

REALITY CHECK : SB 662

*An honest look at
Senate Bill 662
passed by the Missouri
General Assembly and
vetoed by Governor
Jeremiah "Jay" Nixon on
June 11, 2014*



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: Taxpayer notice of sales tax law interpretation changes by DOR or courts

SECTION: 144.021.2

DESCRIPTION: The bill provides that "sellers" must be notified by the Missouri Department of Revenue (DOR) when the amount of sales tax due is modified by a decision of the DOR, the Administrative Hearing Commission or a court. If the sellers are not notified, the seller is not held liable for the change in interpretation until the seller is notified of the change.

AIM/TRIM's ESTIMATE OF IMPACT: Minimal administrative cost to state government consisting of website changes; no cost to local governments.

AIM/TRIM’s METHODOLOGY: The new law would require the DOR to notify affected sellers of changes in interpretation of the sales tax laws by the DOR, the Administrative Hearing Commission or the courts. All of these interpretations are known by officials at the Department of Revenue, as they perform the tax collection and administration function for state and local sales taxes. The law requires the DOR to “notify” affected sellers of these changes.

Unlike numerous other statutes⁴ that require notification by registered mail, subsection 2 of section 144.021 of this bill does not require a specific method of notification. Rather, the new law would simply require the Department of Revenue to notify all affected sellers of modifications of interpretations in sales tax law. This could be accomplished by publishing an electronic newsletter or maintaining a page on a website with changes in tax interpretations at minimal cost to the DOR. A one-time notice to currently registered sellers printed on the next sales tax return or next communication piece that must be sent to sales tax sellers notifying them of the new website and notice on all registration materials of the new website would be sufficient to comply with the law.

Current law provides no requirement for the DOR to notify taxpayers of changes in interpretation and there is no communication of changes in tax policy besides “notification by audit” – taxpayers usually only find out about changes in tax policy when they are audited by the DOR and receive a bill for back taxes. Because they have not been made aware of the tax policy changes, the taxpayers are not able to collect the sales taxes from customers as is the intent of the sales tax law, and they must pay the taxes “out of pocket” instead. This law would provide taxpayers a source of information that currently does not exist and provide a chance for taxpayers to know of changes in application of the tax laws by the DOR due to changes made by DOR auditors and leadership and changes resulting from decisions of the Administrative Hearing Commission and the courts.

OA ESTIMATE OF IMPACT: \$100m state cost; \$100m local cost.¹

AIM/TRIM COMMENT ON OA ESTIMATE OF IMPACT: The Office of Administration is apparently interpreting this statute as requiring a specific notice to each taxpayer, which is not required by the plain language of the statute, in contrast to other statutes⁵ that require specific types of notice to taxpayers. Even so, it is interesting that the OA estimates sellers are currently required to pay \$200 million in additional taxes due to changes in interpretation by the DOR and courts in situations where the DOR has not notified the sellers of the changes in the tax laws (\$100 million in state taxes and \$100 million in local taxes).

Sales taxes are collected by retailers as agents for the state. The state requires retailers to collect these taxes and provides an extremely modest compensation for doing so that, according to most analyses, does not compensate sellers for the true cost of collecting and remitting the tax. The least the government can do is provide the taxpayers with the correct rules regarding what taxes are to be collected.

Given OA’s large estimate of revenue loss that would result from this proposal, one of two things is true: either the DOR is abusing taxpayers by changing the sales tax collection rules and requiring them to pay \$200 million out of their pockets without allowing them to properly collect and remit those taxes from customers; or the estimate is extremely inflated. We believe a page on the DOR website with notices of tax law changes will satisfy the requirement under the new law.

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.

ISSUE: Sales tax exemption of right of first refusal for tickets

SECTION: 144.1030

DESCRIPTION: The bill would clarify that sales tax does not apply to amounts paid for the right to purchase tickets for admissions to events, if the purchase does not result in admission to the event.

AIM/TRIM's ESTIMATE OF IMPACT: No state cost; no local cost.

AIM/TRIM's METHODOLOGY: We believe this provision simply restates the current law and clarifies the existing law regarding sales taxes on admissions. Sales taxes should only be due on tickets, not on the right to buy tickets.

OA ESTIMATE OF IMPACT: \$700,000 state cost; \$700,000 local cost.²

AIM/TRIM COMMENT ON OA ESTIMATE OF IMPACT: We disagree with OA's assessment that taxes are due under current law on these transactions.

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;"

4. See subsection 3 of section 144.210, RSMo, requiring notices of assessment to be sent by certified or registered mail; subsection 5 of section 144.250, RSMo, requiring notices of estimated assessment to be sent to taxpayers by certified or registered mail; section 144.500, RSMo, requiring notice of fraud assessment to be sent by registered mail; and subsection 3 of section 144.630, RSMo, requiring notice of service and copy of process and petition to be sent by restricted registered mail to the defendant. All of these notices are required by provisions within the Missouri sales and use tax law.