

REALITY CHECK : HB 1296

*An honest look at
House Bill 1296
passed by the Missouri
General Assembly and
vetoed by Governor
Jeremiah "Jay" Nixon on
June 11, 2014*



**Associated
Industries
of Missouri**

The Voice of Missouri Business.



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ISSUE: Division of corporation income for state tax purposes

SECTION: 143.451

DESCRIPTION: In the 2013 legislative session, HB 128 was passed and signed into law allowing an additional method for determining the amount of income that is subject to Missouri income tax when a corporation derives income from business in Missouri and other states. Six bills were passed this legislative session with identical language that clarified the 2013 additional method was available to all corporations.

AIM/TRIM's ESTIMATE OF IMPACT: No cost to state or local governments.

AIM/TRIM's METHODOLOGY: The law change in 2013 already applies to **ALL** Missouri corporations. The change in these six bills is intended to clarify the intent of the 2013 law change – specifically, that this new method of calculation indeed applies to all types of corporations: those that derive their income from the sale of tangible personal property, and those that derive their income from other sources.

Although neither the statute nor the regulation issued by the Missouri Department of Revenue (DOR) prevent taxpayers that derive their income from sources other than the sale of tangible personal property from using this new method of calculation, the DOR has recently issued letters to such taxpayers denying them the use of this new calculation method. These new bills are necessary to provide guidance to the DOR of the legislature's intent. As such, there is no revenue loss from the enactment of this language as it simply clarifies the original intent of HB 128. More detail is available in the NOTES.³

OA ESTIMATE OF IMPACT: \$15m state cost, no local cost.¹

AIM/TRIM COMMENT ON OA ESTIMATE OF IMPACT: As stated above, this new language clarifies previous changes made to the law and clarifies the application of the law to all taxpayers as contained in the DOR's regulation interpreting the original law change. There should be no revenue loss associated with this proposal.

ISSUE: Graphing calculators included in sales tax holiday

SECTION: 144.049

DESCRIPTION: The bill adds graphing calculators with a taxable value of \$150 or less to the list of items that may be purchased exempt from state tax during the annual sales tax holiday during one weekend in August. Local governments may choose to participate in the holiday event, in which case, the calculators would be exempt from local tax also.

AIM/TRIM's ESTIMATE OF IMPACT: Unknown cost to state; local government cost is at their option.

AIM/TRIM's METHODOLOGY: The new exemption would simply add an additional item to the list of items that are exempt during the three day sales tax holiday in August each year: graphing calculators with a taxable value of less than \$150.

OA provided an estimate to the Oversight Division that estimated an impact of \$100,000 for the General Revenue Fund/\$200,000 in total state revenue loss, but the Oversight Division included a maximum calculation of revenue loss. To achieve this maximum amount of revenue loss, every student enrolled in Pre-Algebra or Algebra I would purchase a new graphing calculator at a store in Missouri that would otherwise be subject to sales tax, during the three-day sales tax holiday period.

We do not believe every student (or their parent) makes a decision to purchase a calculator based on whether sales tax applies or not, nor do we believe that all parents and students will have the tax planning ability to purchase all such calculators during the sales tax holiday event. Therefore, we believe the impact on state funds will be minimal.

OA ESTIMATE OF IMPACT: \$200,000 state cost; \$0 local cost.¹

AIM/TRIM COMMENT ON OA ESTIMATE OF IMPACT: While we believe the Office of Administration estimate is closer to the correct amount than the amount shown by the Oversight Division in the fiscal note for the bill, we have no data upon which to base an estimate.

ISSUE: Advertising absorption of sales tax

SECTION: 144.080

DESCRIPTION: The bill would allow a retailer to advertise that sales tax will be absorbed or included in the price if it is separately stated on an invoice or receipt. Current law prohibits such activity.

AIM/TRIM's ESTIMATE OF IMPACT: No cost.

AIM/TRIM's METHODOLOGY: We agree there is no impact from this provision.

OA ESTIMATE OF IMPACT: \$0¹

AIM/TRIM COMMENT ON OA ESTIMATE OF IMPACT: We agree with OA's assessment on this issue.

NOTES:

1. "2014 Tax Exemptions Grid UPDATE," published by State of Missouri, Office of Administration, Division of Budget & Planning,
<http://content.oa.mo.gov/sites/default/files/Summary%20of%20fiscal%20impact%20-%20FY%202015.pdf>
2. "Tax Break Legislation, Summary of Fiscal Impact," published by State of Missouri, Office of Administration, Division of Budget & Planning,
<http://content.oa.mo.gov/sites/default/files/Summary%20of%20fiscal%20impact%20-%20FY%202015.pdf>
3. Following passage of HB 128, the Missouri Department of Revenue issued a regulation interpreting the new law, "12 CSR 10-2.052 New Apportionment Method". This regulation was effective March 30, 2014, and is still in effect. The statute and the regulation apply to all corporations: those that derive their income from the sale of tangible personal property and those that derive their income from other sources. In fact, the regulation describes an "eligible corporation" as any corporation that is "eligible to compute an interstate division of income under section 143.451.2, RSMo." Section 143.451.2 says a corporation shall use the apportionment formula if they are, "A corporation described in subdivision (1) of subsection 1 of section 143.441." That section of law clearly does not exclude corporations that derive their income from sources other than the sale of tangible personal property:

"143.441. 1. The term "corporation" means every corporation, association, joint stock company and joint stock association organized, authorized or existing under the laws of this state and includes:

(1) Every corporation, association, joint stock company, and joint stock association organized, authorized, or existing under the laws of this state, and every corporation, association, joint stock company, and joint stock association, licensed to do business in this state, or doing business in this state, and not organized, authorized, or existing under the laws of this state, or by any receiver in charge of the property of any such corporation, association, joint stock company or joint stock association;"