HCS HBs 521 & 579 -- TAXATION

SPONSOR: Koenig

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Ways and Means by a vote of 9 to 3.

This substitute establishes the Streamlined Sales and Use Tax Agreement Act which requires the Director of the Department of Revenue to enter into the multistate Streamlined Sales and Use Tax Agreement 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 substitute 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 boundary change (Section 32.087.18, RSMo);

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

(3) If a political subdivision repeals an existing tax, the repeal must become effective on the first day of the calendar quarter 120 days after the Director of the Department of Revenue receives notice that the abolishment of the tax was approved (Sections 67.1303, 67.2030, 67.2530, and 94.578); 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 substitute 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. The substitute specifies that

all general revenue generated by the agreement after the adoption of the federal legislation, that exceeds the revenue that would have been collected without the agreement must be deposited into the newly created Streamlined Sales and Use Tax Agreement Special Fund and appropriated solely to replace revenues lost from reducing the individual income tax rates and local sales tax rates are required to be adjusted to be revenue neutral (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) Authorizes an exemption for motor fuel used exclusively for watercraft in this state from the motor fuel tax. No tax can be imposed or levied on any motor fuel delivered to any marina or other retailer within this state who sells the fuel solely for use in any watercraft in this state. Currently, a taxpayer must pay the tax with the purchase of the fuel and then request a refund of the motor fuel tax from the Department of Revenue within one year of purchase. Any person who purchases motor fuel for use in a watercraft at a location other than a Missouri marina may claim the exemption by submitting a refund claim for the fuel tax paid from the Department of Revenue (Sections 142.815 and 144.030);

(5) Phases in a reduction in the corporate income tax rate over three years from 6.25% of Missouri taxable income to 5.5% for tax year 2014, 4.9% for 2015, and 4.25% for 2016 and all subsequent tax years (Section 143.071);

(6) Authorizes, beginning January 1, 2013, a one-time individual income tax deduction for the purchaser of a new home built between August 28, 2013, and December 31, 2015, and used as the principal residence of the taxpayer for at least two years. The amount of the deduction will be equal to one-third of the purchase price of the home or $166,667, whichever is less, and cannot exceed a maximum tax benefit of $10,000. Any amount of the deduction that exceeds the taxpayer's Missouri adjusted gross income may be carried forward to any subsequent tax year until the full deduction is claimed. The provisions of this section will expire December 31, 2015 (Section 143.145);

(7) Defines "delivery charges," "food," “bottled water,” “candy,”

“ancillary services,” "lease or rental," "purchase price," "sales price," "tangible personal property," and other definitions to be adopted as defined in the streamlined agreement. The substitute also defines “engaging in business activities within the state” and “maintains a place of business in this state” as they relate to the collection of taxes and “tangible personal property” to exclude specified digital products, digital audio-visual works, digital audio works, and digital books (Section 144.010);

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

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

(10) Allows a seller to advertise that the required sales tax will be assumed or absorbed into the price of the property sold or the service rendered if the amount of the tax is separately stated on the invoice or receipts. Any person who fails to separately state the assumed or absorbed sales tax on the invoice or receipt will be guilty of a misdemeanor (Section 144.080);

(11) Requires the on-line registration for out-of-state sellers to be simplified and no bond to be required (Section 144.082);

(12) Allows the department to require any seller to electronically file and remit sales and use taxes and requires the department to offer out-of-state sellers uniform, simplified electronic filing (Section 144.084);

(13) Authorizes a deduction from taxable sales for sellers with bad debts attributable to taxable sales that are uncollectable (Section 144.104);

(14) Requires the department to provide electronic databases for tax jurisdiction boundary changes, tax rates, and a taxability matrix detailing taxable property and services (Sections 144.123 - 144.124);

(15) 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 streamlined agreement (Section 144.125);

(16) Allows a monetary allowance under the automated collection system, beginning July 1, 2014, of up to 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);

(17) Specifies that the provisions regarding the Show Me Green Sales Tax Holiday for the purchase of energy star appliances will expire on December 31, 2013 (Section 144.526); and

(18) Requires no caps or thresholds to exist on the collection of sales or use taxes (Section 144.1012).

The substitute changes the laws regarding the collection of sales and use taxes relating to nexus with Missouri (Sections 144.010, 144.030, and 144.605). In its main provisions, the substitute:

(1) Specifies that a person is engaging in business in this state as it relates to the collection of sales and use taxes if the person engages in business in this state or maintains a place of business in this state under Section 144.605;

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

(3) 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 or 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;

(4) 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;

(5) Creates a 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 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;

(6) Revises the definition of "maintains a place of business in this state" as it applies to the collection of use taxes to exclude a common carrier acting in its capacity as one; and

(7) 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.

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

PROPONENTS: Supporters of HB 521 say the bill allows Missouri to be part of the streamlined sales and use tax agreement with additional tax changes. It uses the revenue to reduce the individual income tax rate and personal property taxes, cuts the corporate tax rates in half, adds a tax deduction for businesses, and an automated collection for delinquent business requirement. The bill will cut taxes rather than create tax credits, simplify tax law, and treat all businesses the same. With technology and retail practices changing, our laws must change. Both the streamlined and nexus bills need to be passed.

Supporters of HB 579 say that the bill sets up the streamlined compact for Missouri and standardizes Missouri sales and use tax laws to allow the collection of taxes on Internet sales. The bill is very similar to others that have been filed but they prefer the bill to have only the streamlined provisions.

Testifying for HB 521 was Representative Koenig.

Testifying for HB 579 were Representative Funderburk; Missouri Retailers Association; and Missouri Budget Project.

OPPONENTS: Those who oppose HB 521 say that they support streamlined sales tax changes with a few concerns. The concerns include the reduction in property taxes, local money being state funds, opt-out language for sales tax holidays, change in textbooks sales tax exemption language, and cutting the budget since the revenue generated from eliminating tax credits and that the streamlined sales tax will be used for tax cuts and they are opposed to Section 144.001. They oppose cutting state revenues without consideration to the impact on essential state services such as education, higher education, and public safety.

There was no opposition voiced to the committee on House Bill 579.

Testifying against HB 521 were Missouri Municipal League; Missouri Association of Counties; Missouri Budget Project; Missouri Bankers Association; and Missouri Credit Union Association.

OTHERS: Others testifying on HB 521 say that definition changes are necessary to join the streamlined sales and use tax agreement. There is an estimated $620 million revenue potential if passed by both state and federal governments, and it is estimated that the voluntary streamlined sales tax, including counties and cities with local use taxes, will bring in about $15 million in additional revenue. The changes will make it much easier to deal with the sales tax holidays as it would be a real holiday for taxpayers. The holidays do create a spike in sales for brick and mortar stores. We need to fix nexus problem with bordering states. They prefer garnishment of delinquent retailers over forcing the use of an unproven credit card company system required by the Sales Tax Technology Act in Section 144.001. Currently, the company has an intellectual patent instead of an actually working system. It is impossible for American Express to collect sales tax as mandated by the bill because the software doesn’t exist now for us to comply. There is a problem with the streamlined language that requires the rental industry to charge the sales tax rate at the store when a customer gets a rental item, and every other payment is taxed at the rate where the rental item goes, such as the home of the renter. This requires the tracking of multiple taxing rates. Kansas has postponed how they will handle rentals. The rental industry doesn't want to spend their money by investing in the software to help find the tax rates. They want taxes equal. The provisions of the bill with the revenue neutral language is a concern as they want to allow some growth of revenue. Currently, we are at the 2009 revenue levels. Some cities don’t have a personal property tax. They support only the streamlined portion of the bill.

Others testifying on HB 579 spoke about the differences between the filed streamlined sales and use tax bills.

Testifying on HB 521 were Missouri Retailers Association; American Express; Missouri Rental Dealers Association; Tim Fischesser, St. Louis County Municipal League; and Missouri Budget Project.

Testifying on HB 579 was Department of Revenue.