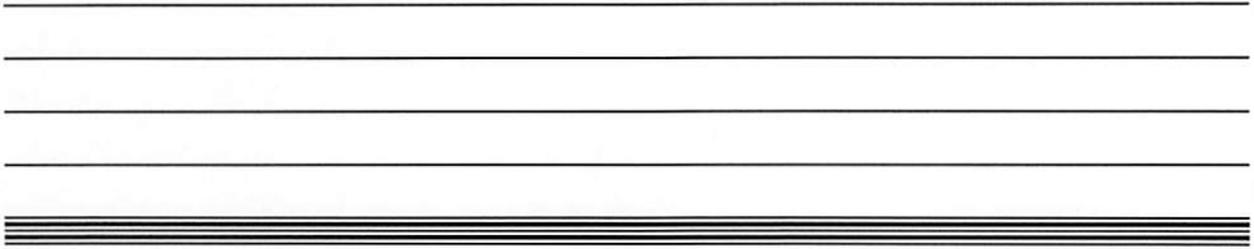


# **Oversight Division**

Committee On Legislative Research

## **PROGRAM EVALUATION**

Review of the  
Department of Revenue  
Tax Compliance Procedures



Program Evaluation

Review of the  
Department of Revenue  
Tax Compliance Procedures

*Prepared for the Committee on Legislative Research  
by the Oversight Division*

*Mickey Wilson, CPA, Director*

*Review Team: Ross Strobe, Jeani Hancock, Linda Dudgeon*

*December 15, 2011*

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THE COMMITTEE ON LEGISLATIVE RESEARCH is a permanent joint committee of the Missouri General Assembly comprised of the chairman of the Senate Appropriations Committee and nine other members of the Senate and the chairman of the House Budget Committee and nine other members of the House of Representatives. The Senate members are appointed by the President Pro Tem of the Senate and the House members are appointed by the Speaker of the House of Representatives. No more than six members from the House and six members from the Senate may be of the same political party.

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**COMMITTEE ON LEGISLATIVE RESEARCH  
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Members of the General Assembly:

The Joint Committee on Legislative Research adopted a resolution on June 20, 2011 directing the Oversight Division to perform a program evaluation of the Department of Revenue, Tax Compliance Procedures to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The report includes Oversight's comments on internal controls, compliance with legal requirements, management practices, program performance and related areas. We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates. You may obtain a copy of the report on the Oversight Division's website at <http://www.moga.mo.gov/oversight/audits.htm>.

Respectfully,

Representative Tom Flanigan  
Chairman

## **EXECUTIVE SUMMARY**

The Missouri Department of Revenue (DOR) was created by the 1945 Missouri Constitution to serve as the central collection agency for all state revenues. One of the primary responsibilities of DOR is the collection of taxes and fees owed to the state. If a taxpayer either fails to file a tax return, or fails to pay the total tax due, DOR will go through various efforts to collect the delinquent tax. In each of the past three fiscal years, DOR states they have collected over \$400 million in delinquent taxes (\$454 million in FY 2009, \$428 million in FY 2010 and \$456 million in FY 2011). DOR uses a variety of resources and tools to determine if a tax is due the state, estimate the amount of tax due, and attempt to collect the delinquent tax.

The collection of delinquent taxes sometimes occurs after a simple reminder letter, but sometimes the collection process goes through several steps; including issuing multiple notices to the taxpayer, calling the taxpayer, filing liens against the taxpayer's property, and/or garnishing the taxpayer's wages to collect the debt. If the taxpayer believes they do not owe the tax, several appeal process avenues are available to them; including the DOR, the Administrative Hearing Commission and finally through the Missouri Supreme Court.

In the collection process, DOR sometimes utilizes third parties collection agencies. DOR currently has contracts with two collection agencies as well as separate agreements with numerous county Prosecuting Attorneys to assist DOR. These companies and Prosecuting Attorneys are able to retain a percentage of the delinquent taxes, additional taxes, penalties and interest that they collect (from 5.5 percent to 20 percent).

Oversight requested from DOR an aging accounts receivable report by tax type to determine the amount of receivables DOR is attempting to collect. According to DOR, the total amount of tax receivables under five years old at a point in time during the evaluation (September, 2011) was roughly \$438 million. Broken out by tax type, the amounts were:

Sales / Use Tax	\$132,601,500
Corporate Income / Franchise	\$ 78,483,940
Withholding Tax	\$ 28,410,420
Individual Income	<u>\$199,346,726</u>
TOTAL	\$438,842,586

Oversight also inquired with other states to determine if different tax collection techniques are being used that could be utilized in Missouri. Some states are coupling the payment of income taxes to the privilege of driving. Both Maryland and Louisiana will not renew a driver's license or renew an automobile registration if the owner/driver has an tax delinquency. California publishes a list of the worst 500 tax offenders and also blocks them from renewing their license or registration. Several other states also publish a listing of individuals with delinquent tax bills.

# **Chapter 1**

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## **Purpose/Objectives**

The General Assembly has provided by law that the Joint Committee on Legislative Research may have access to and obtain information concerning the needs, organization, functioning, efficiency and financial status of any Department of state government or of any institution that is supported in whole or in part by revenues of the State of Missouri. The General Assembly has further provided by law for the organization of an Oversight Division of the Joint Committee on Legislative Research and, upon adoption of a resolution by the General Assembly or by the Joint Committee on Legislative Research, for the Oversight Division to make investigations into legislative governmental institutions of this state to aid the General Assembly.

The Joint Committee on Legislative Research directed the Oversight Division to perform an evaluation of the collection procedures utilized by the Department of Revenue (DOR) and report on the receivables due the state.

Oversight's review addressed, but was not limited to the following:

1. Review of the processes and techniques used by DOR in collecting state taxes.
2. Compliance with state and federal laws and regulations.
3. Determine whether other techniques are successfully utilized by other states.

## **Scope**

The scope of the evaluation concentrated on the period of July 1, 2008 through June 30, 2011, State Fiscal Years 2009 through 2011.

## **Methodology**

The methodology used by the Oversight Division included interviewing Department of Revenue personnel, reviewing the State of Missouri statutes, rules and regulations, organizational charts, annual reports, financial statements, analyzing budget and actual expenditure information, as well as gathering information from other states.

## Background

The Missouri Department of Revenue (DOR) was created by the 1945 Missouri Constitution to serve as the central collection agency for all state revenues. The primary responsibilities of DOR include collection of taxes and fees owed to the state; titling and licensing of motor vehicles, boats and trailers; and licensing of drivers throughout the state.

In State Fiscal Year 2011, DOR collected \$13.2 billion in both state and local tax revenue. According to DOR reports, collections by category for the last three fiscal years have totaled:

Table 1: Tax Collections

Tax	Collected in:			Average Percentage of total
	FY 2009	FY 2010	FY 2011	
Cigarette	\$113,988,090	\$111,860,656	\$111,199,469	.8%
Financial Institutions	\$7,301,231	\$11,006,515	\$28,765,582	.1%
Fuel	\$717,026,190	\$720,777,387	\$719,655,115	5.5%
Income	\$6,477,641,980	\$5,997,433,014	\$6,179,208,499	47.5%
Insurance	\$244,499,360	\$233,637,079	\$253,051,198	1.9%
Local Sales and Use	\$2,284,307,264	\$2,298,017,461	\$2,522,963,192	18.1%
State Sales and Use	\$3,061,095,719	\$2,951,026,637	\$3,007,369,328	23.0%
Other (Gaming, freight line companies, Blind Pension, etc.)	\$388,052,409	\$405,695,473	\$414,456,903	3.1%
<b>Total</b>	<b>\$13,293,912,243</b>	<b>\$12,729,454,222</b>	<b>\$13,236,669,286</b>	<b>100%</b>

Source: Department of Revenue

DOR is divided into four divisions (Taxation, Motor Vehicles & Driver Licensing, Legal Services and Administration) and the Director's Office. The Division of Taxation is responsible for the administration of Missouri's tax laws and processing forms and reports for the collection of revenue. The Taxation Division is further divided into four bureaus:

1. **Business Tax** - administers sales and use, financial institutions, insurance premiums, franchise, excise, cigarette and other tobacco products, motor fuel, corporate income, withholding, and county taxes and fees;
2. **Personal Tax** - administers individual income, partnership, fiduciary, and estate taxes, plus the property tax credit;

3. **Collections and Tax Assistance - provides tax assistance to individuals and businesses and performs appropriate procedures for unpaid tax liabilities;**
4. **Field Compliance - audits businesses both in-state and out-of-state to ensure compliance with Missouri's tax laws.**

The Taxation Division has more than 600 employees that are funded through the General Revenue Fund and has a total budget of nearly \$27 million (\$20.5 million from General Revenue).

According to the Department of Revenue, in each of the past three fiscal years, DOR has collected over \$400 million in delinquent taxes (\$454 million in FY 2009, \$428 million in FY 2010 and \$456 million in FY 2011). DOR uses a variety of resources and tools to determine if a tax is due the state, estimate the amount of tax due, and attempt to collect the delinquent tax. DOR uses several cross checks through Nexus and Discovery efforts to determine if the state is owed money that is either not being paid or is being underpaid.

DOR also utilizes third parties to collect delinquent taxes. DOR currently has contracts with two collection agencies (GC Services Limited Partnership and NCO Financial Systems, Inc.) as well as separate agreements with 66 county Prosecuting Attorneys to collect delinquent taxes. Through the contracts and agreements, DOR pays the collection agencies and the Prosecuting Attorneys a percentage of the proceeds collected (roughly 5.5% to 6.5% for collection agencies and 20% for Prosecuting Attorneys (as specified in Section 136.150, RSMo)). These third party collectors do not directly retain a portion of the taxes they collect; rather a separate General Revenue appropriation is made each year to pay for their services. Total payments to third party collectors for the past three years have been \$3.9 million in FY 2009, \$2.4 million in FY 2010 and \$2.3 million in FY 2011. Approximately 65 to 80 percent of these amounts were paid to Prosecuting Attorneys.

## **Chapter 2**

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### **Report**

As stated, part of the mission of the Department of Revenue is to collect taxes for the state. Oversight reviewed the various steps taken by DOR when taxpayers are delinquent in paying their taxes. The collection of delinquent taxes sometimes occurs after a simple reminder letter, but often the collection process goes through several steps.

If an individual taxpayer is delinquent in paying their tax to the state, DOR will send a Notification of Balance Due notifying them of the suspected balance or if DOR makes a change to an individual's return that results in a deficit, DOR will send a Notice of Adjustment. If the matter is not timely settled, DOR will next issue a Notice of Deficiency by certified mail to the taxpayer again notifying them of the balance due as well as their options. If the taxpayer believes the deficiency is not valid but does not take steps to officially protest this within sixty days, the balance assessed is considered final and further collection efforts will be taken. If an official protest is properly and timely filed by the taxpayer, DOR will reconsider the proposed deficiency and then render a Final Determination, notifying the taxpayer of the findings of fact and the basis for the Final Determination.

If the taxpayer is still not satisfied, they can appeal the decision to the Administrative Hearing Commission within 30 days of receiving the Final Determination. If the taxpayer is again not satisfied after a ruling by the Administrative Hearing Commission, their last appeal is to the Missouri Supreme Court. Again, this appeal must be filed within 30 days of the ruling by the Administrative Hearing Commission.

According to DOR, for FY 2011 over 9,000 protests were filed with DOR for Individual Income Tax, Corporate Income Tax, Sales and Use Tax and Withholding Tax. Of that total, only 308 Final Decisions were rendered by DOR. DOR stated that 'disputes that do not reach a final determination were resolved with additional information, settled or were not properly or timely filed'. Also according to DOR, 715 cases were appealed to the Administrative Hearing Commission in FY 2011 and only 10 tax cases were appealed to the Missouri Supreme Court from calendar 2009 to present.

If the taxpayer does not pay their taxes, in addition to sending notices and making telephone calls, DOR can also file a Certificate of Lien with the recorder of deeds against all real and personal property of the taxpayer in the county. DOR can also file a Certificate of Lien with the clerk of the circuit court which has the full force and effect of a default judgement. DOR may then request an execution on the judgement, which may subject the taxpayers' wages to garnishments and their real and personal property to seizure and sale to settle the tax obligation debt.

DOR defined these actions as:

- Garnishments (involuntary payment through payroll deduction);
- Sequestration (involuntary payment through payroll deduction of a government employee);
- Levy on bank account (involuntary withdrawal of funds from a bank account); and
- Execution against real or personal property (involuntary seizure of real or personal property).

DOR states that in an effort to utilize their resources more efficiently, they utilize a computer system referred to as STRATA, which DOR defines as “a separate rules engine that evaluates each delinquent tax account, assigns it a collections risk score, and designates an appropriate collection treatment scenario which is then facilitated by the legacy system.” In application, STRATA will determine, based upon the history of the taxpayer and other variables, what sequence of collection efforts should be utilized to efficiently recover the debt. Delinquent accounts with low risk scores (taxpayer may have a history of paying bills either on-time or shortly past due) may not receive any immediate action (DOR may not expend the resources to make a telephone call to the taxpayer) while an account with a higher risk score may receive immediate action by DOR.

DOR’s Taxation Division is attempting to replace numerous computer systems currently used to enforce many of the state’s tax laws. According to their current budget submission, DOR uses “a mixture of largely 20- to 30- year old mainframe and PC software systems. Communication between the systems is severely limited.” “A study was contracted for the Department in 2008 to project the cost of an integrated tax system for withholding, sales/use, individual, and corporate taxes”. The study projected the cost for the implementation of an integrated tax system at \$48 million to \$68 million with annual maintenance costs of approximately \$2.5 million.

A few of the current systems utilized by DOR in the collection of taxes include:

- COINS - Corporate Income and Franchise Taxes;
- MINITS - Individual Income Taxes;
- MITS - ‘umbrella’ registration system for sales/use, corporate and employer withholding;
- MOST - facilitates the administration, collection and distribution of sales/use taxes
- CACS-G - computer assisted collection system

On May 31, 2011, the Office of Administration - Division of Purchasing and Materials Management and the Department of Revenue issued a Request for Proposal (RFP) for the new integrated revenue system. The RFP has been amended several times, and bidding closed in September 2011. According to the RFP, “(t)he new system will replace the primary legacy system supporting the administration and collection of sales and use tax, tire and battery fees, individual income tax (not to include fiduciary and trust), property tax credit, withholding tax, and corporate income and franchise tax by providing a single integrated system for all taxpayer

information, history, and current actions. The new system implemented under this RFP shall also replace a number of peripheral systems developed to work in conjunction with the agency’s primary legacy systems or to perform functions not available in the primary systems.”

Within DOR’s FY 2012 budget is an appropriation for \$1 million for the integrated tax system. DOR has submitted a request for an additional \$6 million appropriation in their FY 2013 request. According to DOR, “the contract to create and install the system will be benefits based. The contractor will carry the up-front costs of the system and take payment only in the form of funds collected above current collection amounts.” DOR hopes to award the contract in FY 2012 and states enough benefits may be accrued to award the potential contractor up to \$6 million in FY 2013. DOR attempted to raise funding to pay for a new integrated motor vehicle and driver licensing system by increasing motor vehicle and driver record fees in 2008, but that effort was thwarted by a lawsuit.

During the program evaluation, Oversight requested an aging Accounts Receivable report from DOR. DOR stated they do not generally consider debts older than 5 years to be collectible because the percentage actually collected after 5 years is very small. Below are the amounts considered past due (up to 5 years old) that DOR is attempting to collect, either through collection agencies, Prosecuting Attorneys, or efforts of DOR employees. DOR stated the Accounts Receivable reports change on a daily basis; therefore, the totals below are a snapshot of accounts in September, 2011:

Table 2: Aging Accounts Receivable - amount

	Sales/Use	Corporate Income / Franchise	Withholding	Individual Income	Total
0 - 90 days	\$33,079,599	\$9,110,794	\$3,180,481	\$36,218,515	\$81,589,388
91 - 180 days	\$14,158,761	\$16,217,019	\$1,541,415	\$8,510,419	\$40,427,614
181 days - 1 year	\$13,194,866	\$4,513,909	\$2,758,817	\$22,807,479	\$43,275,070
1 year - 3 years	\$45,028,456	\$36,570,954	\$12,663,253	\$62,541,323	\$156,803,986
3 years - 5 years	\$27,139,820	\$12,071,264	\$8,266,454	\$69,268,989	\$116,746,527
Total	\$132,601,501	\$78,483,940	\$28,410,420	\$199,346,726	\$438,842,586

Source: Department of Revenue

**Table 3: Aging Accounts Receivable - Number of open accounts**

	Sales/Use	Corporate Income / Franchise	Withholding	Individual Income	Total
0 - 90 days	11,341	485	3,770	88,621	104,217
91 - 180 days	5,237	287	1,998	11,755	19,277
181 days - 1 year	5,936	395	3,180	21,786	31,297
1 year - 3 years	13,255	13,713	12,042	88,530	127,540
3 years - 5 years	8,265	3,675	9,432	41,249	62,621
<b>Total</b>	<b>44,034</b>	<b>18,555</b>	<b>30,422</b>	<b>251,941</b>	<b>344,952</b>

Source: Department of Revenue

**Table 4: Aging Accounts Receivable - Average amount receivable per open account**

	Sales/Use	Corporate Income / Franchise	Withholding	Individual Income	Total
0 - 90 days	\$2,917	\$18,785	\$844	\$409	\$783
91 - 180 days	\$2,704	\$56,505	\$771	\$724	\$2,097
181 days - 1 year	\$2,223	\$11,428	\$868	\$1,047	\$1,383
1 year - 3 years	\$3,397	\$2,667	\$1,052	\$706	\$1,229
3 years - 5 years	\$3,284	\$3,285	\$876	\$1,679	\$1,864
<b>Total</b>	<b>\$3,011</b>	<b>\$4,230</b>	<b>\$934</b>	<b>\$791</b>	<b>\$1,272</b>

Source: Department of Revenue

These totals reflect amounts DOR considers past due and is still attempting to collect, whether the ultimate recipient is the state or local political subdivisions. Therefore, the \$132.6 million of past due Sales and Use Tax would include both state moneys (for General Revenue, School District Trust Fund, Conservation, and Soils and Waters) as well as moneys due local political subdivisions. DOR also stated as of early September 2011, their systems reflected accounts receivable greater than 5 years old to be over \$90 million.

## Comments

Oversight researched reciprocity agreements between states regarding the collection of taxes and asked DOR if Missouri has any such agreements. DOR provided a copy of the agreement between Missouri and Kansas which allows each state to check a database provided by the other state before issuing a tax refund. If a delinquent taxpayer who is on the list provided by Missouri is due a tax refund payment from Kansas, the refund payment will be reduced by the amount due to Missouri. Kansas would then pay Missouri the amount retained. DOR stated they are working with several neighboring states to expand this program. DOR states they also have a debt offset agreement with the Internal Revenue Service in which certified state tax debts can be garnished from federal tax refunds.

As part of the evaluation, Oversight asked DOR if they had suggestions regarding legislative changes that could make collections more effective. DOR did not present a 'wish list' to Oversight, but instead referred us to House Bill 4 of the 2011 Extraordinary Session. The bill:

- authorized a tax amnesty period from January 1, 2012 to June 30, 2012;
- allowed the Director of DOR and the Commissioner of the Office of Administration to jointly enter into a reciprocal agreement with the federal government or any other state to offset vendor and contractor payments for any type of debt owed to the state;
- allowed any state agency to refer any debt owed to it to DOR for collection;
- allowed DOR to mail documents by first class mail instead of the more costly certified mail;
- allowed DOR to retain 1% of all local sales and use tax taxes it collected (this is currently done on most local sales and use taxes DOR collects);
- required anyone making a claim or having a judgement under the provisions of the State Legal Expense Fund to have a no-tax due statement from DOR before any moneys can be expended from the fund for the settlement of any liability claim; and
- allowed DOR to issue an administrative garnishment if it filed a certificate of lien in the circuit court for delinquent income or sales or use taxes. Anyone receiving a garnishment order must turn over any of the taxpayer's assets in his or her possession and any assets that are to become due the taxpayer including wages, salaries, commissions, bonuses, worker's compensation benefits, disability benefits, and/or pension or retirement payments.

In response to a request for fiscal impact of the legislation, officials from the DOR stated the tax amnesty provisions would have minimal impact on FY 2012, but could increase state revenue in FY13. Because the legislation includes known tax liabilities, some portion of the increase will reflect acceleration of the collection of liabilities that DOR would have collected after FY 2012 and FY 2013. The proposal would reduce collection of interest and penalties that would have been paid in FY 2012, FY 2013, and subsequent years. The proposal could also have the same effect on local sales and use tax interest and penalties. Other provisions included in this legislation will increase revenues in future fiscal year. DOR provided the following revenue estimate:

**Table 5 - Estimated revenue impact (millions of dollars) from HB 4**

Statute Sections	Subject	FY 2012 General Revenue	FY 2012 All Funds	FY 2013 General Revenue	FY 2013 All Funds	FY 2014 General Revenue	FY 2014 All Funds
32.028, 32.410, 32.420, 32.430, 32.440, 32.450, 32.460	Centralized State Debt Collections	\$0.00	\$0.00	\$0.75	\$1.00	\$4.00	\$6.00
32.058	Certified mail	\$0.50	\$0.50	\$1.00	\$1.00	\$1.00	\$1.00
32.087	One percent collection fee	\$0.20	\$0.20	\$0.35	\$0.35	\$0.35	\$0.35
32.383	Tax Amnesty	\$2.00	\$2.40	\$18.00	\$21.60	\$0.00	\$0.00
32.385	Federal offset	\$1.00	\$1.20	\$3.00	\$3.50	\$6.00	\$7.00
105.716, 140.910	Garnishments	\$1.30	\$1.30	\$3.00	\$3.00	\$3.00	\$3.00

DOR officials estimated the tax amnesty provisions of the bill could have a positive impact on Total State Revenue in FY 2012 and FY 2013 of up to \$74 million. However, the DOR officials stated that up to \$50 million of the \$74 million which could be received through amnesty would be already known to the department. DOR officials assume that an overwhelming majority of the \$50 million, plus interest and penalties, could be collected without amnesty. Therefore, DOR officials estimated that net new revenues would be \$24 million.

DOR also assumed they would incur costs of \$3.7 million in the first fiscal year, \$956,191 in the second fiscal year and roughly \$430,000 per year thereafter from the proposal, including:

- Systems upgrade of \$1.5 million
- Professional services of \$561,000
- Postage of \$86,250
- Postage, envelopes and printing estimate is 490,000 x \$.505 = \$247,450

- Taxation Division processing costs of approximately \$350,000 for the following:
  - Overtime to review correspondence-\$100,000
  - Overtime to review errors on returns-\$73,000
  - Existing staff and temporary employees to key returns and process payments-\$145,000
  - Customer contacts-\$30,000
- DOR officials also recommend an advertising budget of at least \$400,000.

## **Other States**

In researching other states' revenue collection activities, Oversight found that some states use techniques not utilized in Missouri. Early in the review, DOR had alluded to the ability of some states to be able to tie the issuance of drivers' license and/or the registration of vehicles to the payment of delinquent income taxes. Currently, the State of Maryland is able to deny an application for a drivers' license and/or vehicle registration if the applicant has an overdue tax bill. The Maryland Legislature passed a bill (SB 87) this past session that went into effect July 1, 2011. Maryland states that in four months since the new law went into effect (July 1, 2011 - October 31, 2011), they have been able to collect almost \$4.6 million in delinquent taxes. Maryland states that currently they are able to check Individual Income taxes and Business Unemployment Insurance taxes in the program and are in the process of adding all types of taxes for businesses (i.e. withholding, sales and use, etc.).

The State of Louisiana also ties motor vehicle licensing to income taxes outstanding; however, Louisiana takes it a step farther. Louisiana will not only deny a renewal application for a vehicle, but will also suspend a driver's license due to nonpayment of taxes (of \$1,000 or more that is final and nonappealable (La Revised Statutes 47:296.2)).

Another state that now ties delinquent taxes to motor vehicle licensing is California. On October 4, 2011, the Governor of California signed Assembly Bill 1424 which publishes the worst 500 state tax debtors. This listing is found on the California web page. The individuals on this listing are blocked from renewing their drivers' license and/or renewing their vehicle registration. The connection between motor vehicle licensing and tax collection is not made in California for those not on the list. According to the California State Board of Equalization, they have received a total of \$5.2 million from 37 qualifying taxpayers that came forward to take care of their debts.

Several other states publish a listing of individuals with delinquent tax bills. DOR publishes a report on their web site of the 'Who is Not Paying' businesses that have had their business license revoked for failure to pay taxes; however, DOR does not list individuals as some states do. For example, Wisconsin posts a list on its web site of all individuals who owe more than \$5,000 and the amount is unpaid more than 90 days after all appeal rights have expired.

All states need consistent tax revenue to pay for the services and programs that citizens depend upon. Most states utilize the usual collection techniques of mailed notifications, liens, and garnishments; however, many states have resorted to adding new tools to their tax collection arsenal. Missouri utilizes some tools that other states do not use including third party collection agencies and other state reciprocity agreements. There are, however, other tools that could be beneficial in this ongoing process.