

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1864-01
Bill No.: SB 416
Subject: Taxation and Revenue - Sales and Use
Type: Original
Date: February 27, 2017

Bill Summary: This proposal would exempt the purchase of utilities for certain food preparation uses from state sales and use taxes.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	(\$6,189,386 to \$10,231,386)	(\$7,314,519 to \$12,164,519)	(\$7,314,906 to \$12,164,906)
Total Estimated Net Effect on General Revenue	(\$6,189,386 to \$10,231,386)	(\$7,314,519 to \$12,164,519)	(\$7,314,906 to \$12,164,906)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
School District Trust	(\$2,021,000 to \$3,368,000)	(\$2,425,000 to \$4,042,000)	(\$2,425,000 to \$4,042,000)
Conservation Commission	(\$253,000 to \$421,000)	(\$303,000 to \$505,000)	(\$303,000 to \$505,000)
Parks, and Soil and Water	(\$202,000 to \$337,000)	(\$243,000 to \$404,000)	(\$243,000 to \$404,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$2,476,000 to \$4,126,000)	(\$2,971,000 to \$4,951,000)	(\$2,971,000 to \$4,951,000)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **University of Missouri Economic and Policy Analysis Research Center (EPARC)** provided an estimate of the amount of receipts that food preparation establishments in Missouri pay sales tax upon to be \$11.228 billion dollars. Therefore, at the current 3% sales tax rate EPARC estimated food preparation establishments remit approximately \$336.844 million in sales tax. According to IRS corporate return data, within the food preparation service industry the cost of goods sold is approximately 72% of receipts and research of the industry standard yielded the cost of utilities as 3 to 5 percent of cost of goods sold. Using these statistics, EPARC approximated the aggregate cost of utilities for Missouri’s food preparation establishments between \$242.527 million and \$404.212 million. Based on this range of costs, EPARC estimated the sales tax to be credited or refunded to food preparation establishments to be between \$10.247 million and \$17.078 million per year as shown in the table below.

Fund	Sales Tax Rate	Minimum (Aggregate Utilities = \$242.527 million)	Maximum (Aggregate Utilities = \$404.212 million)
General Revenue	3.000%	\$7,275,822	\$12,126,370
School District Trust	1.000%	\$2,425,274	\$4,042,123
Conservation Commission	0.125%	\$303,159	\$505,265
Parks, and Soil and Water	0.100%	\$242,527	\$404,212
Total	4.225%	\$10,246,782	\$17,077,970

EPARC estimated the sales tax exemption for utilities used or consumed in preparation of food would reduce Net General Revenue between \$7.276 million and \$12.126 million, reduce the School District Trust Fund between \$2.425 million and \$4.042 million, reduce the Conservation fund between \$303,159 and \$505,265, and reduce the Parks, Soil and Water fund between \$242,527 and \$404,212.

ASSUMPTION (continued)

Oversight will assume for fiscal note purposes the EPARC estimate of revenue reduction is the best available estimate and will use the EPARC estimate in this fiscal note. The Oversight calculation of sales tax which would be lost as a result of this exemption is shown in the following table. Amounts are rounded for convenience.

Fund	Sales Tax Rate	Ten months		Twelve months	
		From	To	From	To
General Revenue	3.000%	\$6,063,000	\$10,105,000	\$7,276,000	\$12,126,000
School District Trust	1.000%	\$2,021,000	\$3,368,000	\$2,425,000	\$4,042,000
Conservation Commission	0.125%	\$253,000	\$421,000	\$303,000	\$505,000
Parks, and Soil and Water	0.010%	\$202,000	\$337,000	\$243,000	\$404,000

Oversight notes the reduced revenue in the School District Trust Fund would result in reduced transfers to school districts; however, Oversight will not include the reduced transfers in this fiscal note.

ASSUMPTION (continued)

Officials from the **Office of Administration - Division of Budget and Planning (B&P)** assume this proposal would exempt from sales and use tax the utilities used in food preparation by restaurants and other food preparation businesses, and would therefore reduce Total State Revenues by \$51.2 million annually.

<u>Fund</u>	<u>First year impact (Ten months)</u>	<u>Full year impact</u>
General Revenue	(\$30,300,000)	(\$36,400,000)
School District Trust	(\$10,100,000)	(\$12,100,000)
Conservation Commission	(\$1,300,000)	(\$1,500,000)
Parks, and Soil and Water	(\$1,000,000)	(\$1,200,000)
Total	(\$42,700,000)	(\$51,200,000)

B&P officials also noted the proposal could potentially be interpreted to provide a sales and use tax exemption for more businesses involved in food preparation than would appear to be the intent of the proposal.

Officials from the **Department of Revenue (DOR)** noted this proposal would exempt from sales tax electrical energy or gas, water, or other utilities purchased by a restaurant, cafeteria, fast food restaurant, delicatessen, bakery, grocery store, convenience store, or other similar facility used in the preparation of food sold to customers at the facility and engaged in selling prepared food for consumption on or off the premises of the establishment. Taxpayers making purchases of utilities used in food preparation, which would be exempted from tax, could apply between the first day of January and the fifteenth day of April following the year of purchase for a refund or credit for taxes paid. The exemption would not apply to local sales tax.

DOR officials stated that the exemption is written more broadly than other manufacturing exemptions and appears to be in addition to those other manufacturing exemptions. Therefore, the impact to Total State Revenue could be as much as \$51.2 million annually.

ASSUMPTION (continued)

Fiscal impact

DOR officials determined that 25,000 facilities would qualify for this exemption, and information from the National Restaurant Association indicated the monthly utility cost for restaurants is \$2,500. For twelve months, at a rate of 4.225 percent, this exemption could reduce Total State Revenue by $(25,000 \text{ restaurants} \times \$2,500 \text{ per month} \times \text{twelve months} \times 0.04225) = \$31.7 \text{ million annually}$.

DOR officials also provided information from other publications which indicated the average utilities for food service in this zone are about \$2.79 per square foot per month. According to one survey from the Restaurant Association, a medium sized restaurant is about 2,000 to 3,000 square feet. This would result in a loss of Total State Revenue by as much as $(25,000 \text{ restaurants} \times \$2.79 \text{ per square foot per month} \times ((2,000+3,000)/2) = 2,500 \text{ average square feet} \times 12 \text{ months}) = \73.5 million . Averaging these two estimates, the Department estimated the annual loss to Total State Revenue could be as much as \$51.2 million.

Administrative Impact

DOR officials assume the Department would need to create forms and guidance documents needed to submit a refund claim, and Sales Tax would require one additional Revenue Processing Technician I for every 500 new refund claims.

In total, the DOR response included one additional employee; the estimated cost to implement this proposal including the additional employee and related benefits, equipment and expense was \$46,085 for FY 2018, \$47,110 for FY 2019, and \$47,493 for FY 2020.

Oversight has, for fiscal note purposes only, changed the starting salary for the additional employee 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 policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

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 \$6,400 per new employee.

ASSUMPTION (continued)

IT impact

DOR officials provided an estimate of the IT cost to implement this proposal of \$87,329 for 672 hours of programming to make changes to DOR systems.

Oversight will include the DOR estimate of IT impact in this fiscal note.

In response to similar legislation filed this year, HB 82, officials from the **Department of Conservation (MDC)** assumed an unknown negative fiscal impact to their organization, but greater than \$100,000. MDC officials noted that Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax pursuant to the Missouri Constitution, and assume the Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposal.

In response to similar legislation filed this year, officials from the **Department of Natural Resources (DNR)** assumed the proposal would exempt utilities used or consumed in the preparation of food from the sales and use tax. DNR officials noted that Parks and Soils Sales Tax Funds are derived from one-tenth of one percent sales and use tax pursuant to the Missouri Constitution. Therefore, any additional sales and use tax exemption would result in reduced revenue to the Parks and Soils Sales Tax Funds. DNR officials assumed the Department of Revenue and Office of Administration-Budget and Planning would provide a more detailed estimate of the fiscal impact.

Officials from the **Office of the Secretary of State** and the **Joint Committee on Administrative Rules** assume this proposal would have no fiscal impact on their organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
GENERAL REVENUE FUND			
<u>Cost - Department of Revenue</u>			
Salaries	(\$20,300)	(\$24,604)	(\$24,850)
Benefits	(\$10,950)	(\$13,271)	(\$13,404)
Expense and equipment	(\$7,807)	(\$644)	(\$652)
IT cost	<u>(\$87,329)</u>	<u>\$0</u>	<u>\$0</u>
<u>Total cost - Department of Revenue</u>	<u>(\$126,386)</u>	(\$38,519)	(\$38,906)
FTE change for DOR	1 FTE	1 FTE	1 FTE
<u>Revenue reduction</u>	(\$6,063,000 to	(\$7,276,000 to	(\$7,276,000 to
Sales tax exemption	<u>\$10,105,000</u>	<u>\$12,126,000)</u>	<u>\$12,126,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(\$6,189,386 to <u>\$10,231,386)</u>	(\$7,314,519 to <u>\$12,164,519)</u>	(\$7,314,906 to <u>\$12,164,906)</u>
Estimated Net FTE Change for the General Revenue Fund	1 FTE	1 FTE	1 FTE
SCHOOL DISTRICT TRUST FUND			
<u>Revenue reduction</u>	(\$2,021,000 to	(\$2,425,000 to	(\$2,425,000 to
Sales tax exemption	<u>\$3,368,000)</u>	<u>\$4,042,000)</u>	<u>\$4,042,000)</u>
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	(\$2,021,000 to <u>\$3,368,000)</u>	(\$2,425,000 to <u>\$4,042,000)</u>	(\$2,425,000 to <u>\$4,042,000)</u>
CONSERVATION COMMISSION FUND			
<u>Revenue reduction</u>	(\$253,000 to	(\$303,000 to	(\$303,000 to
Sales tax exemption	<u>\$421,000)</u>	<u>\$505,000)</u>	<u>\$505,000)</u>
ESTIMATED NET EFFECT ON CONSERVATION FUND	(\$253,000 to <u>\$421,000)</u>	(\$303,000 to <u>\$505,000)</u>	(\$303,000 to <u>\$505,000)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
PARKS, AND SOIL AND WATER FUND			
<u>Revenue reduction</u> Sales tax exemption	(\$202,000 to <u>\$337,000</u>)	(\$243,000 to <u>\$404,000</u>)	(\$243,000 to <u>\$404,000</u>)
ESTIMATED NET EFFECT ON PARKS, AND SOIL AND WATER FUND	(\$202,000 to <u>\$337,000</u>)	(\$243,000 to <u>\$404,000</u>)	(\$243,000 to <u>\$404,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact to small businesses involved in food preparation.

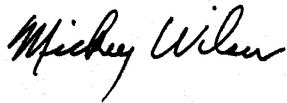
FISCAL DESCRIPTION

The proposed legislation would exempt from sales tax those utility costs related to commercial food preparation.

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 Conservation
Department of Natural Resources
Department of Revenue
University of Missouri
 Economic and Policy Analysis Research Center



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February 27, 2017

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