

HB 1569 -- SALES AND USE TAX ON ELECTRONIC SALES

SPONSOR: Funderburk

COMMITTEE ACTION: Voted "do pass" by the Committee on Tax Reform by a vote of 9 to 0.

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) Revises the definition of "seller" to include any business who regularly or systematically solicits business in this state or solicits business in this state through an independent contractor or other representative for four quarterly periods, has cumulative gross receipts in excess of \$300,000, and has delivered more than 100 sales of property in this state unless the business can demonstrate to the Director of the Department of Revenue that it will not meet these requirements in the next four quarterly periods;

(2) Specifies that soliciting business through an independent contractor or other representative includes a business that enters into an agreement with a resident of Missouri for a commission or other consideration and the resident directly or indirectly refers potential customers by a link on the Internet or otherwise to the seller if the cumulative gross receipts from sales by the seller to customers in Missouri who are referred by all residents with agreements with the seller exceeds \$10,000 during the preceding four quarters unless the seller can prove the resident with whom the seller has an agreement did not engage in any solicitation that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods;

(3) Removes the provision regarding the sales and use tax exemption for retail sales made between Missouri and any other state and between Missouri and any foreign country;

(4) Revises the definition of "engages in business activities within this state" by adding the Internet as a media source to the list of advertising markets for sales and use tax purposes. The business must engage in the activity in this state for four quarterly periods, have cumulative gross receipts in excess of \$300,000, and have delivered more than 100 sales of property in this state unless the business can demonstrate to the department director that it will not meet these requirements in the next four quarterly periods;

(5) Revises the definition of "vendor" to include a company who solicits business through the Internet; and

(6) Removes the provision exempting 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 collecting the use tax.

FISCAL NOTE: Estimated Net Effect on General Revenue Fund of a cost of \$106,907 to an income of More than \$100,000 in FY 2013, a cost of \$103,354 to an income of More than \$100,000 in FY 2014, and a cost of \$104,413 to an income of More than \$100,000 in FY 2015. Estimated Net Income on Other State Funds of More than \$100,000 in FY 2013, FY 2014, and FY 2015.

PROPOSERS: Supporters say that the bill seeks to close a tax loophole created by technology. Advances in technology require Missouri to change its tax structure to adapt to the current business environment. The bill establishes nexus on electronic sales for sales and use tax purposes. It is similar to the streamlined sales tax and works well with it. The bill taxes businesses that are able to get access to its markets by going through a Missouri business or resident such as affiliate sales or linked access. Internet sales are considered the same as sales of a brick and mortar business. It would include businesses using the Internet as part of its mass media to market to Missouri businesses. Any business selling through a Missouri business to Missouri residents in excess of \$300,000 in gross receipts in four quarters will be subject to Missouri sales tax laws and be required to collect sales tax. Local governments and communities need money to provide services and the bill will help with this. This is not a new tax or levy increase but collecting it in a changing technology world. Many states have already passed this, including Arkansas, and many others are considering it. This is a first step to get major businesses to collect Missouri's sales tax. There is no burden since the business already knows what our tax rate is and the Department of Revenue will do the enforcement. A significant number of businesses need to step forward and collect Missouri's sales tax.

Testifying for the bill were Representative Funderburk; Missouri Retailers Association; Missouri Grocers' Association; Missouri AFL-CIO; and American Federation of Teachers.

OPPOSERS: Those who oppose the bill say that while states may have a need to seek out additional tax revenue, the burden this gain would cause in lost revenue, job loss across Missouri, and harm to our economy, business, schools, and charities could be huge. The bill encourages businesses to leave the state.

Testifying against the bill was Carl Szabo, NetChoice.

OTHERS: Others testifying on the bill say that an affiliate

relationship is created when someone partners with Walmart to sell goods and he or she gets a percentage of the sales for referrals. Most affiliates are not small businesses, just bloggers. They create marketing on the front-end to drive customers in a direction for retail sales. Walmart has nexus in all 50 states. If the bill is passed, sales transactions that occur because of Walmart's affiliates that live in Missouri would be taxable. Nine states have passed similar legislation. On the negative side, Amazon is ending relationships with affiliates in states that pass this legislation and some other larger corporations could follow this example. Amazon has agreed to collect sales tax in several states through agreements. In New York, there is a law suit by Amazon. New York has collected \$75 million from Amazon alone. California has a similar bill that will be effective in September 2012 and Amazon will start to collect California's sales tax on that date. Indiana is ending its exemption for Amazon in 2014. Pennsylvania believes it already has authority to collect from Amazon and created a bulletin stating the fact and will collect beginning September 2012. According to a study by Dr. Fox at the University of Tennessee, in a report not yet released, 2012 revenues are estimated at \$190.6 million for Missouri e-commerce and that number will continue to grow. If Missouri taxes an item, no matter how they get the item, it should be taxed. This is a regressive issue. When you look at who can purchase on line, those that can't access a computer or a credit card must always pay the tax. Twenty percent of Walmart's customers are un-banked and can't take advantage of Internet sales.

Testifying on the bill was Laurie Smalling, Walmart.