

HCS HBs 521 & 579 -- TAXATION (Koenig)

COMMITTEE OF ORIGIN: Committee on Ways and Means

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) Allows the department director and the Commissioner of the Office of Administration to enter into a reciprocal collection and offset of indebtedness agreement with the federal government to offset vendor, contractor, and taxpayer payments for any type of debt owed to the state. Currently, the department has a reciprocal agreement with the United States Treasury to offset income tax overpayments. The department director and the commissioner are also authorized to enter into a reciprocal agreement with any other state to set off from state tax refunds and from payments due to vendors and contractors providing goods or services to state departments or agencies nontax debt due if the other state extends a similar authority to this state (Section 32.385);

(5) 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);

(6) Increases the individual income tax rates annually, beginning January 1, 2013, for the increase in inflation (Section 143.011);

(7) 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);

(8) 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);

(9) 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);

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

(11) Authorizes a sales and use tax exemption for sales of kidney dialysis equipment and enteral feeding systems (Section 144.030);

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

(13) 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);

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

(15) 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);

(16) Authorizes a deduction from taxable sales for sellers with bad debts attributable to taxable sales that are uncollectable

(Section 144.104);

(17) 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);

(18) 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);

(19) 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);

(20) 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

(21) 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.