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Missouri Study Commission on State Tax Policy

Testimony of Ray McCarty, President/CEO
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Shipping Charges – see attached information presented to the Tax Administration Work Group.

Timely Filing Allowances for Sales/Use and Withholding Tax

In recent years, legislation has been filed to limit timely filing allowances for sales/use and withholding taxes. According to national data, the timely filing allowances for the sales/use tax should be increased to at least 3%. The withholding tax allowance is already graduated so employers collecting larger amounts of tax (and bearing more risk) are able to retain less as a collection allowance. Again, if any change is to be made, it should be to **increase** these collection allowances.

The state requires employers to properly account for, withhold and pay employment taxes on behalf of the state. In this sense, employers are providing a tax collection and remittance function for the state in addition to paying some employment related taxes on behalf of employees. Given the chance most employers would probably exercise an option to not withhold these taxes, but it is obviously much more efficient for the state to collect this tax from employers than directly from employees. For this service, the state allows employers that timely remit the proper amount of tax to retain a portion of the withholding tax collected: 2% of $5,000 or less; 1% of amounts $5,000-$10,000; ½% of amounts in excess of $10,000. The employer assumes all risk that the proper amount of tax has been collected and remits what is due to the Department of Revenue.

Similarly, retailers inside and outside Missouri generally must collect sales and/or use taxes on sales made to locations in Missouri. For both types of tax, the vendor or retailer is allowed to retain 2% of the amount collected. As with withholding taxes, retailers and vendors would prefer to not collect the tax at all, but do so on behalf of the state, assuming all risk and ensuring that all amounts due will be paid to the state and local governments, whether or not they have collected the proper amount from their customers.

This risk and responsibility comes at a cost to the businesses, both administratively and in terms of liability to collect the proper amount of tax. Collection costs are only part of the equation. Compliance costs can be significantly higher than collection costs. Both costs are meant to be partially offset by the timely filing allowances to retailers and employers.

A PriceWaterhouseCoopers study from April 2006 is one of the only comprehensive studies readily available evaluating sales and use tax collection costs borne by retailers. Although technology has continued to evolve, sometimes technology itself can increase costs of collection. Also, evolving technology may aid in collection costs, but may do nothing in alleviating compliance costs. There is no evidence suggesting the cost of collection and compliance for retailers in 2016 is any less than it was in 2006. In fact, compliance costs depend on the aggressiveness of the tax collection agency. As the tax collection agency becomes more aggressive in their interpretation of the laws, regulations and policies governing tax collection, compliance and collection costs increase for retailers, along with the risk they may be liable for taxes they have not collected from customers.

The 2006 PWC study was supported by many state governments (including the state of Missouri), the Federation of Tax Administrators, Multistate Tax Commission, National Conference of State Legislatures, Council on State Taxation, National Retail Federation, and the Government Finance Officers Association. The study was endorsed by the U.S. Chamber of Commerce, the National Federation of Independent Business, and the Retail Industry Leaders Association. The study was based on a survey sent to 13,000 retailers nationwide.

The 2006 PWC study found collection costs borne by retailers averaged more than 3% of the taxes collected on a nationwide basis. Smaller businesses with less than $1 million in retail sales shouldered collection costs of more than 13%, mid-sized businesses more than 5%, and larger businesses more than 2%. The study measured the following collection costs:

1. Training of personnel on sales tax;
2. Documenting tax-exempt sales;
3. Customer service relating to sales tax issues;
4. Sales tax-related software and license fees;
5. Programming and servicing cash registers;
6. Returns preparation and related costs (remittances, refund credits, and sales tax research);
7. Dealing with sales tax audits and appeals; and,
8. Other compliance costs.

Note the “other compliance costs” category could include items like paying sales and use taxes not collected from customers. As state tax collectors become more aggressive, they tend to change the taxability of items without telling the retailers in time to prospectively collect the proper amount of tax. This has certainly been true in Missouri. It should also be noted that Missouri, with thousands of local taxing jurisdictions, remains one of the most complicated sales tax states, meaning costs of collection and compliance are higher in Missouri than the national average would measure.

Because the withholding tax timely filing allowance is already dreadfully low for those collecting the most amount of withholding tax (and assuming a corresponding increase in risk), neither collection allowance should be reduced. In fact, they should be increased until the retailer and employer are relieved of the burden of collecting these taxes on behalf of state and local governments.