SS HB 253 -- TAXATION

(Vetoed by the Governor)

This bill changes the laws regarding taxation.

STREAMLINED SALES AND USE TAX AGREEMENT

The bill requires the Director of the Department of Revenue to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and types of commerce.

The bill specifies that:

(1) When a city annexes or detaches property, the city clerk must forward a certified copy of the ordinance to the department director within 10 days. The tax rate in the added or abolished territory must become effective on the first day of the calendar quarter 120 days after the sellers receive notice of the change (Section 32.087.18, RSMo);

(2) When a political subdivision changes the tax rate or the local sales tax boundary, the change must become effective on the first day of the calendar quarter 120 days after the sellers receive notice of the change (Section 32.087.19);

(3) When specified political subdivisions repeal an existing tax, the repeal must become effective on the first day of the calendar quarter 120 days after notice to sellers (Sections 66.620 - 67.1545, 67.1775, 67.2000, and 67.2530); and

(4) When a seller fails to properly collect taxes based on certain information provided by the department, the seller will be relieved from the tax liability (Sections 144.123 - 144.124).

The bill also:

(1) Requires the department to establish the necessary rules to implement the compliance provisions of the agreement. The state must be represented as a member of the agreement for amending the agreement by three delegates including a person appointed by the Governor, a member of the General Assembly appointed by mutual consent of the President Pro Tem of the Senate and the Speaker of the House of Representatives, and the department director or his or her designee. The delegates must make an annual report by January 15 on the status of the agreement (Section 32.070);

(2) Authorizes the department director to retain 1% of the amount of any local sales or use taxes collected by the department for the cost of collection (Section 32.086);

(3) Requires the department director to perform all functions regarding the administration, collection, enforcement, and operation of all sales taxes. All state and local sales taxes must have the same base which means that exemptions at the state and local level must be identical (Sections 32.087 and 66.620 - 67.2530);

(4) Defines "delivery charges," "food," "bottled water," "candy," "ancillary services," "lease or rental," "purchase price," and "sales price" as they apply in the streamlined agreement. The bill also defines "engages in business activities within the state" and "maintains a place of business in this state" as they relate to the collection of taxes and defines "tangible personal property" to exclude specified digital products, digital audio-visual works, digital audio works, and digital books (Section 144.010);

(5) Establishes rules to determine the taxability of bundled transactions involving both taxable and nontaxable goods or services (Section 144.022);

(6) Requires uniform sourcing rules to determine what tax rates will apply to certain transactions (Sections 144.040 - 144.043);

(7) Requires the department director to participate in an on-line registration system that will allow sellers to register in this state and other member states. Registration with the central registration system and the collection of sales and use taxes in this state must not be used as a factor in determining whether the seller has nexus with this state for any tax at any time (Section 144.082);

(8) Requires the department director to establish rules and regulations for the remittance of sales and use taxes that allow for payments by all remitters and requires a seller to submit its sales and use tax returns electronically in a simplified format approved and prescribed by the department director (Section 144.084);

(9) Authorizes a deduction from taxable sales for a seller for bad debts attributable to taxable sales that have become uncollectable (Section 144.105);

(10) Requires the department director to provide and maintain an electronic database that describes boundary changes for all taxing jurisdictions and the effective dates of the changes for sales and

use tax purposes, a database of all sales and use tax rates for all taxing jurisdictions, and a database that assigns each five- and nine-digit zip code to the proper rates and taxing jurisdictions. The department director must complete a taxability matrix detailing taxable property and services (Sections 144.123 - 144.124);

(11) Authorizes an amnesty to certain out-of-state sellers with uncollected or unpaid sales or use tax if the seller was not registered in Missouri in the prior 12-month period before the effective date of the state's participation in the streamlined agreement (Section 144.125); and

(12) Requires the department director to provide a monetary allowance under the automated collection system of 2% of the amount of remittance that sellers and certified service providers are allowed for collecting and remitting the state and local sales taxes. Currently, sellers are allowed to keep 2% for collecting and timely remitting the tax. A seller cannot simultaneously receive this monetary allowance and the 2% timely filing deduction (Section 144.140).

TAX AMNESTY

The bill authorizes an amnesty from the assessment or payment of all penalties, additions to tax, and interest on delinquencies of unpaid taxes administered by the Department of Revenue which occurred on or prior to December 31, 2012. A taxpayer must apply for amnesty; pay the unpaid taxes in full from August 1, 2013, to October 31, 2013; and agree to comply with state tax laws for the next eight years from the date of the agreement. If a taxpayer is granted amnesty, he or she will not be eligible to participate in any future amnesty for the same tax. All tax payments received from the tax amnesty program must be deposited into the General Revenue Fund unless otherwise earmarked by the Missouri Constitution (Section 32.383).

COMMUNITY DEVELOPMENT DISTRICT TAX

The bill changes the items that are to be exempt from a community development district tax to the retail sale of fuels used to power motor vehicles, aircraft, locomotives, or watercraft; the retail sale of electricity, piped natural or artificial gas, or other fuels delivered by the seller; and the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. Currently, the sales of motor vehicles, trailers, boats or outboard motors, and sales to or by public utilities and providers of communications, cable, or video services are exempt (Section 67.1545).

INCOME TAX

The bill:

(1) Modifies the individual income tax rate table. Beginning with the 2014 tax year, the maximum tax rate on personal income will be reduced by 0.5% over a period of 10 years. However, the reduction can only occur if the tax revenues collected in the current year exceed those collected in any of the three prior fiscal years by at least $100 million. After the rate reduction is fully phased-in, the maximum tax rate will be 5.5%. If the federal government passes the Marketplace Fairness Act of 2013, or similar legislation, the maximum rate of tax on personal income will be reduced an additional 0.5% (Sections 143.011 and 143.021);

(2) Creates an individual income tax deduction for business income and phases it in over a five-year period. A taxpayer will be allowed to deduct 10% of business income for the 2014 tax year and, once fully phased-in, will be allowed a 50% deduction for all tax years after the 2017 tax year. A shareholder of a S-corporation and a partner in a partnership will be allowed a proportional deduction based on his or her share of ownership (Section 143.022);

(3) Reduces the tax rate on corporate income by 3% over a period of 10 years, beginning with the 2014 tax year. However, the reduction can only occur if the tax revenues collected in the current year exceed those collected in any of the three prior fiscal years by at least $100 million. After the rate reduction is fully phased-in, the tax rate on corporate income will be 3.25% (Section 143.071); and

(4) Authorizes, beginning January 1, 2014, an additional personal exemption of $1,000 for every individual with a Missouri adjusted gross income of less than $20,000. Currently, the personal exemption for individual income tax is $2,100 (Section 143.151).

WITHHOLDING TAX FILING REQUIREMENTS

Currently, an employer is allowed to file an annual withholding tax return instead of four quarterly returns when the aggregate amount withheld is less than $20 in each of the four preceding quarters. The bill changes the amount to less than $100 in each of the four preceding quarters if the employer is not otherwise required to file a withholding return on a quarterly or monthly basis (Section 143.221).

SALES AND USE TAX

The bill:

(1) Authorizes a state and local sales and use tax exemption for all sales of kidney dialysis equipment and enteral feeding systems; durable medical equipment, prosthetic devices, and mobility enhancing equipment; and over-the-counter drugs prescribed by a licensed health care practitioner (Section 144.030.2(19));

(2) Revises the list of items exempted from state and local sales and use tax to add all sales of piped natural or artificial gas or other fuels delivered by the seller for domestic use and to remove all sales of electrical current, natural, artificial or propane gas, wood, coal, or home heating oil. It also repeals the exemption for all sales of water service for domestic use in the City of St. Louis (Section 144.030.2(24));

(3) Authorizes a sales tax exemption for all sales of new light aircraft, light aircraft kits, or light aircraft parts or components manufactured or substantially completed within this state when sold by the manufacturer to a qualified purchaser (Section 144.030.2(43));

(4) Authorizes a sales tax exemption for all sales of computer printouts, computer output on microfilm or microfiche, and computer-assisted photo compositions (Section 144.030.2(44)); and

(5) Specifies that the 2% timely remittance of payment allowance applies to sales transactions with tax exemptions under Sections 144.210 and 144.212 (Section 144.710).

USE TAX NEXUS

The bill changes the laws regarding the collection of sales and use taxes relating to nexus with Missouri. In its main provisions, the bill:

(1) Voids any ruling, agreement, or contract between the executive branch or any other state agency or department and any person that exempts the person from the collection of sales and use tax unless it is approved by the General Assembly (Section 144.522);

(2) Revises the definition of "engages in business activities within this state" as it relates to the collection of use taxes to remove the provisions including the use of media to purposefully or systematically exploit Missouri's market and being owned or controlled by the same interests that own or control a seller engaged in the same or similar line of business in this state (Section 144.605);

(3) Creates a presumption that a vendor engages in business

activities within this state if any person, other than a common carrier acting in its capacity as one, that has a substantial nexus with Missouri performs specified activities in relation to the vendor within this state. The presumption may be rebutted by showing that the person's activities are not significantly associated with the vendor's ability to establish or maintain a market in Missouri for the vendor's sales (Section 144.605);

(4) Creates an additional presumption that a vendor engages in business activities within this state if the vendor enters into an agreement with one or more residents of Missouri to refer potential customers to the vendor and the sales generated by the agreement exceeds $10,000 in the preceding 12 months. This presumption may be rebutted by showing proof that the Missouri resident did not engage in any activity within Missouri that was significantly associated with the vendor's ability to establish or maintain the vendor's market in Missouri in the preceding 12 months (Section 144.605);

(5) Revises the definition of "maintains a place of business in this state" as it applies to the collection of use taxes to exclude a place of business owned or operated by a common carrier acting in that capacity (Section 144.605);

(6) Repeals the provision that exempts a vendor with less than $500,000 total gross receipts in Missouri or $12.5 million nationwide with no selling agents in Missouri and no place of business in this state from the definition of "vendor" as it relates to the collection of use taxes (Section 144.605); and

(7) Specifies that an out-of-state seller not legally required to collect use tax but who chooses to register to collect and remit use tax to file a return for the calendar year by January 31 of the following year. If the amount collected is $1,000 or more, the seller must file a return and remit the tax monthly (Section 144.655).

TRANSPORTATION DEVELOPMENT DISTRICT TAX

The bill changes the items that are exempt from a transportation development district tax to the retail sale or use of fuels used to power motor vehicles, aircraft, locomotives, or watercraft; electricity, piped natural or artificial gas, or other fuels delivered by the seller; and the retail sales or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. Currently, the sale or use of motor vehicles, trailers, boats or outboard motors; all sales of electricity or electrical current, water and gas, natural or artificial; and the sales of service to telephone subscribers are exempt (Section

238.235).

The provisions of the bill regarding the Streamlined Sales and Use Tax Agreement will become effective January 1, 2015.

The provisions of the bill regarding use tax nexus in Section 144.605 will expire January 1, 2015, and the provisions regarding the tax amnesty will expire December 31, 2021.

The provisions of the bill regarding the tax amnesty contain an emergency clause.