

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5000-04  
Bill No.: Truly Agreed To and Finally Passed CCS for HCS for SB 662  
Subject: Business and Commerce; Revenue Department; Taxation and Revenue - Sales and Use  
Type: Original  
Date: June 11, 2014

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Bill Summary: This proposal would provide a new option for income tax reporting of interstate sales by corporations. This proposal would also require the Department of Revenue to notify affected sellers of certain decisions modifying sales tax law and would authorize a seller to advertise that the sales tax will be assumed or absorbed if the amount of tax is separately stated. Finally, this proposal would provide a sales tax exemption for fees charged for the first opportunity to purchase or decline tickets for admission to events at the Sprint Center in Kansas City.

**FISCAL SUMMARY**

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

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 14 pages.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
School District Trust	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
Conservation Commission	(Unknown)	(Unknown)	(Unknown)
Parks, and Soil and Water	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(More than \$100,000)</b>	<b>(More than \$100,000)</b>	<b>(More than \$100,000)</b>

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

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

- 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).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Local Government</b>	<b>(More than \$100,000)</b>	<b>(More than \$100,000)</b>	<b>(More than \$100,000)</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

**Section 143.451, RSMo. - Corporate Income Tax on Interstate Transactions:**

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 of \$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.

**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.

ASSUMPTION (continued)

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 similar language in another 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.

**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.

ASSUMPTION (continued)

Section 144.021, RSMo. - Notification of Changes to Sales Tax Law:

Officials from the **Office of Administration - Division of Budget and Planning** assume this provision would require the Department of Revenue (DOR) to notify sellers of any change in sales tax law that results from a decision by DOR, the Administrative Hearing Commission, or a court. This language would relieve the seller of any obligation to collect and remit tax until such notification is received, and BAP received from information from DOR which indicated this provision would reduce Total State Revenue by an unknown amount.

Officials from the **Department of Revenue** 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 an unknown amount, and would result in additional costs for personnel and postage.

**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.

ASSUMPTION (continued)

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 businesses x 5 notices per year) = 700,000 mailing per year, and (700,000 mailings per year x \$0.555 cost per notice) = \$388,500.

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.

ASSUMPTION (continued)

**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.

Section 144.080, RSMo. - Advertising the Assumption of Sales Tax by Sellers:

Officials from the **Office of Administration - Division of Budget and Planning** noted this proposal would allow a seller to advertise that sales tax will be assumed or absorbed into the price of goods or services, provided the amount of the tax is displayed on the receipt or invoice. BAP officials assume this proposal would have no direct impact on Total State Revenues.

Officials from the **Department of Revenue** assume this provision would have no fiscal impact on their organization.

**Oversight** assumes this provision would have no impact on the state or on local governments.

ASSUMPTION (continued)

Section 144.1030 Sales Tax Exemption for Right of First Refusal Fees:

Officials from the **Office of Administration - Division of Budget and Planning** noted this provision would provide a sales tax exemption for right of first refusal for tickets at the Kansas City Sprint Center. BAP officials assume this provision would reduce Total State Revenues, including those for schools. BAP officials provided an estimate from the Department of Revenue which indicated a state revenue reduction of \$0.7 million annually, of which \$0.5 million would be due to the General Revenue Fund.

Officials from the **Department of Revenue** assume this provision would provide a sales tax exemption for the right of first opportunity to purchase admission to events, and provided an estimate that exempting those sales could result in a loss of Total State Revenue of up to \$700,000.

**Oversight** notes the estimate provided by BAP and DOR indicates currently taxable sales of  $(\$500,000/.03) = \$16.667$  million; our calculations of the potential revenue reductions for that amount of sales are shown in the following chart.

Fund or Entity	Sales Tax Rate	Revenue Reduction
General Revenue	3.000%	\$500,000
School District Trust	1.000%	\$166,667
Conservation Commission	0.125%	\$20,833
Parks, and Soil and Water	0.100%	\$16,667
Local Governments *	3.700%	\$616,667
* The 3.7% average local sales tax rate was calculated by Oversight based on sales tax collections reported by the Department of Revenue.		



ASSUMPTION (continued)

For fiscal note purposes, **Oversight** will include a revenue reduction more than \$100,000 per year for the General Revenue Fund, the School District Trust Fund, and local governments, and less than \$100,000 per year for the Conservation Commission Fund and the Parks, and Soil and Water Fund. Oversight notes that sales tax revenues in the School District Trust Fund are distributed along with other revenues in the fund to local school districts but will not include those distributions in this fiscal note.

Bill as a whole responses

In response to a previous version of this proposal, officials from the **Office of the Secretary of State (SOS)** assumed 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 **Joint Committee on Administrative Rules** assume this proposal would not have a fiscal impact to their organization in excess of existing resources.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
<b>GENERAL REVENUE FUND</b>			
<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 - Merchant notification requirement</u>			
Section 144.021	(Unknown)	(Unknown)	(Unknown)
<u>Cost - DOR</u>			
Merchant notification system Section 144.021	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
<u>Revenue reduction - Sales tax exemption for right of first refusal fees Section</u>			
144.1030	(More than <u>\$100,000</u> )	(More than <u>\$100,000</u> )	(More than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b>(Could exceed <u>\$15,200,000</u>)</b>	<b>(Could exceed <u>\$15,200,000</u>)</b>	<b>(Could exceed <u>\$15,200,000</u>)</b>
<b>SCHOOL DISTRICT TRUST FUND</b>			
<u>Revenue reduction - Merchant notification requirement</u>			
Section 144.021	(Unknown)	(Unknown)	(Unknown)
<u>Revenue reduction - Sales tax exemption for right of first refusal fees Section</u>			
144.1030	(More than <u>\$100,000</u> )	(More than <u>\$100,000</u> )	(More than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND</b>	<b>(More than <u>\$100,000</u>)</b>	<b>(More than <u>\$100,000</u>)</b>	<b>(More than <u>\$100,000</u>)</b>

FISCAL IMPACT - State Government                      FY 2015                      FY 2016                      FY 2017  
 (Continued)                      (10 Mo.)

**CONSERVATION COMMISSION  
 FUND**

Revenue reduction - Merchant notification  
 requirement  
 Section 144.021                      (Unknown)                      (Unknown)                      (Unknown)

Revenue reduction - Sales tax exemption  
 for right of first refusal fees Section  
 144.1030                      (Less than  
\$100,000)                      (Less than  
\$100,000)                      (Less than  
\$100,000)

**ESTIMATED NET EFFECT ON  
 CONSERVATION COMMISSION  
 FUND**                      **(Unknown)**                      **(Unknown)**                      **(Unknown)**

**PARKS, AND SOIL AND WATER  
 FUND**

Revenue reduction - Merchant notification  
 requirement  
 Section 144.021                      (Unknown)                      (Unknown)                      (Unknown)

Revenue reduction - Sales tax exemption  
 for right of first refusal fees Section  
 144.1030                      (Less than  
\$100,000)                      (Less than  
\$100,000)                      (Less than  
\$100,000)

**ESTIMATED NET EFFECT ON  
 PARKS, AND SOIL AND WATER  
 FUND**                      **(Unknown)**                      **(Unknown)**                      **(Unknown)**

<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
<b>LOCAL GOVERNMENTS</b>			
<u>Revenue reduction</u> - Merchant notification requirement Section 144.021	(Unknown)	(Unknown)	(Unknown)
<u>Revenue reduction</u> - Sales tax exemption for right of first refusal fees Section 144.1030	(More than <u>\$100,000</u> )	(More than <u>\$100,000</u> )	(More than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS</b>	<b>(More than <u>\$100,000</u>)</b>	<b>(More than <u>\$100,000</u>)</b>	<b>(More than <u>\$100,000</u>)</b>

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact to small businesses which have interstate sales or are subject to sales tax.

## FISCAL DESCRIPTION

### Allocation of Interstate Sales for Corporations

This proposal would revise the process for determining the portion of a corporation's interstate sales income that is taxable in Missouri.

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 would be considered an instate sale. For sales of service, the portion of the benefits delivered to purchasers in this state would be considered an instate sale.

For rentals or licenses of intangible property, the portion used in this state by the lessee or licensee would be considered an instate sale. Intangible property used for marketing would 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 would be considered an instate sale. If the sale is for the right to conduct business activity in a certain geographic area, the sale would 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 would 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 would be excluded from the sales factor for corporate income taxation.

### Notification to Sellers of Sales Tax Law Changes

This proposal would require the Department of Revenue to notify affected sellers of certain decisions modifying sales tax law.

### Assumption of Sales Tax by Seller

This proposal would allow a seller to advertise that sales tax would be assumed or absorbed in the price of the property sold or the service rendered, if the amount of the tax is stated on the invoice or receipt.

FISCAL DESCRIPTION (continued)

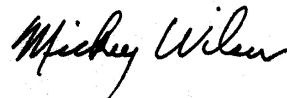
Sales Tax Exemption for Right of First Refusal Fees

This proposal would create a sales and use tax exemption for right of first refusal fees at the Sprint Center in Kansas City.

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  
Joint Committee on Administrative Rules  
Office of Administration  
    Division of Budget and Planning  
Department of Revenue



Mickey Wilson, CPA  
Director  
June 11, 2014

Ross Strobe  
Assistant Director  
June 11, 2014