

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0737S.02I
 Bill No.: SB 173
 Subject: Taxation and Revenue - Sales and Use
 Type: Original
 Date: February 28, 2023

Bill Summary: This proposal modifies a sales tax exemption for the sale of certain medical devices.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue	Could exceed (\$77,250)	Could exceed (\$92,700)	Could exceed (\$92,700)
Total Estimated Net Effect on General Revenue	Could exceed (\$77,250)	Could exceed (\$92,700)	Could exceed (\$92,700)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Park, Soil, and Water Fund (0614)	Could exceed (\$2,575)	Could exceed (\$3,090)	Could exceed (\$3,090)
Conservation Commission Fund (0609)	Could exceed (\$3,219)	Could exceed (\$3,863)	Could exceed (\$3,863)
School District Trust Fund (0688)	Could exceed (\$25,750)	Could exceed (\$30,900)	Could exceed (\$30,900)
Total Estimated Net Effect on <u>Other</u> State Funds	Could exceed (\$31,544)	Could exceed (\$37,853)	Could exceed (\$37,853)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Local Government	Could exceed (\$104,803)	Could exceed (\$125,763)	Could exceed (\$125,763)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration - Budget and Planning (B&P)** note the following:

Rolling Conformity with Social Security Act

This proposal would create a rolling sales tax exemption conformity for all medical equipment covered by Medicare. Currently, the Missouri sales tax exemption is limited to those items that were covered as of January 1, 1980. This proposal would expand the sales tax exemption to all devices covered by Medicare now and in the future. Therefore, this provision could result in forgone revenue in the future. B&P is unable to determine when or how much revenue may be forgone by creating the rolling conformity.

As of December 2022, B&P is aware of two potential devices that would become tax exempt as a result of this provision. One device is used to treat glioblastoma and mesothelioma, while the other device is used for brain aneurysm embolization. B&P will include cost estimates for the lost sales tax revenue from these devices.

Cancer Devices

This proposal would exempt class III medical devices that use electric fields in the treatment of cancer from state and local sales and use taxes. This would also exempt the components, repair, and disposable patient supplies used with such devices. This exemption would begin August 28, 2023.

B&P notes that there are currently two such FDA devices approved. The first device is used to treat glioblastoma and the second device is used to treat mesothelioma. Based on data published by the manufacturer, B&P estimates that approximately 7.2% of glioblastoma patients use the qualifying device. B&P was unable to estimate the usage rate for mesothelioma. For the purpose of this fiscal note, B&P will assume that the usage rate is the same 7.2% found for glioblastoma patients.

Based on information published by the CDC, there were 466 individuals with brain and other nervous system cancers in Missouri during 2019, the most recent year available. Based on further research, B&P determined that glioblastoma cancer accounts for 17% of all brain and nervous system cancers. Therefore, B&P estimates that approximately 79 individuals in Missouri (466 brain and nervous system cancers x 17%) may have glioblastoma. Based on further information published by the CDC, there were 55 cases of mesothelioma in Missouri during 2019.

Assuming that Missouri cancer patients use the qualifying class III medical devices at the same rate as patients outside of Missouri, B&P estimates that approximately 6 individuals with glioblastoma (79 Missouri glioblastoma patients x 7.2% device usage) and 4 individuals with

mesothelioma (55 Missouri mesothelioma patients x 7.2% device usage) per year may qualify for this sales tax exemption.

Based on additional research, B&P determined that the average cost of using the qualifying class III medical device is approximately \$21,000 per month, or \$252,000 per year (\$21,000 per month x 12). Therefore, B&P estimates that this proposal may exempt \$2,520,000 [(6 glioblastoma patients x \$252,000 per year costs) + (4 mesothelioma patients x \$252,000 per year costs)] in sales from state and local sales taxes.

Based on the above information, B&P estimates that this provision may reduce TSR by \$106,470 and GR by \$75,600 per year. Using the 2022 population weighted local sales tax rate of 4.07%, B&P further estimates this proposal may reduce local sales tax collections by \$102,564 per year.

Embolization Devices

Approximately 300,000 people in the U.S. have a ruptured brain aneurysm each year. B&P notes that there is a newly FDA approved device used to treat brain aneurysms. Assuming that the incidence of ruptured brain aneurysms is similar throughout the U.S., B&P assumes that 570 Missouri residents suffer from a ruptured brain aneurysm each year.

Based on data published by the manufacture, this new embolization device costs about \$1,000. Therefore, B&P estimates that this proposal could exempt \$570,000 (570 patients x \$1,000 treatment) in sales from state and local taxation.

Based on the above information, B&P estimates that this provision may reduce TSR by \$24,083 and GR by \$17,100 per year. Using the 2022 population weighted local sales tax rate of 4.07%, B&P further estimates this proposal may reduce local sales tax collections by \$23,199 per year.

Wheelchair accessories

This proposal would also exempt wheelchair accessories. B&P notes that some accessories may already be exempt if they are attached to the wheelchair when purchased. However, such accessory may be subject to tax if purchased separately from a wheelchair. Due the complex taxability and limited sales data, B&P is unable to determine a potential impact from this provision. However, B&P anticipates that state and local revenue loss would be minimal.

Summary

B&P estimates that this proposal may reduce TSR by an amount that could exceed \$130,553 and GR by an amount that could exceed \$92,700 per year. Using the 2022 population weighted local sales tax rate of 4.07%, B&P further estimates this proposal may reduce local sales tax collections by an amount that could exceed \$125,763 per year.

Table 1: Estimated Impact by Fund

	FY 2024	FY 2025+
<u>State Funds</u>		
General Revenue	Could exceed (\$77,250)	Could exceed (\$92,700)
Education (SDTF)	Could exceed (\$25,750)	Could exceed (\$30,900)
Conservation	Could exceed (\$3,219)	Could exceed (\$3,863)
DNR	Could exceed (\$2,575)	Could exceed (\$3,090)
Total State Revenues	Could exceed (\$108,794)	Could exceed (\$130,553)
<u>Local Impact</u>		
Local Sales Tax	Could exceed (\$104,803)	Could exceed (\$125,763)

Officials from the **Department of Revenue (DOR)** note Section 144.030 outlines all the products that are exempt from sales tax. In Section 144.030.2(18) the sales of all durable medical equipment as defined on January 1, 1980, by the Medicare program is exempt. This current wording allows the state to have rolling compliance with the Medicare program however, it is limited to only as the Medicare program existed in 1980. Due to medical advances, new products have been brought on the market that are considered durable medical goods at the federal level but not at the state level. As of December 2022, the Department is aware of two such devices; one device used to treat glioblastoma and mesothelioma and a second device is an embolization device used to prevent brain aneurysms.

This proposal would remove the limitation that the device have been covered as of January 1, 1980. This proposal may expand the sales tax exemption to new devices in the future and result in forgone revenue in the future. The Department is not able to estimate the impact from future devices being sales tax exempt. The Department will estimate the impact from the two devices DOR is aware of.

Brain Cancer Devices

This proposal would allow the sales of all class III medical devices that use electric fields for the purposes of the treatment of cancer to be exempt from all state and local sales and use taxes. This exemption would begin August 28, 2023. Class III medical devices are those devices that have a high risk to the patient and/or user. These devices usually sustain or support life, are implanted, or present potential unreasonable risk of illness or injury. They represent 10% of medical devices regulated by the FDA. These devices are used for treating glioblastoma and mesothelioma.

The Department is aware that one company makes two devices, one for glioblastoma and one that treats mesothelioma. These devices cost approximately \$21,000 a month each or \$252,000 annually. The manufacturer estimates that approximately 7.2% of all patients with these conditions use their product. According to the CDC approximately 466 individuals have brain and other nervous system cancers and 55 individuals have mesothelioma in Missouri.

Since glioblastoma accounts for about 17% of all brain cancers, DOR will assume that 79 Missourians have glioblastoma and 55 have mesothelioma.

Applying the 7.2% percentage to the number of Missouri residents with these conditions DOR estimates that 6 Missourians are using it for glioblastoma and 4 are using it for mesothelioma and will qualify for the sales tax exemption annually.

At a cost of \$252,000 per year per person, DOR notes that this would result in taxable sales of \$2,520,000. This proposal removes both the state sales tax (4.225%) and the local sales tax (4.07% weighted average local tax rate). This would result in a loss to the state of \$106,470 in total state revenue.

		10/12 Year	Full Year
General Revenue	3%	(\$63,000)	(\$75,600)
School District Trust	1%	(\$21,000)	(\$25,200)
Conservation Commission	0.125%	(\$2,625)	(\$3,150)
Park, Soil & Water	0.10%	(\$2,100)	(\$2,520)
Total State Revenue		(\$88,725)	(\$106,470)
Local	4.07%	(\$85,470)	(\$102,564)

Embolization Devices

The Department is aware there is a device that is used to treat brain aneurysms. It is an embolization device that costs about \$1,000.

Approximately 300,000 people in the U.S., and 570 in Missouri have a ruptured brain aneurysm each year. Therefore up to \$570,000 (570 patients * \$1,000 device) could be exempt from state and local taxes annually.

The Department estimates that this provision may reduce total state revenue by \$24,083 per year.

		10/12 Year	Full Year
General Revenue	3.00%	(\$14,250)	(\$17,100)
School District Trust	1.00%	(\$4,750)	(\$5,700)
Conservation Commission	0.125%	(\$594)	(\$713)
Park, Soil & Water	0.10%	(\$475)	(\$570)
Total State Revenue		(\$20,069)	(\$24,083)
Local	4.07%	(\$19,333)	(\$23,199)

Wheelchair accessories

This proposal would add wheelchair accessories to the list of devices that will be considered tax exempt. Wheelchairs and some accessories are already tax exempt while other accessories are not. The Department notes that when most accessories are purchased with the wheelchair, such as a seatbelt or restraints those accessories are tax exempt. However, sometimes when a taxpayer buys those accessories later those accessories may be subject to sales tax. This proposal will make it clear that all the accessories are considered tax exempt regardless of when purchased. Due to the limited sales tax the impact of this provision is unknown but it is anticipated to be minimal.

These provisions would require a change to the sales and use tax forms, to their website and to their tax computer system. The estimated costs of these changes is \$14,386.

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

Officials from the **Department of Natural Resources** defer to the **Department of Revenue** for the potential fiscal impact of this proposal.

Oversight notes the Park, Soil, and Water Sales Tax funds are derived from the one-tenth of one percent sales and use tax pursuant to Article IV Section 47 (a) thus DNR's sales taxes are constitutional mandates. Oversight notes this proposed sale tax exemption would decrease the revenue distributed to the Park, Soil, and Water Sales Tax Fund. Therefore, Oversight will reflect the B&P's and DOR's fiscal impact estimates for DNR's funds.

Officials from the **Missouri Department of Conservation** assume this proposal would have an unknown fiscal impact. The Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax pursuant to Article IV Section 43 (a) of the Missouri Constitution. The Department defers to the Department of Revenue as it is responsible for tax collection and would be better able to estimate the anticipated fiscal impact that would result from this proposal.

Oversight notes that the Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax of the Missouri Constitution, thus MDC's sales taxes are constitutional mandates. Oversight notes this proposed sale tax exemption would decrease the revenue distributed to the Conservation Sales Tax Fund. Therefore, Oversight will reflect the B&P's and DOR's fiscal impact estimates for MDC's funds.

Officials from the **City of O'Fallon** assume the proposal will have no fiscal impact on their city.

Officials from the **City of Kansas City** and the **City of Springfield** each assume this proposal would have a negative fiscal impact on their respective cities of an indeterminate amount.

Oversight notes the above local political subdivisions stated this proposal would have a negative fiscal impact on their respective cities of an indeterminate amount. Oversight notes this proposed sale tax exemption could impact the local sales tax revenue to all localities. Therefore, Oversight will note B&P and DOR’s estimates for all local political subdivisions on the fiscal note.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other cities and counties were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

Oversight notes officials from B&P and DOR both assume the proposal will have a negative fiscal impact on both state and local revenues. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect DOR’s and B&P’s estimated impact in the fiscal note.

Oversight notes this proposal would extend the sales tax exemption to all devices covered by Medicare now and in the future. Therefore, Oversight will show a range of fiscal impacts of \$0 (no additional items covered by Medicare) to an Unknown negative amount that may be forgone by creating the rolling conformity.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
GENERAL REVENUE			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption	(\$63,000)	(\$75,600)	(\$75,600)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption	(\$14,250)	(\$17,100)	(\$17,100)
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON GENERAL REVENUES	<u>Could exceed</u> <u>(\$77,250)</u>	<u>Could exceed</u> <u>(\$92,700)</u>	<u>Could exceed</u> <u>(\$92,700)</u>

<u>FISCAL IMPACT – State Government</u> <u>(continued)</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
PARK, SOIL, WATER FUNDS (0614)			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption	(\$2,100)	(\$2,520)	(\$2,520)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption	(\$475)	(\$570)	(\$570)
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON PARK , SOIL AND WATER FUNDS	<u>Could exceed</u> <u>(\$2,575)</u>	<u>Could exceed</u> <u>(\$3,090)</u>	<u>Could exceed</u> <u>(\$3,090)</u>
CONSERVATION COMMISSION FUNDS (0609)			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption	(\$2,625)	(\$3,150)	(\$3,150)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption	(\$594)	(\$713)	(\$713)
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption	(Unknown)	(Unknown)	(Unknown)

<u>FISCAL IMPACT – State Government</u> (continued)	FY 2024 (10 Mo.)	FY 2025	FY 2026
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUNDS	<u>Could exceed</u> <u>(\$3,219)</u>	<u>Could exceed</u> <u>(\$3,863)</u>	<u>Could exceed</u> <u>(\$3,863)</u>
SCHOOL DISTRICT TRUST FUND (0688)			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption	(\$21,000)	(\$25,200)	(\$25,200)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption	(\$4,750)	(\$5,700)	(\$5,700)
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	<u>Could exceed</u> <u>(\$25,750)</u>	<u>Could exceed</u> <u>(\$30,900)</u>	<u>Could exceed</u> <u>(\$30,900)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption	(\$85,470)	(\$102,564)	(\$102,564)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption	(\$19,333)	(\$23,199)	(\$23,199)
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption	(Unknown)	(Unknown)	(Unknown)
NET ESTIMATED EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>Could exceed</u> <u>(\$104,803)</u>	<u>Could exceed</u> <u>(\$125,763)</u>	<u>Could exceed</u> <u>(\$125,763)</u>

FISCAL IMPACT – Small Business

Businesses that purchase qualified medical devices could be positively impacted by this proposal.

FISCAL DESCRIPTION

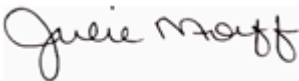
Current law provides a sales tax exemption for certain durable medical equipment as defined on January 1, 1980, by the federal Medicare program. This act removes the reference to January 1, 1980.

Additionally, current law provides a sales tax exemption for the sales or rental of manual and powered wheelchairs, including parts. This act applies the exemption to accessories for such wheelchairs.

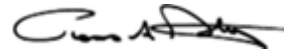
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Revenue
Office of Administration - Budget and Planning
Missouri Department of Conservation
Department of Natural Resources
City of Kansas City
City of Springfield
City of O'Fallon



Julie Morff
Director
February 28, 2023



Ross Strobe
Assistant Director
February 28, 2023