

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1849-07
Bill No.: HS for HCS for SB 460
Subject: Business and Commerce; Revenue Dept.; Taxation and Revenue-Sales and Use
Type: Original
Date: May 11, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$3,743,043 to Unknown)	(\$2,562,673 to Unknown)	(\$326,040 to Unknown)
School District Trust	(\$739,908 to Unknown)	(\$768,226 to Unknown)	(\$35,503 to Unknown)
Conservation	(\$92,489 to Unknown)	(\$96,028 to Unknown)	(\$4,438 to Unknown)
Parks and Soil	(\$73,991 to Unknown)	(\$76,822 to Unknown)	(\$3,550 to Unknown)
Abandoned Fund Account	Less than \$22,000,000	Unknown	Unknown
Total Estimated Net Effect on <u>All</u> State Funds	LESS THAN \$17,350,569 to (UNKNOWN)	(\$3,503,749 to UNKNOWN)	(\$369,531 to UNKNOWN)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	(UNKNOWN)	(UNKNOWN)	(UNKNOWN)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 pages.

FISCAL ANALYSIS

ASSUMPTION

Prospective Tax Application

Officials of the **Office of the State Courts Administrator (CTS)**, **Office of the Attorney General (AGO)** and the **Office of Administration, Administrative Hearing Commission (AHC)** assume this portion of the bill has no fiscal impact to their agencies or costs can be absorbed.

Officials of the **Office of the Secretary of State (SOS)** assume this portion of the bill creates the Prospective Tax Application Act. DOR may promulgate rules to implement this bill. These rules will be published in both the *Missouri Register* and the *Code of State Regulations*. Based on experience with other divisions, the rules, regulations and forms issued by DOR could require as many as 10 pages in the *Code of State Regulations*. For any given rule, roughly half again as many pages are published in the *Missouri Register* in the Code because cost statements, fiscal notes and the like are not repeated in the Code. These costs are estimated. The estimated cost of a page in the *Missouri Register* is \$23. The estimated cost of a page in the *Code of State Regulations* is \$27. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriations process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials of the **Department of Revenue (DOR)** state this portion of the legislation authorizes the DOR and the Administrative Hearing Commission to abate all or part of the tax liability of a taxpayer, and allow prospective application of taxes in certain situations.

The DOR is unable to determine the impact this legislation may have on collections. However, it is reasonable to assume that it may reduce collections from audit assessments. Therefore, the revenue impact is an unknown loss in revenues.

This portion of the legislation adds a new and separate procedure to tax litigation, in addition to the appeal. The DOR estimates one Field Auditor and one Attorney will be needed to review audit cases and present/testify at hearings. One Clerk Typist III will be needed as support staff for the additional attorneys. All equipment and expense relating to these FTE will also be requested.

ASSUMPTIONS (continued)

Oversight assumes, for purposes of this portion of this fiscal note, this proposal would decrease compliance in the areas of corporate income tax and sales/use tax collections. This amount is unknown, therefore Oversight will reflect the revenue impact of this proposal as a negative unknown to various state and local funds. In addition, Oversight assumes DOR can utilize existing personnel to handle the abatements, correspondence, audit reviews, and to present/testify at hearings.

Sales Tax Holiday

Officials of the **Office of Administration - Division of Budget and Planning (BAP)** assume this portion of the proposal would allow for a sales tax “holiday” on the purchase of clothing and shoes.

BAP estimates the annual consumer spending in Missouri on clothing and shoes based on national estimates from the U.S. Department of Commerce - Bureau of Economic Analysis. BAP staff assumes Missouri represents 1.9% of U.S. totals. BAP staff estimates taxable sales for FY2002 to be \$6,427,700,000, taxable sales for FY 2003 to be \$6,686,100,000 and taxable sales for FY 2004 to be \$6,953,544,000.

BAP states, as was the case with similar proposals from last year, there is no information available that addresses what percent of these expenditures would qualify for the exemption or how effective this program would be in so far as motivating the public to shop for clothing during the tax “holiday”.

Officials of the **Department of Revenue (DOR)** state this portion of the legislation creates a sales and use tax holiday for all retail sales of clothing with a taxable value of one hundred dollars or less for four days in August. Any local revenue lost will be reimbursed by the state the first year. Beginning January 1, 2002, political subdivisions may opt out of the exemption by adopting an ordinance. The sales tax holiday will expire July 1, 2004.

DOR will have to notify all sales tax accounts of the holiday period. 127,000 notification letters will have to be sent to the registered accounts at a cost of \$43,910. DOR stated their workload measures but did not provide an estimate of any FTE needed.

DOR will need to create a new item tax; however, it should be noted that this could be confusing and difficult to explain to taxpayers. DOR’s MITS sales tax system will need to be programmed to recognize the new item tax. DOR estimates 2,941 hours of programming at a total cost of \$99,677. The state data center charges will be \$19,139.

Oversight, for purposes of this portion of the fiscal note, has reflected the loss in sales tax revenue based upon the estimate provided by the Office of Administration, Budget and Planning

ASSUMPTIONS (continued)

and the actual impact similar legislation had on other states. The revenue estimate was based on 4/365 of the fiscal year taxable sales, resulting in a total revenue loss of \$1 million in FY 2002 to state funds due to the sales tax holidays. Oversight made no adjustment for the \$100 cap. **Also, no adjustment was made for any incentive effect this portion of the proposal might have on spending habits. The actual loss to state funds from this sales tax holiday could be significantly higher than estimated.** Oversight assumes the Department of Revenue will enforce the provisions of the bill through post-audit in the field. If compliance is not monitored, the revenue impact could increase

Oversight assumes the mailing costs would be incurred in July before the August sales tax holiday. In addition, Oversight has included the programming costs and personnel requested by DOR since this portion of the legislation includes a reimbursement to local government for any local sales tax revenue lost for FY02 and it is assumed DOR will be required to track the sales tax revenue lost.

For a similar prior proposal, Oversight contacted three states that enacted similar legislation, the **State of Texas**, the **State of Florida** and the **State of New York**. Texas had a Sales Tax Holiday on clothing and footwear during a three day period in August, 1999. Florida had a nine day sales tax holiday period on clothing and footwear in August, 1998, and New York has had several such "holidays" in 1997, 1998 and 1999. Oversight assumes that similar impacts would occur in Missouri and have applied their taxable sales during the holidays to the Gross State Product in Chained (1992) Dollars, by industry from the U.S. Census Bureau, the Official Statistics, Statistical Abstract of the United States: 1998 to determine what Missouri's taxable sales in a similar period might be. The comparison reveals that by using the Office of Administration, Budget and Planning's estimated sales of clothing and footwear in Missouri for a given fiscal year, a reasonable estimate could be made to the actual impact a sales tax holiday would have. Oversight assumes that the same impact will occur whether the exemption applied to clothing or shoes under \$500 as it would for clothing under \$100. Oversight also assumes that the results could be applied over a three day exemption as it would for a seven day exemption, as it would for a thirty-one day exemption.

Sales Tax Exemption for Bullion and Investment Coins

Officials of the **Department of Revenue (DOR)** state this portion of the legislation is technical cleanup for SB 896, which was passed last year. This portion of the legislation revises the exemption for the sale of bullions and investment coins to allow for the exemption from all local sales taxes. DOR assumes there would be no revenue impact or administrative impact to the Department of Revenue because of this legislation.

DOR states that local sales/use tax are not currently being collected on bullion and investment coins.

ASSUMPTIONS (continued)

In the fiscal note for SB 896, **Oversight** assumed, according to the Merchandise Product Lines report from the 1992 Census of Retail Trade, that coins, metals and other numismatic items account for roughly 0.1% of retail sales at jewelry stores. Oversight assumed this would represent coins and gold bullion as defined in this proposal. Also, total sales of jewelry in the United States totaled \$25,872,289,000.

Therefore, assuming that coins and metals sold outside of jewelry stores is proportionate to coins and metals sold within jewelry stores, the total sales of coins and metals in the United States in 1992 is estimated to be \$25,872,289. Assuming that Missouri sales represent 1.9% of this total, \$491,573 of sales in Missouri in 1992 were for coins and metals. Growing the jewelry sales by 5% for all years since 1992, estimated sales in Fiscal Year's 2002, 2003 and 2004 for coins and gold bullion are estimated to be \$800,721, \$840,757 and \$882,794 respectively. This would result in a loss in local sales tax revenue of \$9,008 in FY 2002 (9 months), \$12,611 in FY 2003 and \$13,242 in FY 2004. However, this loss was reflected in the fiscal note for SB 896 and a local sales and use tax exemption is already being applied to gold bullion and investment coins.

Sales tax refunds to Purchasers

Officials from the **Department of Revenue (DOR)** assume this portion of the legislation as worded would require sales tax refunds to be refunded or credited to the person who originally paid the sales tax. The person who remits the tax must demonstrate that the sales tax refund will be refunded to the person who originally paid the tax prior to DOR refunding. Any over-collected sales tax not refunded to the purchaser will be credited to the Abandoned Fund account.

DOR assumes this portion of the legislation could result in a decrease in sales tax refunds for FY 02 of approximately \$22 million. DOR does not foresee any additional savings due to the additional documentation that will be required in order to apply for a sales tax refund. DOR assumes a minimal impact on programming to be completed with existing resources.

Officials from the **Office of Administration, Budget and Planning (BAP)** state DOR is better suited to respond to this portion of the proposal.

Officials from the **Office of the State Treasurer (STO)** state this portion of the proposal would not impact their agency.

Oversight assumes the determination of the amount to transfer to the Abandoned Fund account annually may not be feasible administratively. In addition, since DOR's estimate is based on prior year refund amounts and DOR assumes taxpayers will become better informed about sales tax rules and not overcharge customers in the future with the passage of this legislation, Oversight has shown the fiscal impact in FY03 and FY04 as unknown.

ASSUMPTIONS (continued)

Simplified Sales/Use Tax Agreement

Officials of the **Department of Revenue (DOR)** state this portion of the legislation, as worded, would implement through the General Assembly the adoption of the Simplified Sales and Use Tax Administration Act which allows Missouri to continue in the Streamlined Sales Tax Project. DOR assumes this portion of the legislation would not fiscally impact their agency. Also, DOR assumes this language does not contain any conforming language or change any current law provisions, so it will have no revenue impact.

Officials of the **Office of Administration, Budget and Planning (BAP)** assume this portion of the bill has no fiscal impact to their agency and DOR is better suited to respond to this portion of the proposal.

In a similar prior proposal, the **Office of the Governor** and the **Missouri Senate** assumed this portion of the proposal would have no direct fiscal impact on their agencies.

Oversight assumes, for purposes of this fiscal note, this portion of the proposal allows DOR to pursue the Streamlined Sales and Use Tax Agreement and make preparations for its implementation, which would not occur until the legislature takes further action to bring Missouri law into compliance with the agreement. Oversight assumes the revenue impact of this proposal would be zero.

Sales Tax Exemption for Donated High Tech Inventory to Schools

Officials of the **Department of Revenue (DOR)** state this portion of the legislation as worded would provide an exemption for retailers who donate high tech inventory to public elementary or secondary schools and approved public institutions of higher learning. In order to obtain the exemption, the taxpayer must apply to the Department of Elementary and Secondary Education. The maximum amount of exemptions allowed per year is \$150,000.

DOR assumes because the local taxes are not exempt, this will create a new line (item tax) on the return. The MITS system will need to be modified to recognize a new item tax, and the modifications are estimated to be 2,941 hours of contract labor at a cost of \$99,677. Implementation costs for the State Data Center will be \$19,139.

Officials from the **Office of Administration - Budget and Planning (BAP)** state this portion of the proposal would provide a sales tax exemption for inventory donated to private or public schools. BAP has not been able to find any empirical basis to estimate the fiscal impact of this portion of the proposal.

The **Department of Higher Education (CBH)** officials assume this portion of the bill would have no fiscal impact on their agency. There could be a positive fiscal impact on institutions of

ASSUMPTIONS (continued)

higher education if this bill results in donations of goods to such institutions that would not have otherwise been made.

Officials of the **Department of Elementary and Secondary Education (DES)** assume this portion of the proposal will impact DES in the area of developing the rules and regulations for the sales tax exemptions, working with DOR in developing the certification approval form, and processing the applications as received until the statewide cap has been reached. The \$150,000 maximum statewide cap could result in DES processing applications totaling approximately \$3.55 million.

DES assumes there is no impact on the state aid formula except that more sales tax exemptions mean less General Revenue available statewide for state use including education. DES will require 3 FTE Supervisors to develop rules and regulations for the sales tax exemptions, work with DOR in developing the certification approval form, and process the applications as received until the statewide cap has been reached.

Since **Oversight** does not possess data regarding the incidence of donated new high technology inventory to public education entities, revenue losses have been stated as \$150,000 annually to all affected state funds.

Sales Tax Exemption for Admission Fees for Hunting

Officials of the **Department of Revenue (DOR)** state this portion of the legislation would not have an administrative impact on its agency. This portion of the legislation as worded would exempt from sales tax all admission fees charged for hunting or taking of domestically raised pheasants, partridges and quail on licensed shooting areas. It also exempts sales tax on purchases of feed and equipment used in production of such birds.

Officials from the **Office of Administration - Budget and Planning (BAP)** have not been able to find any empirical basis to estimate the fiscal impact of this portion of the proposal and defer to the estimate that may be provided by DOR or MDC. This portion of the proposal would have no fiscal impact on BAP.

The **Missouri Department of Conservation (MDC)** officials assume this portion of the bill creates a sales and use tax exemption for sales of feed and equipment used to produce pheasants, partridges and quail, and for certain hunting admission fees. This portion of the proposal would appear to have very minor fiscal impact on MDC funds.

Since **Oversight** does not possess data regarding the incidence of game bird hunting admission fees or feed and equipment purchases for pheasants, partridges and quail, revenue losses have been stated as unknown, not expected to exceed \$100,000 annually to all affected funds.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
GENERAL REVENUE FUND			
<i>Sales Tax Refunds</i>			
<u>Revenue - General Revenue Fund</u>	Less than		
Reduction in sales tax refunds	\$22,000,000	Unknown	Unknown
<u>Transfer to Abandoned Fund Account</u>	Less than		
Reduction in sales tax refunds	(\$22,000,000)	(Unknown)	(Unknown)
<i>Sales Tax Holiday</i>			
<u>Cost to General Revenue Fund</u>			
<u>Department of Revenue (DOR)</u>			
Programming costs	(\$118,816)	\$0	\$0
Postage	(\$43,910)	(\$43,910)	\$0
Total costs - DOR	(\$162,726)	(\$43,910)	\$0
<u>Transfer to Local Government</u>			
Reimbursement for loss in local sales tax revenue	(\$1,056,608)	\$0	\$0
<u>Loss to General Revenue Fund</u>			
Abatement of tax/prospective application	(Unknown)	(Unknown)	(Unknown)
<i>Sales Tax Exemption for High Tech Inventory Donated to Schools</i>			
<u>Loss to General Revenue Fund</u>	(\$106,509)	(\$106,509)	(\$106,509)
<u>Cost to General Revenue Fund</u>			
<u>Department of Elementary and Secondary Education (DES)</u>			
Personnel (3 FTE)	(\$119,040)	(\$146,419)	(\$150,080)
Fringe Benefits	(\$39,688)	(\$48,816)	(\$50,037)
Equipment and Expense	(\$26,440)	(\$18,849)	(\$19,414)
Total costs - DES	(\$185,168)	(\$214,084)	(\$219,531)

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
<u>Cost to General Revenue Fund</u>			
<u>Department of Revenue (DOR)</u>			
Programming costs	(\$118,816)	_____ \$0	_____ \$0
 ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	 <u>(\$1,629,827 to Unknown)</u>	 <u>(\$364,503 to Unknown)</u>	 <u>(\$326,040 to Unknown)</u>
<u>Loss to School District Trust Fund</u>			
Abatement of tax/prospective application	(Unknown)	(Unknown)	(Unknown)
High tech donations to schools sales tax exemption	_____ (\$35,503)	_____ (\$35,503)	_____ (\$35,503)
 ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	 <u>(\$35,503 to Unknown)</u>	 <u>(\$35,503 to Unknown)</u>	 <u>(\$35,503 to Unknown)</u>
<u>Loss to Conservation Fund</u>			
Abatement of tax/prospective application	(Unknown)	(Unknown)	(Unknown)
High tech donations to schools sales tax exemption	_____ (\$4,438)	_____ (\$4,438)	_____ (\$4,438)
 ESTIMATED NET EFFECT ON CONSERVATION FUND	 <u>(\$4,438 to Unknown)</u>	 <u>(\$4,438 to Unknown)</u>	 <u>(\$4,438 to Unknown)</u>
<u>Loss to Parks and Soil Funds</u>			
Abatement of tax/prospective application	(Unknown)	(Unknown)	(Unknown)
High tech donations to schools sales tax exemption	_____ (\$3,550)	_____ (\$3,550)	_____ (\$3,550)
 ESTIMATED NET EFFECT ON PARKS AND SOILS FUND	 <u>(\$3,550 to Unknown)</u>	 <u>(\$3,550 to Unknown)</u>	 <u>(\$3,550 to Unknown)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
Revenue - Abandoned Funds	Less than		
Transfer-Reduction in sales tax refunds	\$22,000,000	Unknown	Unknown
<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
Loss to Cities			
Clothing sales tax exemption	(\$633,965)	\$0 to (\$659,451)	\$0
Hunting admission fees/feed/equip.	(Unknown)	(Unknown)	(Unknown)
Abatement of tax/prospective application	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
Total Loss to Cities	(\$633,965 to Unknown)	\$0 to (Unknown)	(Unknown)
Loss to Counties			
Clothing sales tax exemption	(\$422,643)	\$0 to (\$439,634)	\$0
Hunting admission fees/feed/equip.	(Unknown)	(Unknown)	(Unknown)
Abatement of tax/prospective application	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
Total Loss to Counties	(\$422,643 to Unknown)	(Unknown)	(Unknown)
Income from General Revenue			
Reimbursement	\$1,056,608	\$0	\$0
ESTIMATED NET EFFECT TO LOCAL GOVERNMENT	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

FISCAL IMPACT - Small Business

This legislation could affect all businesses that collect sales tax. Sales tax paperwork will be increased for the month that the "holiday" sales tax days are exempt.

Private not-for-profit elementary and secondary schools, as well as approved private institutions may see an increase in donations of inventory by retailers. Small businesses operating as retailers would be exempt from sales tax on inventory donated to entities defined in this bill.

DESCRIPTION

Section 32.375 Prospective Tax Application

This act authorizes the Department of Revenue (DOR) and the Administrative Hearing Commission (AHC) to abate all or part of the tax liability of a taxpayer in certain situations, including those situations in which:

1. The taxpayer fails to collect, account for or pay a tax which others in the same industry or occupation also failed to pay, perhaps due to miscommunication between DOR and a specific industry or profession about the taxability of a certain event or transaction;
2. The taxpayer does not have sufficient ability to pay the entire amount of the tax due; or
3. Collection of the tax would undermine compliance with the tax laws.

The act directs that in situations where DOR or the AHC grant this type of relief to a taxpayer, the application of the tax at issue shall be prospective for that taxpayer, such that the taxability of the event or transaction begins after the DOR or AHC decision on the issue. In order to qualify for whole or partial abatement, a taxpayer must agree to several conditions set forth in the act, such as waiving his or her right to appeal the decision and paying his or her own attorney fees and expenses.

Section 1443049 Sales Tax Holiday

This bill exempts from sales and use tax the sale of certain clothing when sold during four designated days in the month of August. Each individual item must sell for \$100 or less to qualify for the exemption. This legislation contains an emergency clause so that the effective date for this exemption is August 2001. The state will reimburse political subdivisions for any revenue lost as a result of the holiday for calendar year 2001. Beginning January 1, 2002, political subdivisions may adopt an ordinance to prohibit the provisions of this section for local sales tax exemptions within their regions. The exemption will expire on July 1, 2004.

Section 144.815 Sales/Use Tax Exemption for Gold Bullion and Investment Coins

This act makes technical clarifications and corrections to the sales and use tax exemption for purchases of bullion and investment coins.

Section 144.195 Sales Tax Refunds to Purchasers

This bill requires that any request for a refund of sales taxes by a person who collects and remits the tax will only be granted if the person demonstrates to the satisfaction of the Director of Revenue that the amount will be refunded or credited to the person who originally paid the sales tax. The restriction will not apply if the person seeking the refund shows to the director's satisfaction that he or she originally paid the tax and that it was not collected from the purchasers.

DESCRIPTION (continued)

Any funds collected but not refunded under subsection 3 of Section 144.190 shall be deposited in the abandoned fund account established pursuant to Sections 447.500 to 447.595, RSMo.

Sections 144.1050 to 144.1068 Simplified Sales/Use Tax

This bill creates the Simplified Sales and Use Tax Administration Act.

The act allows the State of Missouri to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify the sales and use tax laws and brings the laws into general conformity among the agreeing states. The act also allows the state to continue negotiations with other states to determine the best approach for obtaining conformity.

The act allows the Department of Revenue to adopt administrative rules and procure goods and services in furtherance of the cooperative agreement. The act also provides for the development of certified service providers for the purpose of collecting and remitting sales and use tax on behalf of sales and use taxpayers. The bill will become effective January 1, 2002.

Sales Tax Exemption for Donated High Tech Inventory to Schools

The act provides a state sales tax exemption for retailers who donate high technology inventory to public elementary or secondary schools and approved public institutions of higher learning.

Sales Tax Exemption for Admission Fees for Hunting

This bill exempts from state and local sales and use taxes all admission fees charged for the hunting and taking of certain game birds on licensed shooting areas and all sales of feed and equipment used in the production of certain game birds by licensed wildlife breeders.

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
 Division of Budget and Planning
 Administrative Hearing Commission
Office of the State Treasurer
State Courts Administrator
Office of the Attorney General
Secretary of State
Missouri Department of Conservation

SOURCES OF INFORMATION (continued)

Department of Higher Education
Department of Elementary and Secondary Education
Office of the Governor
Missouri Senate
State of Texas
State of Florida
State of New York

NOT RESPONDING: Counties of St. Louis and St. Charles



Jeanne Jarrett, CPA
Director
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