

HB 578 -- BUSINESS ACTIVITIES SUBJECT TO SALES AND USE TAXATION

SPONSOR: Funderburk

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Ways and Means by a vote of 11 to 1.

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

- (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, RSMo;
- (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.

PROPOSERS: Supporters say that the bill will change the rules for establishing nexus with out-of-state vendors who are selling within Missouri. While this is governed by the federal government and the state's powers are limited by the Commerce Clause of the U.S. Constitution, the bill will remove the gross receipts limit and determine when a business is doing business with our state. It will also equal out the taxing differences between our border states and us. The nexus thresholds were established in the early 1990s before people could shop on the Internet. Today, out-of-state vendors stay just below Missouri's thresholds so that they don't have to collect our tax while Missouri residents who purchase from a Kansas or Illinois business must pay that state sales tax.

Testifying for the bill were Representative Funderburk; Missouri Retailers Association; Department of Revenue; Associated Industries of Missouri; and Missouri Budget Project.

OPPOSERS: There was no opposition voiced to the committee.