

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1094-03  
Bill No.: HB 410  
Subject: Taxation and Revenue - Sales and Use; Business and Commerce  
Type: Original  
Date: April 9, 2013

Bill Summary: This proposal would change the laws regarding sales and use taxes, relating to Nexus with Missouri.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Conservation Commission	Unknown	Unknown	Unknown
Parks, and Soil and Water	Unknown	Unknown	Unknown
School District Trust	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on Other State Funds</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 11 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
General Revenue	3	3	3
<b>Total Estimated Net Effect on FTE</b>	<b>3</b>	<b>3</b>	<b>3</b>

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).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Local Government</b>	<b>More than \$100,000</b>	<b>More than \$100,000</b>	<b>More than \$100,000</b>

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## FISCAL ANALYSIS

### ASSUMPTION

#### Sections 144.010, 144.030, and 144.605, RSMo. - Sales and Use Tax:

Officials from the **Office of the Secretary of State (SOS)** assume 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 **Office of the Attorney General** assume that any potential costs arising from this proposal could be absorbed with existing resources.

Officials from the **Joint Committee on Administrative Rules** assume that this proposal would not have a fiscal impact to their organization in excess of existing resources.

Officials from **St. Louis County** stated they were not able to determine the potential fiscal impact of this proposal on their organization.

ASSUMPTION (continued)

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

BAP officials note this proposal would expand the definition of "engaging in business" and other related definitions under sales tax law, to include more out-of-state vendors that are doing business inside the state.

Various studies have suggested the Missouri is losing hundreds of millions of dollars in sales taxes on sales to out-of-state vendors, often via e-commerce. These changes would allow the Department of Revenue to begin capturing some of these taxes from vendors that are currently unidentified. It would also make it easier to comply with the Streamlined Sales Tax Agreement.

BAP estimates this proposal would increase Total State Revenues by \$10 million annually, of which \$7 million would be deposited in the General Revenue Fund.

Officials from the **Department of Conservation (MDC)** assume this proposal would have an unknown fiscal impact, but greater than \$100,000 to their organization. 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 this proposal would expand the definition of "engaging in business" and "maintaining a business" within the state. MDC officials noted that any increase in sales and use tax collected would increase revenue to the Conservation Sales Tax funds, and assume the Department of Revenue would be better able to estimate the fiscal impact for this proposal.

Officials from the **Department of Natural Resources (DNR)** assume this proposal would modify existing provisions relating to Sales Tax and Compensating Use Tax. DNR officials noted that Parks and Soils Sales Tax Funds are derived from a one-tenth of one percent sales and use tax pursuant to the Missouri Constitution. DNR officials also noted that the proposal appears to expand who is required to collect the sales and use tax, potentially resulting in increased revenue for the Parks and Soils Sales Tax Funds.

DNR officials deferred to the Department of Revenue for an estimate of anticipated fiscal impact for the Parks and Soils Sales Tax Fund.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume this proposal would modify the current definition of “engaging in business” in this state for sales and use tax purposes.

The proposal would define a "seller" by providing that a seller includes any business regularly or systematically soliciting business in the state, or soliciting business in the state through an independent contractor or other representative. Then, for purposes of sales tax law, a person would be considered to solicit business in the state if, for the immediately preceding four quarterly periods ending on the last days of March, June, September, and December, the cumulative total of such seller's gross receipts from sales of property delivered in the state exceeded \$200,000 and the seller made more than 100 sales of property delivered in the state.

A person making sales of tangible personal property or taxable services would be considered to solicit business through an independent contractor or other representative if the seller enters into an agreement with a resident of this state under which the resident refers potential customers, for a commission or other consideration, directly or indirectly, whether by a link on an internet website or otherwise, to the seller, if cumulative gross receipts from sales to customers in the state referred to the seller by all residents with such referral agreements exceeded \$10,000 during the preceding four quarterly periods ending on the last days of March, June, September, and December.

Fiscal impact

DOR officials assume this proposal would generate increased revenue from sellers located outside the state. The proposed changes could result in additional revenue of more than \$10 million to the state, although certain changes to Section 144.010 could exempt some sellers currently making retail sales in the state from collecting and remitting sales tax if they fell below the filing thresholds. This provision would result in a loss of Total State Revenue.

ASSUMPTION (continued)

Administrative impact

DOR officials assume Collections and Tax Assistance (CATA) would require one additional FTE Revenue Processing Technician I (Range 10, Step L) per 8,300 additional registrations / maintenance to business tax accounts in Business Tax Registration; one additional FTE Revenue Processing Technician I (Range 10, Step L) per 24,000 additional contacts annually to the registration phone line, with CARES equipment and agent license; and one additional FTE Revenue Processing Technician I (Range 10, Step L) per 4,800 contacts annually to the field offices, with CARES equipment and agent license.

The DOR response included three additional FTE along with associated benefits, equipment, and expense, and totaled \$123,042 for FY 2014, \$122,613 for FY 2015, and \$123,903 for FY 2016.

**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 for fiscal year 2014 could be reduced by roughly \$6,000 per additional employee.

**Oversight** has, for fiscal note purposes only, changed the starting salary for the additional employees 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 the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. Oversight has also adjusted the DOR estimate of equipment and expense in accordance with OA budget guidelines. Finally, Oversight assumes a limited number of additional employees could be accommodated in existing office space.

**Oversight** has not been able to locate any reliable information as to the potential impact of sales and use tax changes in this proposal other than the estimates provided by the Office of Administration - Division of Budget and Planning and the Department of Revenue. For fiscal note purposes, Oversight will assume that revenues from this proposal would generate more new sales and use tax revenue than would be needed to provide the additional employees requested by the Department of Revenue. If revenues are not adequate to support the costs of collections, Oversight assumes the program would be terminated.

ASSUMPTION (continued)

Accordingly, **Oversight** will indicate additional revenues greater than the DOR costs for the General Revenue Fund. Oversight will indicate revenues greater than \$100,000 per year for local governments and unknown additional revenues for the other state funds which receive general sales tax revenues. Oversight assumes the law changes in this proposal would not have an impact on motor vehicle or motor fuel sales and will not include any fiscal impact for transportation funds.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>GENERAL REVENUE FUND</b>			
<u>Additional revenue - sales tax</u>			
Sections 144.010, 144.030, and 144.605 RSMo.	More than \$112,424	More than \$107,294	More than \$108,497
<u>Cost - Department of Revenue</u>			
Sections 144.010, 144.030, and 144.605 RSMo.			
Salaries and wages (3 FTE)	(\$57,840)	(\$69,408)	(\$70,102)
Benefits	(\$29,351)	(\$35,221)	(\$35,573)
Equipment and expense	<u>(\$25,233)</u>	<u>(\$2,665)</u>	<u>(\$2,732)</u>
<u>Total costs - DOR</u>	<u>(\$112,424)</u>	<u>(\$107,294)</u>	<u>(\$108,407)</u>
FTE change - DOR	3 FTE	3 FTE	3 FTE
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
Estimated Net FTE Impact on General Revenue Fund	3 FTE	3 FTE	3 FTE

FISCAL IMPACT - State Government  
(Continued)

FY 2014  
(10 Mo.)

FY 2015

FY 2016

**CONSERVATION COMMISSION  
FUND**

Additional revenue - sales tax  
Sections 144.010, 144.030, and 144.605  
RSMo.

Unknown

Unknown

Unknown

**ESTIMATED NET EFFECT ON  
CONSERVATION COMMISSION  
FUND**

Unknown

Unknown

Unknown

**PARKS, AND SOIL AND WATER  
FUND**

Additional revenue - sales tax  
Sections 144.010, 144.030, and 144.605  
RSMo.

Unknown

Unknown

Unknown

**ESTIMATED NET EFFECT ON  
PARKS, AND SOIL AND WATER  
FUND**

Unknown

Unknown

Unknown

**SCHOOL DISTRICT TRUST FUND**

Additional revenue - sales tax  
Sections 144.010, 144.030, and 144.605  
RSMo.

Unknown

Unknown

Unknown

**ESTIMATED NET EFFECT ON  
SCHOOL DISTRICT TRUST FUND**

Unknown

Unknown

Unknown

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>LOCAL GOVERNMENTS</b>			
<u>Additional revenue - sales tax</u> Sections 144.010, 144.030, and 144.605 RSMo.	More than <u>\$100,000</u>	More than <u>\$100,000</u>	More than <u>\$100,000</u>
<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENT</b>	<b>More than <u>\$100,000</u></b>	<b>More than <u>\$100,000</u></b>	<b>More than <u>\$100,000</u></b>

FISCAL IMPACT - Small Business

This proposal would have a direct fiscal impact to small businesses which meet the statutory definitions for collection of sales and use taxes.

FISCAL DESCRIPTION

This proposal would modify current sales and use tax provisions. In its main provisions, the proposal would:

- \* Revise the definition of “seller” to include any business that regularly or systematically solicits business in the state or solicits business in the state through an independent contractor or other representative for four quarterly periods, has a cumulative gross receipts in excess of \$200,000, and has delivered more than 100 sales of property in the state unless the business can demonstrate to the Director of the Department of Revenue that it will not meet those requirements in the next four quarterly periods;

FISCAL DESCRIPTION (continued)

- \* Specify that soliciting business through an independent contractor or other representative includes a business that enters into an agreement with a resident of Missouri for a commission or other consideration and the resident directly or indirectly refers potential customers by a link on the Internet or otherwise to the seller if the cumulative gross receipts from sales by the seller to customers in Missouri who are referred by all residents with agreements with the seller exceeds \$10,000 during the preceding four quarters unless the seller can prove to the Director of the Department of Revenue that the resident with whom the seller has an agreement did not engage in any solicitation that would satisfy the nexus requirement of the United States Constitution during the next four quarterly periods;
- \* Remove the exemption for retail sales made between Missouri and any other state and between Missouri and any foreign country;
- \* Revise the definition of “engages in business activities within this state” by adding the Internet as a media source to the list of advertising markets for sales and use tax purposes. The business would be considered to have engaged in business activity in the state if, for four quarterly periods, it had cumulative gross receipts in excess of \$200,000, and had delivered more than 100 sales of property in the state unless the business can demonstrate to the Director of the Department of Revenue that it will not meet these requirements in the next four quarterly periods;
- \* Revise the definition of “vendor” to include a company which solicits business through the Internet; and
- \* Remove the provision exempting a vendor with less than \$500,000 total gross receipts in Missouri or \$12.5 million nationwide with no selling agents or place of business in the state from collecting the use tax.

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 Conservation  
Department of Natural Resources  
Department of Revenue  
St. Louis County



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