

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5085-03
Bill No.: SCS for HCS for HB 1296 with SA1
Subject: Business and Commerce; Corporations; Taxation and Revenue - Income;
Taxation and Revenue - Sales and Use
Type: Original
Date: May 12, 2014

Bill Summary: This proposal would authorize a seller to advertise that the required sales tax will be assumed or absorbed into the price of the property sold or the services rendered if the amount of the tax is separately stated. The proposal would also provide a new option for income tax reporting of interstate sales by corporations, and would add certain graphing calculators to the list of items that are exempted from sales tax during the annual sales tax holiday for school supplies.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	(Up to \$15,000,000)	(Up to \$15,442,989)	(Up to \$15,442,989)
Total Estimated Net Effect on General Revenue Fund	(Up to \$15,000,000)	(Up to \$15,442,989)	(Up to \$15,442,989)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
School District Trust	\$0	(Up to \$147,663)	(Up to \$147,663)
Conservation Commission	\$0	(Up to \$18,458)	(Up to \$18,458)
Parks, and Soil and Water	\$0	(Up to \$14,766)	(Up to \$14,766)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	(Up to \$180,887)	(Up to \$180,887)

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	\$0	(Up to \$546,353)	(Up to \$546,353)

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 proposal would change the methodology for determining the portion of a corporation's income which is taxable in Missouri, and deferred to the Department of Revenue for an estimate of the impact.

In response to similar language in HCS for SB 693 LR 5185-02, officials from the **Department of Revenue (DOR)** stated this language would provide, for purposes of income allocation, that transactions involving sales other than the sale of tangible personal property would be considered in this state if the taxpayer's market is in this state.

DOR officials prepared an estimate of the impact for these provisions which suggests the total loss of state revenue from this provision could be as much as \$10 to \$15 million annually.

DOR officials stated their calculation used 2011 information because that is the most recent year the Department has complete corporate information. DOR officials stated their understanding of the language in these provisions was to eliminate the current "partially within/partially without" category from the one-factor and three-factor allocation procedures and make sales either "in" or "out" of Missouri for corporate income tax reporting purposes. DOR officials also stated they assumed the new provisions would primarily apply to services.

ASSUMPTION (continued)

DOR officials stated they calculated their estimate of impact by eliminating the reported "partially" sales for corporations with a cost of sales percentage under 50% for companies based in Missouri assuming those sales were services and would be reported as "outside" Missouri under the proposed language.

Oversight notes this provision includes definitions to use in allocating the taxable income from multi-state transactions to determine the taxable amount for Missouri. Oversight does not have information regarding the number or amount of transactions which might be subject to those definitions. For fiscal note purposes, Oversight will indicate a reduction in income tax revenues up to the Department of Revenue estimate of \$15 million.

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

Officials from the **Office of the Attorney General** assume any potential costs arising from a previous version of this proposal this proposal could be absorbed with existing resources.

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

BAP officials noted this proposal would allow a seller to advertise that the required sales tax will be assumed or absorbed into the price of goods or services if 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** assumed a previous version of this proposal would have no fiscal impact on their organization.

Oversight assumes these provisions would have no impact on the state or on local governments.

ASSUMPTION (continued)

Bill as a whole responses

In response to similar provision in other proposals, 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** assumed similar provisions in other proposals would have no fiscal impact on their organization.

Amendments

Senate Amendment 1 would add certain graphing calculators to the list of items that are exempted from sales tax during the annual sales tax holiday for school supplies.

Officials from the **Joint Committee on Administrative Rules** assumed similar language in HB 1165 LR 4052-1 would not have a fiscal impact to their organization in excess of existing resources.

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assumed similar language in HB 1165 LR 4052-1 would add graphing calculators valued at \$150 or less to the sales tax holiday in August. According to information supplied to BAP by the Department of Elementary and Secondary Education (DESE), there were 98,442 students enrolled in Pre-Algebra or Algebra I in 2012. BAP officials assume each of these students was a new algebra student that required a new graphing calculator, which would result in $(98,442 \times \$150) = \$14,766,300$ in purchases.

ASSUMPTION (continued)

BAP officials stated they could not determine how many of those purchases would be made in stores vs. by e-commerce, nor does BAP have data to indicate how many of these sales might occur during the holiday. Therefore, BAP officials assume this proposal could reduce revenues as much as shown below.

Potential calculator sales

Algebra students	98,442
Calculator cost	\$150
Potential sales	\$14,766,300

Potential revenue reduction

Fund	Sales Tax Rate	Estimated Revenue Reduction
General Revenue	3.000%	\$442,989
School District Trust	1.000%	\$147,663
Conservation Commission	0.125%	\$18,458
Parks, and Soil and Water	0.100%	\$14,766

For fiscal note purposes, **Oversight** will indicate a revenue reduction up to the amounts calculated above for these funds. Oversight notes that sales tax revenue in the School District Trust Fund are allocated to Missouri school districts according to a formula in Section 163.087, RSMo. but Oversight will not include those distributions in this fiscal note.

Oversight notes local governments revenues could be reduced as much as $(\$14,766,300 \times .037) = \$546,353$. The 3.7 percent average local government sales tax rate was calculated by Oversight based on tax collections reported by the Department of Revenue. Oversight will indicate a revenue reduction up to the amount calculated. Oversight also notes that the proposal would become effective after the sales tax holiday in August of 2014 (FY 2015) so the first impact would be in FY 2016.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
GENERAL REVENUE FUND			
<u>Revenue reduction - Income tax</u>			
Changes in corporate sales allocation methodology	(Up to	(Up to	(Up to
Section 143.451	\$15,000,000)	\$15,000,000)	\$15,000,000)
<u>Revenue reduction - DOR</u>			
Sales tax exemption for graphing calculators		(Up to	(Up to
Section 144.049	<u>\$0</u>	<u>\$442,989)</u>	<u>\$442,989)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(Up to <u>\$15,000,000</u>)	(Up to <u>\$15,442,989</u>)	(Up to <u>\$15,442,989</u>)
SCHOOL DISTRICT TRUST FUND			
<u>Revenue reduction - DOR</u>			
Sales tax exemption for graphing calculators		(Up to	(Up to
Section 144.049	<u>\$0</u>	<u>\$147,663)</u>	<u>\$147,663)</u>
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	<u>\$0</u>	(Up to <u>\$147,663</u>)	(Up to <u>\$147,663</u>)
CONSERVATION COMMISSION FUND			
<u>Revenue reduction - DOR</u>			
Sales tax exemption for graphing calculators			
Section 144.049	<u>\$0</u>	<u>(Up to \$18,458)</u>	<u>(Up to \$18,458)</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	<u>\$0</u>	(Up to <u>\$18,458</u>)	(Up to <u>\$18,458</u>)

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2015 (10 Mo.)	FY 2016	FY 2017
--	---------------------	---------	---------

PARKS, AND SOIL AND WATER FUNDS

<u>Revenue reduction - DOR</u> Sales tax exemption for graphing calculators Section 144.049	\$0	<u>(Up to \$14,766)</u>	<u>(Up to \$14,766)</u>
--	-----	-------------------------	-------------------------

ESTIMATED NET EFFECT ON PARKS, AND SOIL AND WATER FUNDS	<u>\$0</u>	<u>(Up to \$14,766)</u>	<u>(Up to \$14,766)</u>
--	-------------------	--------------------------------	--------------------------------

<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
---	---------------------	---------	---------

LOCAL GOVERNMENTS

<u>Revenue reduction - DOR</u> Sales tax exemption for graphing calculators Section 144.049	\$0	(Up to <u>\$546,353</u>)	(Up to <u>\$546,353</u>)
--	-----	------------------------------	------------------------------

ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>\$0</u>	<u>(Up to \$546,353)</u>	<u>(Up to \$546,353)</u>
--	-------------------	-------------------------------------	-------------------------------------

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact to a small business with out of state sales as defined in the proposed language.

FISCAL DESCRIPTION

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 act specifies 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.

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.

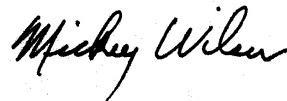
If it can not be determined or reasonably approximated that a sale occurs in this state, such sale shall be excluded from the sales factor for corporate income taxation.

This proposal would also add a graphing calculator with a taxable value of \$150 or less to the list of items that are exempt from sales tax during the annual sales tax holiday for school supplies.

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 Revenue



Mickey Wilson, CPA
Director
May 12, 2014

Ross Strobe
Assistant Director
May 12, 2014