MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (16-058)

Subject

Initiative petition from Chuck Hatfield regarding a proposed constitutional amendment to Article X. (Received May 13, 2015)

Date

June 2, 2015

Description

This proposal would amend Article X of the Missouri Constitution.

The amendment is to be voted on in November 2016.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office,** the **Department of Agriculture,** the **Department of Economic Development,** the **Department of Elementary and Secondary Education,** the **Department of Higher Education,** the **Department of Health and Senior Services,** the **Department of Insurance, Financial Institutions and Professional Registration,** the **Department of Mental Health,** the **Department of Natural Resources,** the **Department of Corrections,** the **Department of Labor and Industrial Relations,** the **Department of Revenue,** the **Department of Public Safety,** the **Department of Social Services,** the **Governor's office,** the **Missouri House of Representatives,** the **Department of Conservation,** the **Department of Transportation,** the **Office of Administration,** the **Office of State Courts Administrator,** the **Missouri Senate,** the **Secretary of State's office,** the **Office of the State Public Defender,** the **State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County Legislators, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Columbia,** the **City of Jefferson,** the **City of Joplin,** the **City of Kansas City,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, St. Louis Community College,** and the **State Tax Commission.**

Marc Ellinger provided information for this proposal to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they assume that any potential costs arising from the adoption of this proposal can be absorbed with existing resources.

Officials from the **Department of Agriculture** indicated no fiscal impact on their department.

Officials from the **Department of Economic Development** indicated no impact for their department.

Officials from the **Department of Elementary and Secondary Education** indicated no cost to their department.

Officials from the **Department of Higher Education** indicated they have reviewed the provisions of this initiative petition. Although the proposal would limit the ability of the state to revise its tax structure, it is impossible for their department to determine what tax revenues the state might forgo as a result or the impact the limit would have on appropriations to higher education. Consequently, while they do not believe the proposal would have a direct fiscal impact on their department, the actual potential impact is unknown.

Officials from the **Department of Health and Senior Services** indicated no fiscal impact on their department.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated the fiscal impact from this proposal is unknown. While there would appear to be no current and direct fiscal impact from these provisions on their department, they would certainly and perhaps severely limit what state and local governments can do in the future in terms of changing the way taxes are handled.

Officials from the **Department of Corrections** indicated no impact for their department.

Officials from the **Department of Labor and Industrial Relations** indicated no fiscal impact on their department.

Officials from the **Department of Revenue** indicated this petition will have no fiscal impact on their department.

Department officials provided the following additional information:

They reviewed the comments submitted and disagree with the assumptions. Please see below:

The Initiative Petition will require a substantial increase in Department of Revenue lawyer FTEs
The Department feels there is already a sufficient legal staff available to handle any possible new litigation.

The Initiative Petition will require a substantial increase in Department of Revenue non-lawyer FTEs
The Department currently maintains records of all exemptions under Missouri law and how they apply. These provisions will not change anything.

The Initiative Petition will eliminate the revenue from the Parks and Soils tax
Both are constitutional provisions. This provision does not trump the tax or the need for election in another provision. Also, the tax is imposed as of January 1, 2015. Therefore, it may still be approved to continue after that date.

The Initiative Petition will eliminate the revenue from the Kansas City transportation sales tax
The tax is imposed as of January 1, 2015. Therefore, it may still be approved to continue after that date. Where there is some litigation risk, the law already says that there must be a vote to extend. This provision should not impact that fact.

Officials from the **Department of Public Safety** indicated this petition could restrict their ability to establish a way to fund public safety programs going forward, but the fiscal impact would not measurable at this point.

Officials from the **Department of Social Services** indicated no fiscal impact on their department.

Officials from the **Governor's office** indicated there should be no fiscal impact to their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact to their agency.

Officials from **Department of Conservation** indicated that no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Department of Transportation** indicated they assume there will be no fiscal impact.

Officials from the **Office of Administration** indicated:

The proposal enacts a new section (Section 26) in Article X of the Missouri Constitution. This section would prohibit the state, counties, any other political subdivisions from imposing any new sales or use tax on services or activities not subject to tax on January 1, 2015.

The state sales tax base continues to shrink as the amount of Internet sales increases. This proposal would prevent the state from modernizing its taxing structure in the future to include Internet sales, which would negatively impact the state's ability to raise sufficient revenue to support vital state services. This proposal would also negatively impact the state's ability to restructure tax policy in the future. Counties and political subdivisions would likely experience the same revenue issues if this proposal were to be enacted.

This proposal will not impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Secretary of State's office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Their office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with $1.3 million historically appropriated in odd numbered fiscal years and $100,000 appropriated in even numbered fiscal years to meet these requirements. Through FY 2013, the appropriation had historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost $2.17 million to publish (an average of $434,000 per issue). In FY 2015, the General Assembly changed the appropriation so that it was no longer an estimated appropriation and their office was appropriated $1.19 million to publish the full text of the measures. Due to this reduced funding, their office reduced the scope of the publication of these measures. In FY 2015, at the August and November elections, there were 9 statewide Constitutional Amendments or ballot propositions that cost $1.1 million to publish (an average of $122,000 per issue). Despite the FY 2015 reduction, their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, we reserve the right to request funding to meet the cost of our publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition will not have any substantial impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from the **City of Columbia** indicated this amendment could severely hamper local taxpayers ability to fund and support local needs. Without the ability to seek approval even for currently authorized taxes, their city could find that it is unable to meet expectations for public safety, economic development, capital improvements and other services. It is not possible to quantify the fiscal impact.

Officials from the **City of Kansas City** indicated they estimate an annual revenue loss of at least $203,000,000 if either Initiative Petition 16-058, 16-059, or 16-060 is adopted. These losses result from the prohibition on new local sales and use taxes, which would include a ban on new sales taxes on Internet purchases of goods and services by city residents from out-of-state merchants. Their city would also lose substantial sales tax revenues because these initiatives would cancel any revenues otherwise gained from the elimination of exemptions under the Streamlined Sales Tax Act.

The projected loss of $203 million is based on the following data and assumptions:

According to a study reported on the web site of the National Conference of State Legislatures, approximately 49 percent of Missouri sales commerce in 2009 was electronic (online) commerce. The study was performed by the Center for Business and Economic Research of the University of Tennessee.

Only a negligible amount of online commerce actually results in the payment of use taxes to the jurisdiction where the purchaser resides. Few purchasers voluntarily report and pay use taxes on online purchases.

This unreported and unpaid use tax on online commerce could be captured if (1) Congress passed the Marketplace Fairness Act, and (2) Missouri enacted the Streamlined Sales Tax. Arguably, Initiative Petitions 16-058, 16-059, and 16-060 would prevent Missouri from adopting the Streamlined Sales Tax.

Assuming that their city has the same level of electronic commerce as the entire state of Missouri according to the study (49%), the city is losing 49 percent of its potential sales & use taxes as the result on unreported and unpaid use taxes on online transactions.

Their city's estimated sales tax revenue for fiscal year 2015-16 is $212 million according to its budget.

Their city's loss from uncaptured use taxes on 49 percent of total sales tax revenue is estimated as follows:

If x = total potential sales and use tax revenue (both paid and unpaid)

$212,000,000 = .51x$

X = 212,000,000 / .51
X = 415,686,275
Unreported/unpaid use tax = 415,686,275 – 212,000,000 = 203,686,275

Officials from **Metropolitan Community College** indicated unknown impact for their college.

Officials from **University of Missouri** indicated this initiative petition would not have a significant fiscal impact on their university.

Marc Ellinger provided the following information for this initiative petition.

I submit the following proposed statement of fiscal impact for the Initiative Petition that was filed by Chuck Hatfield on May 13, 2015. The initiative petition has been labeled by the Secretary of State as 2016-058.

The initiative petition would prohibit the state, counties and other political subdivisions from imposing a sales or use tax on any service or activity that was not subject to a sales or use tax on January 1, 2015.

(1) Initiative Petition 2016-058 will require a substantial increase in Department of Revenue lawyer FTEs

The Initiative Petition will increase costs to the state due to increased litigation as a result of the proposed measure. The largest component of "litigation costs" is the personnel costs. The Department of Revenue currently employs a small army of lawyers. In 2014, the State spent more than 1.6 million dollars of taxpayer money to fund the salaries of the Department's lawyers. (See Appendix A). Since 2010, the Director of Revenue has been a party to more than fifty Missouri Supreme Court cases.[1]

Whether or not a service or activity is currently subject to sales or use tax has been subject the focus of considerable litigation, especially in recent years. Already this year, the Missouri Supreme Court has decided *Alberici Constructors, Inc. v. Director of Revenue*, 452 S.W.3d 632 (Mo. banc 2015) (a use tax case), *Fred Weber Inc. v. Director of Revenue*, 452 S.W.3d 628 (Mo. banc 2015) (a sales tax case), *Ben Hur Steel Worx v. Director of Revenue*, 452 S.W.3d 624 (Mo. banc 2015) (a sales and use tax case), *Five*

[1] See, generally, www.courts.mo.gov/casenet.

Delta Alpha, LLC v. Director of Revenue, --- S.W.3d ---, 2015 WL 777898 (Mo. banc 2015) (a use tax case), and *Tatson, LLC v. Director of Revenue*, 456 S.W.3d 43 (Mo. banc 2015) (a sales tax case). These cases account for 14% of the total cases handed down so far this year by the Missouri Supreme Court.

Furthermore, an amendment of this type would incentivize parties, who previously would have reached a settlement with the Department, to seek a legal determination that their services and/or activities were not subject to a sales or use tax on January 1, 2015. Such determination would essentially provide them with a perpetual exemption from tax.

The increase in litigation will necessitate additional lawyer FTEs for the Department of Revenue. These costs should be included in the Fiscal Note Summary. At the very least, the Fiscal Note Summary should state "the proposal's passage will likely lead to increased litigation-related costs." [2]

(2) Initiative Petition 2016-058 will require a substantial increase in Department of Revenue non-lawyer FTEs

The initiative would also prohibit the state from repealing any of the current exemptions in Missouri's sales and use tax law. Thus, the initiative would require the Department to track current exemptions. In a 2013 audit, the Department of Revenue

[2] This language was previously adopted by the Auditor for Initiative Petitions 2016-021 and 2016-022 (attached hereto as Appendix B).

admitted it does not currently track or report exemptions and stated "to track and report exemptions, the Department would require a substantial increase in FTE[.]" [3]

(3) Initiative Petition 2016-058 will eliminate the revenue from the Parks and Soils tax

The proposed measure essentially prohibits any new sales or use taxes. The existing Parks and Soils tax in Article IV, Section 47(a) of the Missouri Constitution, which imposes a sales tax of one-tenth of one percent, expires in 2016. Mo. Const. art. IV, Section 47(c). Without additional voter approval, Sections 47(a), (b), and (c) terminate. As of January 1, 2015 there is not a sales or use tax under Section 47 of the Missouri Constitution on or after 2016. The initiative effectively eliminates the Parks and Soils tax after 2016. The amount collected in FY2014 from the state sales and use tax for Parks and Soils was $76,121,334.[4] That is an increase over the $67.9 million that was collected in FY2010. The loss to the state in 2017 as a result of the elimination of the Parks and Soils tax in Article IV, Section 47 will be at least $76 million dollars.

(4) Initiative Petition 2016-058 will eliminate the revenue from the Kansas City transportation sales tax

In 2015, the legislature passed Senate Bill 190 (attached as Appendix D) which would extend the Kansas City transportation sales tax indefinitely. However, the

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[3] http://auditor.mo.gov/Repository/Press/2013-015.pdf (attached hereto, without Appendixes, as Appendix C).
[4] http://dor.mo.gov/pdf/financialstatreport14.pdf.

proposed measure prohibits any new sales or use taxes that were not in effect as of January 1, 2015. As of January 1, 2015, there was no Kansas City transportation sales tax on or after December 31, 2015. As such, the state would be prohibited from imposing or extending such tax as a result of Initiative Petition 2016-058. If the sales tax expires, the result is a loss to the City of Kansas City in the amount of $36.5 million dollars annually (Fiscal Note for SB 190 attached as Appendix E).

(5) Initiative Petition 2016-058 will repeal any local taxes voted on and approved by the people after January 1, 2015.

Since January 1, 2015, a number of local governments put tax measures before their voters for approval. Many passed by overwhelming margins. Still, these taxes would be repealed by the Initiative Petition because it prohibits a local government or political subdivision from imposing any sales or use tax that was not already imposed on January 1, 2015. The taxes listed below are a sampling of the taxes that were passed in April 2015 that would be repealed by the Initiative Petition:

- Country Club Hills Prop S - Sales Tax
- Crawford County Prop 1 - Sales Tax
- Crystal City Prop E - Sales Tax
- Hazelwood Prop P - Sales Tax
- Hillsboro, MO Fire Prop F - Sales Tax
- Kirkwood Prop 1 - Sales Tax
- Pleasant Valley Sales Tax

- Rolla Prop P - Sales Tax
- Sni-Valley Fire Prot. Distr. Sales Tax
- St. John Prop S - Sales Tax
- Ste. Genevieve Co. Prop A - Sales Tax
- Valle Ambulance Dist. Prop Valle - Sales Tax
- Washington County Road & Bridge Sales Tax

The loss to local governments as a result of the repeal of these taxes would be significant and such costs should be included in the Fiscal Note Summary.

Conclusion

No savings or reduction in costs to state government can be gleaned in any manner from the proposed Initiative Petition. Additionally, this measure expressly restricts the ability of counties, cities, and other political subdivisions from imposing certain taxes. Local governments will see reduced revenues in the future as a result of the proposed measure.

The proposed measure would have a significant negative economic impact on the state. The proposed measure will increase litigation related costs, eliminate the state Parks and Soils tax, and eliminate the Kansas City transportation sales tax. Any estimate of fiscal impact of the proposed measure must include these significant losses in order to adequately inform potential signors and voters. The use of the phrase "unknown" suggests an ambiguity regarding costs or savings – that such costs or savings could be positive or negative. Since there is no evidence to support (1) any reduction in costs (2)

any savings, or (3) any increased revenues, such ambiguity cannot be included in the fiscal note summary. Therefore use of the word "unknown," unless it includes the phrase "negative impact," is improper.

2014 REVENUE	ASSOCIATE COUNSEL	ALLEN, CHANDREKA N.	26,374.38
2014 REVENUE	ASSOCIATE COUNSEL	AUSMUS, MARK DAVID	5,859.96
2014 REVENUE	ASSOCIATE COUNSEL	BRIGHT, DEANNA MARIE	33,185.44
2014 REVENUE	ASSOCIATE COUNSEL	FEHR, CHRISTOPHER R.	46,858.68
2014 REVENUE	ASSOCIATE COUNSEL	HOUDEK, THOMAS A	9,766.60
2014 REVENUE	ASSOCIATE COUNSEL	MARTIN, SPENCER ADAM	9,766.60
2014 REVENUE	ASSOCIATE COUNSEL	SANDERS, MARIA A	30,983.49
2014 REVENUE	CHIEF COUNSEL	MONAGHAN, MAUREEN M	65,583.00
2014 REVENUE	GENERAL COUNSEL - DIVISION	HALE, JONATHAN HOWARD	41,588.75
2014 REVENUE	GENERAL COUNSEL - DIVISION	KISLING, MICHAEL SHAYNE	70,483.08
2014 REVENUE	GENERAL COUNSEL - DIVISION	PLAGGENBERG, JOSEPH G	1,875.00
2014 REVENUE	LEGAL COUNSEL	AUSMUS, MARK DAVID	37,642.50
2014 REVENUE	LEGAL COUNSEL	BERNSEN, TORY DOWD	43,023.00
2014 REVENUE	LEGAL COUNSEL	CONWAY, STEPHEN	43,023.00
2014 REVENUE	LEGAL COUNSEL	COOPER, CAMERON H	43,023.00
2014 REVENUE	LEGAL COUNSEL	HOUDEK, THOMAS A	34,055.50
2014 REVENUE	LEGAL COUNSEL	KENNEDY, DANIEL J	43,023.00
2014 REVENUE	LEGAL COUNSEL	MARTIN, SPENCER ADAM	34,055.50
2014 REVENUE	LEGAL COUNSEL	SLAWSON, BENJAMIN C	43,023.00
2014 REVENUE	LEGAL COUNSEL	VEIT, DAWN RENEE	12,228.41
2014 REVENUE	LEGAL COUNSEL	VITALE, DESIREE JUDE	48,483.00
2014 REVENUE	MANAGING COUNSEL	BERTELS, RYAN EUGENE	4,361.59
2014 REVENUE	MANAGING COUNSEL	FREUDENBERG, ROGER L.	67,602.12
2014 REVENUE	MANAGING COUNSEL	GINTHER, STEVEN ALLAN	67,602.12
2014 REVENUE	MANAGING COUNSEL	GOOCH, CHARLES L	67,602.12
2014 REVENUE	MANAGING COUNSEL	LAKS, YAMINI A.	51,729.10
2014 REVENUE	MANAGING COUNSEL	MILLER, DALE WOOD	39,660.62
2014 REVENUE	SENIOR COUNSEL	ALLEN, CHANDREKA N.	15,642.69
2014 REVENUE	SENIOR COUNSEL	BRIGHT, DEANNA MARIE	15,642.69
2014 REVENUE	SENIOR COUNSEL	CHENAULT, JAMES A.	60,363.48
2014 REVENUE	SENIOR COUNSEL	COX, JOSEPH M	53,611.08
2014 REVENUE	SENIOR COUNSEL	LAFAVER, BEVERLY L	54,718.44
2014 REVENUE	SENIOR COUNSEL	LAKS, YAMINI A.	2,708.33
2014 REVENUE	SENIOR COUNSEL	LAUGHLIN, JANE A	59,983.08
2014 REVENUE	SENIOR COUNSEL	LISSANT, SUSAN LEAH	53,611.08
2014 REVENUE	SENIOR COUNSEL	MOREAU, SHERYL L	28,738.76
2014 REVENUE	SENIOR COUNSEL	MURRAY, MICHAEL LEE	56,987.16
2014 REVENUE	SENIOR COUNSEL	PRITCHARD, JAN	53,611.08
2014 REVENUE	SENIOR COUNSEL	ROSE, GLORIA JEAN	59,445.71
2014 REVENUE	SENIOR COUNSEL	SANDERS, MARIA A	20,112.03
2014 REVENUE	SENIOR COUNSEL	SPRADLIN, JAMES L	53,611.08
2014 REVENUE	SENIOR COUNSEL	SULLIVAN, STEPHEN PATRICK	56,987.16
		Total	1,668,236.41

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

CHRIS KOSTER
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

March 12, 2015

OPINION LETTER NO. 26-2015

The Honorable John Watson
Missouri State Auditor
State Capitol, Room 121
Jefferson City, MO 65101

Dear Auditor Watson:

This office received your letter of March 2, 2015, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Jill Carter, version 1 (16-021). The fiscal note summary that you submitted is as follows:

> Any potential costs or savings from this proposal to state and local governmental entities is unknown. However, the proposal's passage will likely lead to increased litigation-related costs and impact the ability of state and local governments to provide certain health and welfare services.

Under § 116.175.4, RSMo, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the initiative petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

CHRIS KOSTER
Attorney General

OP-2015-0031

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

CHRIS KOSTER
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

March 12, 2015

OPINION LETTER NO. 27-2015

The Honorable John Watson
Missouri State Auditor
State Capitol, Room 121
Jefferson City, MO 65101

Dear Auditor Watson:

This office received your letter of March 2, 2015, submitting a fiscal note and fiscal note summary prepared under § 116.175, RSMo, for an initiative petition submitted by Jill Carter, version 2 (16-022). The fiscal note summary that you submitted is as follows:

> Any potential costs or savings from this proposal to state and local governmental entities is unknown. However, the proposal's passage will likely lead to increased litigation-related costs and impact the ability of state and local governments to provide certain health and welfare services.

Under § 116.175.4, RSMo, we approve the legal content and form of the fiscal note summary. Because our review of the fiscal note summary is mandated by statute, no action that we take with respect to such review should be construed as an endorsement of the initiative petition or as the expression of any view regarding the objectives of its proponents.

Very truly yours,

CHRIS KOSTER
Attorney General

OP-2015-0032

Thomas A. Schweich

Missouri State Auditor

REVENUE

Sales and Use Tax

February 2013

Report No. 2013-15

http://auditor.mo.gov

APPENDIX C

February 2013

Thomas A. Schweich
Missouri State Auditor

CITIZENS SUMMARY

Findings in the audit of the Department of Revenue, Sales and Use Tax

Individual Consumer Use Tax and Internet Sales

Missouri's individual consumer use tax requirements are not well known by the general public and are difficult to enforce and administer. The audit report expresses no opinion on the economic effect of collecting the tax but notes the unworkable structure in place now. Missouri law imposes an individual consumer use tax on the storage, use, or consumption of tangible personal property which is required to be paid unless sales or use tax is paid to the seller or the property is tax exempt. Also, use tax is due on purchases from a seller which is not engaged in business. A purchaser is required to file a use tax return if the cumulative purchases subject to use tax exceed $2,000 in a calendar year. The United States Supreme Court has held that states cannot require companies that do not have a physical presence in the state to collect state and local sales taxes. University studies have estimated that Missouri state and local governments have lost and will continue to lose sales/use tax revenue of between $358 million and $474 million annually by not collecting taxes on these sales. The Streamlined Sales and Use Tax Agreement (Agreement) is a cooperative effort among states, local governments, and businesses to simplify sales and use tax collection and administration by retailers and states, intended to minimize costs and administrative burdens on retailers that collect sales tax while encouraging out-of-state sellers to collect tax on sales to customers in the Streamlined states. Forty-four states, including Missouri, signed the Agreement, but Missouri has not passed implementing legislation.

The Department of Revenue (DOR) does not include a specific line that requires state individual income taxpayers to state whether they made purchases exceeding $2,000 for which sales or use tax was not paid, and, as a result, most taxpayers are not likely aware of the consumer use tax requirement. If the state continues to impose the individual consumer use tax, there are additional enforcement procedures the DOR should consider.

Ongoing Concerns

The DOR does not track and report information regarding some sales and use tax exemptions, and so the cost in terms of reduced state revenue for each exemption cannot be determined. DOR records indicate adjustments to gross sales receipts totaled over $154 billion, $144 billion, and $147 billion in fiscal years 2011, 2010, and 2009, respectively. The DOR has agreed that tracking exemptions is a good idea, but it believes the recommendation increases the reporting burden on vendors and has indicated the current sales tax system might not have the capacity to handle the additional information. However, the DOR and the Office of Administration awarded a contract in February 2012 for a new Missouri Integrated Revenue System (MIRS) which should not have similar limitations.

The state is foregoing a significant amount of sales tax revenue because there is no cap on the amount of timely discounts large vendors can take. Business were allowed to keep approximately $102 million, $94 million, and $95 million in state and local sales tax revenues collected from purchases in fiscal years 2011, 2010, and 2009, respectively, as an incentive for timely submitting state sales tax payments. Moreover, the DOR does not routinely report the amount of timely discounts to the General Assembly.

When consumers overpay sales or use taxes, the DOR refunds the vendor the overpayment plus interest, but vendors are not required to return these funds to the original purchaser, resulting in a windfall for the vendor. The DOR has previously agreed to support legislation that would require sales and use tax refunds and related interest to be returned to the original purchaser, but, to date, such legislation has not been successful.

The General Revenue Fund (GRF) does not receive reimbursement from local funds for their proportionate share of interest paid on refunds of sales and use taxes. Sales and use tax refunds, including interest, are made from the GRF, and adjustments are automatically made to reimburse the GRF for the principal amount due from local funds. However, adjustments are not automatically made to reimburse the GRF for the amount of interest due from local funds. Although the DOR has previously agreed that local funds should pay their proportionate share of this interest, the DOR has not been able to develop a method for recovering this interest with the current tax system, but according to DOR personnel the new MIRS should not have this limitation.

Automated Sales Suppression Device

Missouri law does not prohibit the creation, sale, purchase, installation, transfer, or possession of an automated sales suppression device (a software program commonly known as a zapper). Zapper software enables businesses to evade tax liability by altering the electronic sales records in a cash register to make it appear that fewer transactions have occurred. At least 10 other states have passed or are considering similar legislation.

In the areas audited, the overall performance of this entity was **Good**.*

American Recovery and Reinvestment Act (Federal Stimulus)

The Department of Revenue did not receive any federal stimulus monies for sales and use tax operations during the audited time period.

*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

Excellent: The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.

Good: The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.

Fair: The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.

Poor: The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

All reports are available on our website: http://auditor.mo.gov

Department of Revenue
Sales and Use Tax
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THOMAS A. SCHWEICH
Missouri State Auditor

Honorable Jeremiah W. (Jay) Nixon, Governor
and
Brian K. Long, Director
Department of Revenue
Jefferson City, Missouri

We have audited certain operations of the Department of Revenue, sales and use tax collections, as required by Sections 32.087 and 67.525, RSMo. The scope of our audit included, but was not necessarily limited to, the years ended June 30, 2011, 2010, and 2009. The objectives of our audit were to:

1. Evaluate the department's internal controls over significant management and financial functions.

2. Evaluate the department's compliance with certain legal provisions.

3. Evaluate the economy and efficiency of certain management practices and operations, including certain financial transactions.

Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the department; analysis of comparative data obtained from internal sources; and testing selected transactions. We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We tested certain of those controls to obtain evidence regarding the effectiveness of their design and operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the department's management and was not subjected to the procedures applied in our audit of the department.

For the areas audited, we identified (1) a deficiency in internal controls, (2) no significant noncompliance with legal provision, and (3) the need for improvement in management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Department of Revenue, sales and use tax collections.

Thomas A. Schweich
State Auditor

The following auditors participated in the preparation of this report:

Deputy State Auditor:	Harry J. Otto, CPA
Director of Audits:	John Luetkemeyer, CPA
Audit Manager:	Toni Crabtree, CPA
In-Charge Auditor:	Robyn Vogt, M.Acct., CPA
Audit Staff:	Corey McComas, M.Acct., CPA
	Aaron D. Allen

1. Individual Consumer Use Tax and Internet Sales

Missouri's individual consumer use tax requirements are not well known by the general public, require extensive taxpayer record keeping, are generally not complied with, and are difficult to enforce and administer. This report expresses no opinion on the economic effect of collecting the tax on the economy of Missouri; the report simply notes the unworkable structure in place now.

Background information

State law imposes an individual consumer use tax on the storage, use, or consumption of tangible personal property in Missouri. The consumer use tax is required to be paid unless sales or use tax is paid to the seller or the property is tax exempt. Also, use tax should be paid on purchases from a seller which is not engaged in business. A purchaser is required to file an annual use tax return with the Department of Revenue (DOR) if the cumulative purchases subject to use tax exceed $2,000 in a calendar year. The use tax is computed on the purchase price of all goods once purchases exceed $2,000. Consumer use tax information and requirements are posted on the DOR website.

The type of purchases subject to use tax include, but are not limited to, 1) catalog purchases, 2) magazine subscriptions, 3) cross-border purchases of goods, 4) TV marketing purchases, 5) computer software and hardware, 6) mail-order supply purchases, 7) furniture and equipment purchases from out-of-state sellers, 8) purchases of goods over the Internet (e-commerce) and by phone, and 9) purchases of goods from outside the United States. Currently, state law requires local businesses to collect sales tax, even if they have an online business, because these businesses have a physical presence (nexus) in the state. However, under a 1992 U.S. Supreme Court ruling[1], states cannot require companies that do not have nexus to collect state and local sales taxes. As a result, Missouri cannot require businesses without nexus to collect sales tax on goods sold to Missouri residents. Federal legislation has been proposed that would enable states to require online retailers to collect and remit sales taxes, while also providing businesses with an effective means to comply. Such legislation includes the Marketplace Fairness Act, the Main Street Fairness Act, and the Marketplace Equity Act.

With the increasing popularity and usage of the Internet, e-commerce sales have grown significantly over recent years. University studies[2] have

[1] Quill orp v, North Dakota, 504 U.S.298 (1992)

[2] Bruce, Donald, William F. Fox, LeAnn Luna, "State and Local Government Sales Tax Revenue Losses from Electronic Commerce," University of Tennessee, Center for Business and Economic Research, <http://cber.bus.utk.edu/ecomm.htm>, accessed on April 27,2012; and Huanfm Ting, John Kosash and Andrew Wesemann (2012). "Internet Sales and Use Tax Issues in Missouri" Report 01-2012, University of Missouri Columbia, Institute of Public Policy, <http://ipp.missouri.edu/Publications/306>, accessed on June 5, 2012.

estimated that Missouri state and local governments have lost and will continue to lose sales/use tax revenue of between $358 million and $474 million annually by not collecting taxes on these sales. Both studies also noted that local vendors face a competitive disadvantage because consumers that make purchases online avoid paying sales/use taxes. However, it is possible that if taxes were collected on e-commerce sales, consumer purchasing habits could change resulting in less revenue for the state than forecasted. The issues of revenue, consumer spending habits, and the economic effect of increased taxation are beyond the scope of this report.

Streamlined Sales and Use Tax Agreement

The Streamlined Sales and Use Tax Agreement (Agreement) is a cooperative effort among states, local governments, and businesses to simplify sales and use tax collection and administration by retailers and states. The Agreement aims to minimize costs and administrative burdens on retailers that collect sales tax, while also encouraging out-of-state sellers to collect tax on sales to customers in the Streamlined states. Forty-four states, including Missouri, signed the Agreement, originally adopted in November 2002, and 24 of these states have passed legislation to conform to the Agreement. Legislation was introduced in Missouri during the 2012 legislative session and in prior years to implement the provisions of the Agreement; however, such legislation has not passed. Participation in the Agreement is voluntary for businesses and consumers; therefore, Missouri cannot require out-of-state sellers without nexus to collect sales taxes on purchases made by Missouri residents. However, according to the University of Missouri report, each state that has entered into the Agreement collected, on average, an additional $30.7 million, in total, in e-commerce tax revenue between 2005 to 2010.

Some states (such as Washington, North Dakota, New York, Kansas, and Kentucky) have entered into agreements with large Internet sellers, to collect and remit state and local sales taxes. Large Internet sellers have also negotiated deals with other states to collect sales tax in the future. In other instances, Internet sellers have agreed to disclose sales and use tax requirements on their Internet sites for certain states. Such disclosures inform customers that many states require purchasers to file a sales or use tax return reporting all taxable purchases that were not taxed and to pay tax on those purchases, and may include a link to that state's website.

Individual income tax forms

The DOR does not include a specific line that requires state individual income taxpayers to state whether they made purchases exceeding $2,000 for which sales or use tax was not paid. As a result, most taxpayers are not likely aware of the consumer use tax requirements as evidenced by the small amount of consumer use tax collections.

According to DOR records, the following consumer use tax was paid:

Tax Year	2011 (1)	2010	2009	2008
Number of individual tax returns	2,917,023	2,876,787	3,019,358	3,080,945
Number of use tax returns	168	190	125	96
Use tax paid	$205,087	301,474	110,784	40,714

(1) Tax year 2011 information through August, 2012.

If the state continues to impose the individual consumer use tax, there are additional enforcement procedures the DOR should consider. Our review of other states' procedures noted some states include a specific line on its individual income tax return to report purchases made for which sales or use tax was not paid. In addition, to reduce taxpayer recordkeeping burden, some states provide an optional use tax reporting table which bases the consumer's use tax liability on a percentage of adjusted gross income rather than actual purchases.

To increase taxpayer compliance with existing individual consumer use tax laws, the DOR should consider revising individual income tax forms to include a specific line regarding purchases made for which sales or use tax was not paid, and an optional use tax reporting table which bases consumer use tax liability on a percentage of adjusted gross income rather than actual purchases.

Recommendation

The DOR revise the individual income tax forms to increase taxpayer compliance with existing individual consumer use tax laws.

Auditee's Response

The Department supports the collection of all taxes due the state of Missouri, including use taxes. However, adding a line on the return may not have much impact on use tax collections, but it would delay the availability of general revenue funds. This delay could be substantial in the April-May time frame when the majority of individual income tax revenues are received.

Individual income tax revenues are all general revenue funds and currently are deposited very quickly, usually the same or next day even during the April-May time frame. If those funds were combined with use tax funds, all money would need to be deposited in a suspense account until the return is processed and the appropriate local and state fund distribution can be determined. This could delay availability of the funds by as much as six weeks. The Department will continue to explore other ways to encourage compliance with use tax laws that do not negatively affect the timely transfer of funds to the general revenue fund.

Auditor's Comment

We do not agree with the Department's contention that enforcing existing consumer use tax law would need to unnecessarily delay the availability of general revenue funds. The DOR could place only the consumer use tax portion in the suspense account thereby eliminating any need to delay the availability of general revenue funds.

2. Ongoing Concerns

The DOR does not track and report information regarding some sales and use tax exemptions or routinely report to the General Assembly for its consideration the amount of timely discounts taken by businesses. Under Missouri law, vendors are not required to return sales and use tax refunds to the original purchaser when applicable, and local funds are not paying their proportionate share of interest paid on refunds of sales and use taxes.

These issues are ongoing concerns and have been reported in prior audit reports.

2.1 Sales and use tax exemptions

The DOR does not track and report information regarding some sales and use tax exemptions. As a result, the cost in terms of reduced state revenue for each exemption cannot be determined.

According to DOR records, there are currently 150 sales and use tax exemptions provided by state law. The DOR only tracks exemptions related to the 3 percent reduction on food sales, textbook sales, and manufacturing sales.

Vendors remit monthly, quarterly, or annual sales and use tax returns to the DOR. The returns include gross sales receipts, adjustments to gross sales receipts, and taxable sales. The adjustment amounts include, but are not limited to, exempt sales for the period of the sales tax return (file period), and corrections of errors from previous file periods.

DOR records indicate adjustments to gross sales receipts totaled over $154 billion, $144 billion, and $147 billion in fiscal years 2011, 2010, and 2009, respectively. Detailed information of what is included in the adjustments total is not required to be provided on returns, and according to DOR personnel, only taxable sales are reported on some returns, with the gross sales receipts or adjustment amounts not included.

Although the DOR has previously agreed that tracking exemptions is a laudable goal, the DOR believes the recommendation increases the burden of reporting on taxpayers (vendor) and is contrary to the provision which requires simplified returns in the Streamlined Sales and Use Tax Agreement, (see MAR finding number 1). The DOR has indicated that when Missouri comes into substantial conformity with the Agreement, the DOR will require filers to submit a report of consolidated exempt sales by exemption type in accordance with the Agreement. However, as previously

noted, legislation is required to put the state into conformity with the Agreement and Missouri has yet to pass such legislation.

The DOR has also indicated the current sales tax system would require significant reprogramming, and might not have the capacity to handle the additional information from tracking and reporting exemptions. In February 2012, the DOR and the Office of Administration awarded a contract for a new Missouri Integrated Revenue System (MIRS). According to DOR personnel, although the new system is currently in the developmental stages, it should not have similar limitations.

2.2 Timely discounts

The DOR does not routinely report to the General Assembly for its consideration the amount of timely discounts taken by businesses. This discount was established for businesses to recover a portion of their costs for compliance with state sales tax laws. However, the state is foregoing a significant amount of sales taxes revenue because there is not a cap on the amount of timely discounts taken by large vendors.

Approximately $102 million, $94 million, and $95 million in state and local sales tax revenues were collected from purchasers but retained as timely discounts by businesses remitting sales and use taxes in fiscal years 2011, 2010, and 2009, respectively.

Section 144.710, RSMo, allows businesses remitting sales and use taxes to retain 2 percent of taxes payable to the DOR if the business remits payments in a timely manner. These discounts reduce the amount of sales and use taxes received by the state and local governments. According to a November 2008 report[3], 46 states (including the District of Columbia) impose state sales taxes, 26 states allow businesses a discount and/or compensation for recording and remitting sales tax collections, and 13 states, including Missouri, have not established a ceiling to limit amount of taxes businesses can retain. Of the eight states contiguous to Missouri, three (Iowa, Kansas and Tennessee) do not allow businesses to retain any compensation, and four (Arkansas, Kentucky, Nebraska, and Oklahoma) have established ceilings to limit the amount of discount and/or compensation retained by businesses.

Sales and use tax revenues are used to fund significant portions of state and local government budgets. For example, in fiscal year 2011, sales and use taxes comprise approximately 25 percent of the state's general revenue. The General Assembly needs timely and accurate information regarding reductions to sales and use tax revenues resulting from timely discounts to make informed financial decisions.

[3] *Skimming the Sales Tax,* Good Jobs First, November 2008.

The DOR previously indicated they provided the timely discount information when requested, and is willing and able to do so.

2.3 Refunds

State law does not require vendors to return sales and use tax refunds and related interest to the original purchaser when applicable, resulting in a windfall for the vendor. In addition, in many instances, the vendor may not even be able to identify the original purchasers to whom the refunds are due, further increasing the likelihood of a windfall. The DOR distributed sales and use tax refunds, including interest, of approximately $50 million, $60 million, and $71 million during fiscal years 2011, 2010, and 2009, respectively.

Vendors collect sales and use taxes from their customers and remit the taxes to the DOR. Section 144.190, RSMo, authorizes the DOR to issue sales and use tax refunds due to an overpayment of sales or use taxes. For some refunds the vendor is the original purchaser and some refunds are the result of taxpayer errors, incorrect quarter-monthly filer estimates, or other circumstances in which sales and use taxes were not collected from a purchaser, and as a result, should be retained by the vendor. However, in many cases, the refund is the result of an over collection of sales tax by the vendor and the refund is due back to the original purchaser.

Section 144.190.6, RSMo, provides, ". . . if a person legally obligated to remit the tax levied pursuant to sections 144.010 to 144.525 has received a refund of such taxes for a specific issue and submits a subsequent claim for refund of such taxes on the same issue for a tax period beginning on or after the date the original refund check issued to such person, no refund shall be allowed . . . . " This section further provides situations in which this section shall not apply and a refund shall be allowed. These include the receipt of additional information or an exemption certificate from the purchaser of the item at issue, a decision of a court of competent jurisdiction or the Administrative Hearing Commission, or changes in regulations or policy by the DOR. However, Section 144.190.6, RSMo, does not provide that refunds must be returned to the original purchaser. In addition, it appears that a vendor may not be able to identify the original purchaser in some cases, such as cash transactions or other point of sale settings where purchaser name or contact information is not captured. In these situations, the vendor would be unable to forward the refund to the original purchaser and would receive the windfall refund.

The DOR has previously agreed to support legislation that would require sales and use tax refunds and related interest to be returned to the original purchaser. However, to date, such legislation has not been successful. The legislation should also address how the refund should be handled when the original purchasers cannot be identified.

2.4 Interest paid on refunds local funds

The General Revenue Fund (GRF) does not receive reimbursement from local funds for their proportionate share of interest paid on refunds of sales and use taxes.

Based on the percentage of distributions to local funds to total distributions to state and local funds (exclusive of the GRF), interest payments of approximately $383,000, $1,723,000, $2,133,000 should have been allocated to local funds during fiscal years 2011, 2010, 2009, respectively, and is due to the GRF from local funds.

Sales and use tax refunds are issued from the GRF. To reimburse the GRF, adjustments are automatically made in the DOR tax system for the principal and interest amount of the refunds due from other state funds and the principal amount of the refunds due from local funds. However, adjustments are not automatically made to local funds for the interest paid on sales tax refunds.

Although the DOR has previously agreed that local funds should pay their proportionate share of interest paid on refunds, the DOR has been unable to develop any alternatives for recovering interest from local governments without the acquisition of a new tax system. As noted above, a new MIRS is currently being developed, and according to DOR personnel, the limitations of the current tax system should not be an issue with the new system.

Recommendations

The DOR:

2.1&2 Ensure the tracking and reporting of exemptions and the timely discount is a component of the new MIRS, so that the reductions of state revenue related to each exemption and the timely discount can be determined and reported to the General Assembly.

2.3 Continue to support legislation that would require sales and use tax refunds and related interest to be returned to the original purchaser. Such legislation should also address whether a refund should be made when the original purchaser is not known.

2.4 Ensure the new MIRS has the capability to calculate the reimbursement to the GRF for local funds' proportionate share of interest paid on sales and use tax refunds.

Auditee's Response

2.1&2 Tracking and reporting exemptions is an appropriate goal. Reporting exemptions would substantially increase the burden on businesses. Also, based on prior attempts to track limited exemptions, the data collected is likely to be highly inaccurate due to businesses errors in reporting. In addition, to track and report exemptions, the Department would require a substantial increase in

FTE, which the current budget does not support. The Department is in the process of implementing an integrated revenue system that may be able to track at least some exemptions, but tracking and reporting the data will still be a significant burden on businesses and the data collected will still be likely to be inaccurate.

The Department has provided information regarding the timely filing discount when requested by elected officials from time-to-time, but has not been requested to report this information on a regular basis. The Department is willing and able to do so.

2.3 The Department reviews and makes recommendations with respect to existing laws and proposed legislation every year. The Department will review this issue and support appropriate legislation.

2.4 This is a requirement in the request for proposal and is scheduled to be implemented when the sales and use tax portion of the system is implemented in 2016.

3. Automated Sales Suppression Device

Missouri law does not prohibit the creation, sale, purchase, installation, transfer, or possession of an automated sales suppression device. This device gives retailers the ability to hide the amount of cash transactions, and thus, evade paying sales taxes on cash transactions.

An automated sales tax device, commonly known as a zapper, is a software program that falsifies the electronic records of point of sale (POS) systems for the purpose of tax evasion. Most often, transactions in stores and restaurants are recorded by a POS system, rather than a mechanical cash register. The POS system records are generally not alterable by the operator and are used as the basis of tax assessments and audits by tax authorities. To hide the removal of cash, a zapper often runs untraceably from a USB flash drive and alters the electronic sales records in a cash register. This makes it appear that fewer transactions occurred than was actually the case. The use of zapper software reduces the tax liability of the business.

Due to concerns about the potential of sales tax zappers to reduce state and local government revenues, some states are enacting legislation to address this type of fraud. According to a recent study[4], Georgia, Maine, Utah, and West Virginia, have passed legislation to subject the technology (automated sales suppression device) that facilitates the fraud to enforcement measures.

[4] Robert T. Ainsworth, "An American Look at Zappers", Boston University School of Law Working Paper No. 12-14, <http:www.bu.edu/law/facuity/scholarship/workpapers/2012.html#>, accessed on October 17, 2012.

Other states, such as Florida, Indiana, Michigan, New York, Oklahoma, and Tennessee have similar legislation pending.

According to DOR management, the DOR is familiar with zapper technology and has taken steps to monitor for the use of zappers. However, the DOR has not identified any business using zappers, and is not aware of pending legislation to address zapper technology.

Recommendation

The DOR work with the General Assembly on legislation to address the possession and use of automated sales suppression devices by businesses.

Auditee's Response

The Department reviews and makes recommendations with respect to existing laws and proposed legislation every year. The Department will review this issue and support appropriate legislation.

Department of Revenue
Sales and Use Tax
Organization and Statistical Information

The Department of Revenue (DOR) was created by Article IV, Section 12, Missouri Constitution as the central collection agency for state revenues. The Director of Revenue is appointed by the Governor, with the advice and consent of the Senate, and is responsible for all operations and policies. DOR responsibilities include:

1) Administering and collecting state taxes and fees, including sales and use tax, motor vehicle sales tax, and highway use tax.
2) Collecting certain taxes and fees for local governments, including local sales and use tax.
3) Titling and licensing motor vehicles, trailers, and boats.
4) Licensing motor vehicle operators.

The DOR consists of four divisions and the Director's office.

Motor Vehicle and Driver Licensing Division: This division consists of three bureaus. 1) The Motor Vehicle Bureau issues titles and registers motor vehicles, trailers, all-terrain vehicles, manufactured homes, and marine craft. In addition, the bureau issues registration certificates to motor vehicle and salvage dealers and leasing companies. 2) The Driver Licensing Bureau issues, renews, suspends, revokes, and reinstates driver and nondriver licenses and driving permits. The bureau also processes and maintains records regarding license issuance, traffic violation point assessments, and failure to appear in court for traffic violations, and administers the alcohol and abuse laws for alcohol/drug offenders. 3) The License Offices Bureau manages the operations of the contract license offices throughout the state. These local offices provide driver licensing and motor vehicle services. This division collects motor vehicles sales and use taxes.

Taxation Division: This division consists of four bureaus which collect taxes and administer state tax law. 1) The Business Tax Bureau administers sales and use, financial institutions, insurance premiums, franchise, cigarette and other tobacco products, motor fuel, corporate income, withholding, and county taxes and fees. 2) The Personal Tax Bureau administers individual income, partnership, fiduciary, and estate taxes, plus the property tax credit and homestead preservation tax credit. 3) The Collections and Tax Assistance Bureau provides tax assistance to individuals and businesses and handles unpaid tax liabilities. 4) The Field Compliance Bureau audits businesses both in-state and out-of-state to ensure compliance with the state's tax laws.

Administration Division: This division consists of two bureaus. 1) Personnel Services Bureau is responsible for the DOR personnel matters, policies and procedures, training, and written communications. 2) The Financial and General Services Bureau is responsible for accounting, procurement,

banking, and general services such as telecommunications, safety issues, and maintenance.

Legal Services Division: This division ensures DOR compliance with law and internal policies. The General Counsel's Office advises the director and divisions on legal matters and represents the DOR in court. The Criminal Tax Investigation Bureau investigates and develops information for local prosecution of individuals and businesses suspected of violating laws the DOR administers. The Compliance and Investigation Bureau investigates illegal motor vehicle titling and registration, odometer fraud, and tax fraud involving motor fuel sales tax. The bureau also reviews and evaluates the DOR administrative, operations, and internal accounting controls and contract license offices.

Director's Office: This office includes the Director, Deputy Director and key administrative staff. The Director of Communications works with the news media and acts as the DOR spokesperson. The legislative liaison manages the DOR relationship with the General Assembly and other governmental branches. This office also develops fiscal and revenue estimates on proposed legislation.

The Directors of Revenue from July 2008 to November 2012 include:

Omar D. Davis, December 2007 to January 2009
Karen King Mitchell, January 2009 to July 2009
Alana M. Barragan-Scott, (Acting) July 2009 to November 2012 (officially appointed Director in October 2009)

In December 2012, Brian K. Long was appointed Director.

American Recovery and Reinvestment Act 2009 (Federal Stimulus)

The DOR did not receive any federal stimulus monies for sales and use tax operations during the 3 years ended June 30, 2011.

FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 190

98TH GENERAL ASSEMBLY

2015

0805S.02T

AN ACT

To repeal section 92.402, RSMo, and to enact in lieu thereof one new section relating to public mass transportation sales taxes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 92.402, RSMo, is repealed and one new section enacted
2 in lieu thereof, to be known as section 92.402, to read as follows:

92.402. 1. Any city may, by a majority vote of its council or governing
2 body, impose a sales tax for the benefit of the public mass transportation system
3 operating within such city as provided in sections 92.400 to 92.421.
4 2. The sales tax may be imposed at a rate not to exceed one-half of one
5 percent on the receipts from the sale at retail of all tangible personal property or
6 taxable services at retail within any city adopting such tax, if such property and
7 services are subject to taxation by the state of Missouri pursuant to the
8 provisions of sections 144.010 to 144.525. Seven and one-half percent of the sales
9 tax shall be distributed to the interstate transportation authority pursuant to the
10 provisions of section 92.421. The **[**remainder of the tax in excess of such seven
11 and one-half percent shall expire on December 31, 2015, on which date the**]**
12 authority shall be in full compliance with handicapped accessibility pursuant to
13 the terms of the Americans with Disabilities Act.
14 3. Within ten days after the adoption of any ordinance imposing such a
15 sales tax, the city clerk shall forward to the director of revenue by United States
16 registered mail or certified mail a certified copy of the ordinance of the council or
17 governing body. The ordinance shall reflect the effective date thereof and shall
18 be accompanied by a map of the city clearly showing the boundaries thereof.

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 4. If the boundaries of a city in which such sales tax has been imposed
20 shall thereafter be changed or altered, the city clerk shall forward to the director
21 of revenue by United States registered mail or certified mail a certified copy of
22 the ordinance adding or detaching territory from the city. The ordinance shall
23 reflect the effective date thereof, and shall be accompanied by a map of the city
24 clearly showing the territory added thereto or detached therefrom. Upon receipt
25 of the ordinance and map, the tax imposed by sections 92.400 to 92.421 shall be
26 effective in the added territory or abolished in the detached territory on the
27 effective date of the change of the city boundary.

✓

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0805-04
Bill No.: HCS for SCS for SB 190
Subject: Kansas City; Taxation and Revenue - Sales and Use; Transportation
Type: Original
Date: May 1, 2015

Bill Summary: This proposal would remove the current expiration date for the Kansas City transportation sales tax and would add statutory audit requirements for transportation development districts.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on General Revenue	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on FTE	**0**	**0**	**0**

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Local Government *	**$0**	**$0**	**$0**

* Net of additional revenues and expenditures.

FISCAL ANALYSIS

ASSUMPTION

Section 92.402, RSMo. - Kansas City Area Transportation Sales Tax:

This proposal would eliminate the expiration of a portion of the Kansas City Area Transportation Sales Tax. (Under current law that portion of the tax is scheduled to expire December 31, 2015.)

Officials from the **City of Kansas City** stated this proposal would maintain transportation sales tax revenues of $12,166,167 for January 1, 2016 to April 30, 2016, and $36,500,000 per year for FY 2017 and FY 2018.

Oversight has no independent information regarding transportation sales tax revenues and will assume for fiscal note purposes the City of Kansas City response is the best available estimate of the impact of this proposal.

Oversight notes that current provisions would let a portion of the sales tax expire on December 31, 2015 (FY 2016) and the proposal would extend the sales tax indefinitely. If the sales tax expired, the revenue reduction for the City of Kansas City from January 1, 2016 to June 30, 2016 (FY 2016) would be ($36,500,000 x 6/12) = $18,250,000 (disregarding reporting and distribution delays), and the fiscal impact of this proposal for FY 2017 and FY 2018 would be $36,500,000 per year. Oversight will include these amounts in this fiscal note.

For simplicity, **Oversight** will not include any impact for the Department of Revenue's collection costs. Oversight will also assume that all or substantially all of the sales tax revenues would be expended on transportation costs and will so indicate in this fiscal note.

Officials from the **Kansas City Election Board** assumed a previous version of this proposal could result in jurisdiction-wide election at a cost of $400,000.

Oversight notes that current provisions regarding the KCATA Sales Tax do not appear to provide for an election.

Officials from the **Office of the Secretary of State**, the **Joint Committee on Administrative Rules**, the **Department of Revenue**, the **Jackson County Election Board**, and the **Platte County Board of Elections** assumed a previous version of this proposal would have no fiscal impact on their organizations.

ASSUMPTION (continued)

Officials from the **Office of Administration - Division of Budget and Planning** assumed a previous version of this proposal would have no fiscal impact on their organization.

Not responding:

Officials from Jackson County, Belton, Excelsior Springs, Gladstone, Grandview, Harrisonville, Independence, the Kansas City Area Transit Authority, Kearney, Lees Summit, Liberty, Peculiar, Raytown, Sugar Creek, Cass County Elections, Clay County, the Clay County Board of Election Commissioners, the Jackson County Executive, and Platte County did not respond to our request for fiscal information.

Sections 105.145, 238.222, and 238.272, RSMo. - Transportation Development Districts:

Changes to these provisions would provide specific statutory audit requirements for transportation development districts.

Officials from the **Office of the State Auditor** assumed similar language in HCS for HB 477 LR 1681-03 would have no fiscal impact on their organization.

In response to similar language in HCS for HB 477 LR 1681-03, officials from the **Department of Revenue** assumed this legislation would require the department to create a form. DOR officials assumed the form could be set up in the department's existing county fees system without any additional resources.

Oversight notes the Office of the State Auditor (SAO) issued report No. 2013-065 in 2013 entitled Transportation Development Districts regarding their financial statement reporting requirements. The report stated as of December 31, 2011, 49 districts (of the 176 at the time) filed financial statements/audit reports late or did not file financial statements with the Office of the State Auditor at all. While a fine for late filing of financial statements is provided, Section 105.145.8 currently does not establish the agency responsible for the assessment or a collection mechanism for these fines; therefore, no fine revenue has been collected to date. The report also stated, as of February 1, 2013, the potential accumulated fine amounts were $16,859,000.

ASSUMPTION (continued)

IT impact

DOR officials provided an estimate of the IT cost to implement this proposal of $10,449 based on 139 hours of programming at the current state contract rate for IT services.

Oversight assumes DOR could absorb the IT cost to implement this proposal with existing resources.

Oversight also notes this proposal would require future fine revenue to be distributed to local school districts (after the Department of Revenue retains a collection fee of not more than two percent) in the same manner that proceeds for all penalties, forfeitures, and fines collected for any breach of the penal law of the state are distributed.

Oversight assumes the $500 fine is already established in statutes and that Transportation Development Districts (currently 195 districts) would timely submit their financial statements. Therefore, Oversight will assume no additional fiscal impact from this proposal.

In response to a similar proposal (HB 136 LR 0499-01) from this year, officials from **Department of Transportation** assumed the proposal would have no fiscal impact on their organization.

In response to a similar proposal (HB 136 LR 0499-01) from this year, officials from the **City of Kansas City Public School District** assumed the proposal would have no fiscal impact on their organization.

Bill as a whole response

Officials from the **Platte County Board of Elections** assume this proposal would have no fiscal impact on their organization.

FISCAL IMPACT - State Government	FY 2016 (10 Mo.)	FY 2017	FY 2018
	$0	**$0**	**$0**

FISCAL IMPACT - Local Government	FY 2016 (10 Mo.)	FY 2017	FY 2018
LOCAL GOVERNMENTS			
Additional revenue - City of Kansas City Sales tax	$18,250,000	$36,500,000	$36,500,000
Additional expenditures - City of Kansas City Transportation	($18,250,000)	($36,500,000)	($36,500,000)
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	**$0**	**$0**	**$0**

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation would remove the current expiration date for the Kansas City transportation sales tax and would provide specific statutory requirements for audits of transportation development districts.

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

SOURCES OF INFORMATION

Office of the Secretary of State
Joint Committee on Administrative Rules
Office of Administration
    Division of Budget and Planning
Department of Revenue
City of Kansas City
Platte County Board of Elections

Mickey Wilson

Mickey Wilson, CPA
Director
May 1, 2015

Ross Strope
Assistant Director
May 1, 2015

SS:LR:OD

The State Auditor's office did not receive a response from the **Missouri Senate, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Greene County, Jackson County Legislators, Jasper County, St. Charles County, St. Louis County, Taney County,** the **City of Cape Girardeau,** the **City of Jefferson,** the **City of Joplin,** the **City of Kirksville,** the **City of Mexico,** the **City of Raymore,** the **City of St. Joseph,** the **City of St. Louis,** the **City of Springfield,** the **City of Union,** the **City of Wentzville,** the **City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, State Technical College of Missouri, St. Louis Community College,** and the **State Tax Commission.**

Fiscal Note Summary

Potential costs to state and local governmental entities are unknown, but could be significant. The proposal's passage would impact governmental entity's ability to revise their tax structures. State and local governments expect no savings from this proposal.