

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5085-03
Bill No.: Truly Agreed To and Finally Passed SCS for HCS for HB 1296
Subject: Taxation and Revenue - Sales and Use; Merchandising Practices; Business and Commerce
Type: Original
Date: June 9, 2014

Bill Summary: This proposal would provide a new option for income tax reporting of interstate sales by corporations. In addition, this proposal 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 make certain graphing calculators eligible for the sales tax exemption during the annual back-to-school sales tax holiday.

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 12 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 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.

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 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.

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 144.049 Sales Tax Exemption for Certain Graphing Calculators

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this proposal would add graphing calculators valued at \$150 or less to the sales tax holiday in August.

ASSUMPTION (continued)

BAP officials noted they had received information from the Department of Elementary and Secondary Education indicating there were 98,442 students enrolled in Pre-Algebra or Algebra I in 2012, and BAP officials assumed each of those students was a new algebra student that required a new graphing calculator, or $(98,442 \times \$150) = \$14,766,300$ in estimated sales. BAP officials stated they had no data to indicate how many of the purchases were made in stores vs. by e-commerce, nor does BAP have data to indicate how many of these sales might occur during the holiday.

Accordingly, BAP officials assume this proposal could reduce revenues up to the amounts below.

General Revenue Fund	\$442,989
School District Trust Fund	\$147,663
Conservation Commission Fund	\$18,458
Parks, and Soil and Water Funds	\$14,766

BAP officials also noted it is possible (or even likely) that not every student would make a qualifying calculator purchase, and estimated a revenue reduction for the General Revenue Fund of \$0.1 million, and a smaller revenue reduction for dedicated state funds.

ASSUMPTION (continued)

Oversight will indicate revenue reductions up to the amounts calculated by BAP; and assumes local governments would also have comparable revenue reductions. Oversight also notes 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.

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
Local Governments *	3.700%	\$546,353

* The 3.7% local government average sales tax rate was calculated by Oversight based on tax collections reported by the Department of Revenue.

Officials from the **Department of Revenue (DOR)** noted this provision would add graphing calculators with a value of \$150 or less to the list of items that qualify as school supplies, and assume the proposal would exempt those items from sales tax during the annual sales tax holiday.

Fiscal impact

DOR officials assumed the additional item eligible for the sales tax holiday could reduce Total State Revenue but did not provide an estimate of fiscal impact, and suggested the Office of Administration - Division of Budget and Planning may be able to provide an estimate of the revenue impact.

ASSUMPTION (continued)

Administrative Impact

DOR officials assume Sales Tax would need to update their website, the sales tax holiday letter, and the related regulation. Otherwise, this legislation would not have an impact on the Department of Revenue.

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

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** 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)

Bill as a whole responses

Officials from the **Office of the Secretary of State (SOS)** stated in response to a previous version of this proposal that 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.

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

<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 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 exemption on graphing calculators</u>			
Section 144.049	<u>\$0</u>	<u>(Up to \$442,989)</u>	<u>(Up to \$442,989)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Up to \$15,000,000)</u>	<u>(Up to \$15,442,989)</u>	<u>(Up to \$15,442,989)</u>
CONSERVATION COMMISSION FUND			
<u>Revenue reduction - Sales tax exemption for graphing calculators</u>			
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>	<u>(Up to \$18,458)</u>	<u>(Up to \$18,458)</u>
PARKS, AND SOIL AND WATER FUND			
<u>Revenue reduction - Sales tax exemption for graphing calculators</u>			
Section 144.049	<u>\$0</u>	<u>(Up to \$14,766)</u>	<u>(Up to \$14,766)</u>
ESTIMATED NET EFFECT ON PARKS, AND SOIL AND WATER FUND	<u>\$0</u>	<u>(Up to \$14,766)</u>	<u>(Up to \$14,766)</u>

<u>FISCAL IMPACT - State Government</u> (Continued)	FY 2015 (10 Mo.)	FY 2016	FY 2017
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SCHOOL DISTRICT TRUST FUND

<u>Revenue reduction</u> - Sales tax exemption for graphing calculators Section 144.049	\$0	(Up to <u>\$147,663</u>)	(Up to <u>\$147,663</u>)
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ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	<u>\$0</u>	(Up to <u>\$147,663</u>)	(Up to <u>\$147,663</u>)
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<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
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LOCAL GOVERNMENTS

<u>Revenue reduction</u> - Sales tax exemption for graphing calculators Section 144.049	\$0	(Up to <u>\$546,353</u>)	(Up to <u>\$546,353</u>)
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>\$0</u>	(Up to <u>\$546,353</u>)	(Up to <u>\$546,353</u>)
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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

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.

Sales Tax Exemption for Graphing Calculators

This proposal would add graphing calculators with a taxable value of \$150 or less to the items exempted from state sales tax during the annual sales tax holiday for school supplies.

FISCAL DESCRIPTION (continued)

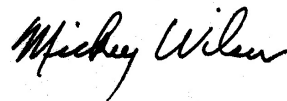
Assumption of Sales Tax by Seller

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.

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
June 9, 2014

Ross Strobe
Assistant Director
June 9, 2014