2,184 based on 80 hours of programming to identify businesses impacted under this legislation and generate notifications.

Oversight assumes OA - ITSD (DOR) is provided with core funding to handle a certain amount of activity each year. Oversight assumes OA - ITSD (DOR) could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, OA - ITSD (DOR) could request funding through the appropriation process.

ASSUMPTION (continued)

Section 144.054, RSMo - Sales Tax Exemption for Commercial Laundries:

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this provision would provide a sales tax exemption for all materials, manufactured goods, machinery and parts, energy, chemicals, and other cleaning agents used to treat and clean textiles by commercial laundries are exempt from sales taxes. Based on information provided by the Department of Revenue, BAP officials estimated this provision would reduce Total State Revenue by \$2 million annually, of which \$1.4 million would be General Revenue.

Officials from the **Department of Natural Resources (DNR)** assume this provision would create a sales and use tax exemption for material, machinery, and energy used by commercial laundries in treating or cleaning textiles. The facility would be required to process at least 500 pounds per hour and 60,000 pounds per week to qualify for the exemption. The Department's Parks and Soils Sales Tax Funds are derived from one-tenth of one percent sales and use tax pursuant to Article IV Section 47(a) of the Missouri Constitution. Therefore, any additional sales and use tax exemption would be a loss to the Parks and Soils Sales Tax Funds.

The department assumes the Department of Revenue would be better able to estimate the exact amount of impact to the Parks and Soils Sales Tax Fund.

Officials from the **Department of Revenue (DOR)** assume this provision would exempt all materials, manufactured goods, utilities, etc, used by commercial or industrial laundries to treat, clean, and sanitize textiles in facilities which process at least 500 pounds of textiles per hour and 60,000 pounds per week.

DOR officials noted the Department has denied refund claims of approximately \$315,000 submitted by a small number of commercial laundries over the past three years. If this legislation were approved, the Department expects the frequency and dollar amount would dramatically increase, and assume this could reduce Total State Revenue by at least \$2 million annually.

ASSUMPTION (continued)

Oversight notes the DOR estimate of reduction in Total State Revenue would indicate currently taxable sales of $(\$2,000,000 / .04225) = \47.3 million. For convenience, Oversight will round the estimate of taxable sales to \$50 million, and notes the sales tax on that amount of sales would be as shown below.

Fund or entity	Sales Tax Rate	Revenue Reduction
General Revenue	3.000%	\$1,500,000
Conservation	0.125%	\$62,500
Parks and Soil	0.100%	\$50,000
School District Trust	1.000%	\$500,000
Total state	4.225%	\$2,112,500
Local governments *	3.700%	\$1,850,000
TOTAL		\$3,962,500
* The 3.7% local sales tax rate is an average calculated by Oversight based on collections reported by the Department of Revenue.		

For fiscal note purposes, Oversight will indicate a revenue reduction greater than \$100,000 for the General Revenue Fund, the School District Trust Fund, and for local governments. Oversight will indicate a revenue reduction less than \$100,000 for the other state funds that receive sales tax revenues.

Oversight notes that sales tax revenues in the School District Trust Fund are distributed to local school districts along with other revenues in the fund but will not include those transfers in this fiscal note.

ASSUMPTION (continued)

Bill as a Whole Responses

Officials from the **Department of Economic Development**, the **Joint Committee on Administrative Rules**, the **Office of Administration** and the **Office of State Treasurer** each assume there would be no fiscal impact to their respective organizations from this proposal.

In response to a previous version of this proposal, 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.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
GENERAL REVENUE FUND			
<u>Transfer out - Arts Council Trust Fund</u> Section 143.183	\$0	\$0	(\$4,800,000)
<u>Transfer out - Humanities Council Trust Fund</u> Section 143.183	\$0	\$0	(\$800,000)
<u>Transfer out - Library Networking Fund</u> Section 143.183	\$0	\$0	(\$800,000)
<u>Transfer out - Public Television Broadcasting Corporation Special Fund</u> Section 143.183	\$0	\$0	(\$800,000)
<u>Transfer out - Historic Preservation Revolving Fund</u> Section 143.183	\$0	\$0	(\$720,000)
<u>Revenue reduction - Income tax</u> Changes in corporate revenue allocation Section 143.451	(Up to \$15,000,000)	(Up to \$15,000,000)	(Up to \$15,000,000)
<u>Revenue Reduction - Sales Tax</u> Exemption for commercial laundries Section 144.054	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
<u>Revenue reduction - Merchant notification requirement</u> Section 144.021	(Unknown)	(Unknown)	(Unknown)
<u>Cost - DOR</u> Merchant notification system Section 144.021	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(Could exceed <u>\$15,200,000</u>)	(Could exceed <u>\$15,200,000</u>)	(Could exceed <u>\$23,120,000</u>)

<u>FISCAL IMPACT - State Government</u> (Continued)	FY 2015 (10 Mo.)	FY 2016	FY 2017
ARTS COUNCIL TRUST FUND			
<u>Transfer in</u> - General Revenue Fund Section 143.183	<u>\$0</u>	<u>\$0</u>	<u>\$4,800,000</u>
ESTIMATED NET EFFECT ON ARTS COUNCIL TRUST FUND	<u>\$0</u>	<u>\$0</u>	<u>\$4,800,000</u>
HUMANITIES COUNCIL TRUST FUND			
<u>Transfer in</u> - General Revenue Fund Section 143.183	<u>\$0</u>	<u>\$0</u>	<u>\$800,000</u>
ESTIMATED NET EFFECT ON HUMANITIES COUNCIL TRUST FUND	<u>\$0</u>	<u>\$0</u>	<u>\$800,000</u>
LIBRARY NETWORKING FUND			
<u>Transfer in</u> - General Revenue Fund Section 143.183	<u>\$0</u>	<u>\$0</u>	<u>\$800,000</u>
ESTIMATED NET EFFECT ON LIBRARY NETWORKING FUND	<u>\$0</u>	<u>\$0</u>	<u>\$800,000</u>

<u>FISCAL IMPACT - State Government</u> (Continued)	FY 2015 (10 Mo.)	FY 2016	FY 2017
PUBLIC TELEVISION BROADCASTING CORPORATION SPECIAL FUND			
<u>Transfer in - General Revenue Fund</u> Section 143.183	<u>\$0</u>	<u>\$0</u>	<u>\$800,000</u>
ESTIMATED NET EFFECT ON PUBLIC TELEVISION BROADCASTING CORPORATION SPECIAL FUND	<u>\$0</u>	<u>\$0</u>	<u>\$800,000</u>
HISTORIC PRESERVATION REVOLVING FUND			
<u>Transfer in - General Revenue Fund</u> Section 143.183	<u>\$0</u>	<u>\$0</u>	<u>\$720,000</u>
ESTIMATED NET EFFECT ON HISTORIC PRESERVATION REVOLVING FUND	<u>\$0</u>	<u>\$0</u>	<u>\$720,000</u>
CONSERVATION COMMISSION			
<u>Revenue Reduction - Sales Tax</u> Exemption for commercial laundries Section 144.054	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Revenue reduction - Merchant</u> notification requirement Section 144.021	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION	(Could exceed <u>\$100,000</u>)	(Could exceed <u>\$100,000</u>)	(Could exceed <u>\$100,000</u>)

<u>FISCAL IMPACT - State Government</u> (Continued)	FY 2015 (10 Mo.)	FY 2016	FY 2017
PARKS, SOIL AND WATER FUND			
<u>Revenue Reduction - Sales Tax</u>			
Exemption for commercial laundries Section 144.054	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Revenue reduction - Merchant notification requirement</u>			
Section 144.021	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON PARK, SOIL AND WATER FUND	(Could exceed <u>\$100,000</u>)	(Could exceed <u>\$100,000</u>)	(Could exceed <u>\$100,000</u>)
SCHOOL DISTRICT TRUST FUND			
<u>Revenue Reduction - Sales Tax</u>			
Exemption for commercial laundries Section 144.054	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
<u>Revenue reduction - Merchant notification requirement</u>			
Section 144.021	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
LOCAL GOVERNMENTS			
<u>Revenue Reduction - Sales Tax</u>			
Exemption for commercial laundries Section 144.054	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
<u>Revenue reduction - Merchant notification requirement</u>			
Section 144.021	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>

FISCAL IMPACT - Small Business

Small businesses may be impacted by this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to taxation.

The Nonresident Entertainer and Athlete Income Tax allocation, subject to appropriation, would be extended through December 31, 2020.

A new method for allocating interstate sales revenues for corporations would be provided. Currently, in determining what portion of a corporation's income is taxable in Missouri, the business may use a method whereby the ratio of instate sales to total sales is multiplied by the net income. A method for determining whether sales of tangible property are to be considered instate is already established in current law. This proposal would specify a process for all other sales.

For sales of real property or rentals of tangible personal property, the portion of the property sold or rented that is located in this state will be considered an instate sale. For sales of service, the portion of the benefits delivered to purchasers in this state will be considered an instate sale.

FISCAL DESCRIPTION (continued)

For rentals or licenses of intangible property, the portion used in this state by the rentee or licensee will be considered an instate sale. Intangible property used for marketing will be considered used in this state if the good or service being marketed is purchased by a consumer in this state. Franchise fees or royalties for intangible property are considered used in this state if the franchise is located in this state.

For sales of intangible property, the portion of the sale used in this state will be considered an instate sale. If the sale is for the right to conduct business activity in a certain geographic area, the sale will be instate if the geographic area is in this state. If receipts for sales of intangible property are dependent on use or productivity, such sale shall be considered a lease or rental of intangible property. All sales of intangible property other than the right to conduct business in a specific area or sales with receipts contingent on productivity or use will be excluded from the sales factor when determining corporate income tax.

If it can not be determined or reasonably approximated that a sale occurs in this state, such sale shall be excluded from the sales factor for corporate income taxation.

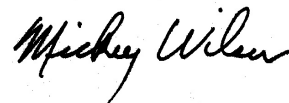
This proposal would require the Department of Revenue to notify sellers if there has been a change in the interpretation of sales tax laws that modifies which items of personal property or services are taxable. If the Department fails to notify a seller of the change, the seller would not be liable for the additional taxes to be collected until the seller is notified.

This proposal would create a sales tax exemption for material, machinery, and energy used by commercial laundries in treating or cleaning textiles. The facility must process at least 500 pounds per hour and 60,000 pounds per week to qualify for the exemption.

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

Department of Economic Development
Department of Natural Resources
Department of Revenue
Joint Committee on Administrative Rules
Office of Administration
 Division of Budget and Planning
Office of State Treasurer
Office of the Secretary of State



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