HCS SS#2 SCS SBs 26, 11 & 31 -- TAXATION

SPONSOR: Kraus (Koenig)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Ways and Means by a vote of 7 to 5.

STREAMLINED SALES AND USE TAX AGREEMENT

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 (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," "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);

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

(8) 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);

(9) Authorizes a deduction from taxable sales for sellers with bad debts attributable to taxable sales that are uncollectable (Section 144.105);

(10) 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);

(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 streamlined agreement (Section 144.125);

(12) 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); and

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

TAX AMNESTY

The substitute 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 whichoccurred 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 cannot 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);

AMENDED PROPERTY TAX RATE FILINGS

The substitute allows a taxing authority to submit an amended property tax rate filing with an explanation for the needed changes to the State Auditor's Office if the forms were incorrectly completed or if there was a clerical error. The State Auditor's Office must take into consideration the amended forms in determining that the tax rate complies with state law (Section 137.073);

INCOME TAX

The substitute:

(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 0.67% over a period of five years. For all tax years beginning on or after 2018, the maximum tax rate will be 5.33%. 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 0.33% (Sections 143.011 & 143.021);

(2) Creates an individual income tax deduction for business income and phases it in over a five-year period. Taxpayers 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. Shareholders of S-corporations and partners in partnerships will be allowed a proportional deduction based on their share of ownership (Section 143.022);

(3) Reduces the tax rate on corporate income by 0.75% over a period of five years, beginning with the 2014 tax year. For all tax years beginning on or after January 1, 2018, the tax rate on corporate income will be 5.5%. The substitute also exempts the first $25,000 of corporate income from taxation (Section 143.071);

(4) Authorizes, beginning January 1, 2014, an additional personal exemption of $2,000 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);

SALES AND USE TAX RATES

The substitute:

(1) Authorizes an increase in the state sales and use tax rate by .2% for the first year. The funds must be deposited in the newly created Mental Health Facilities Capital Improvement Fund until the amount deposited equals $200 million. The funds must be used for building the Fulton State Mental Hospital. Additional moneys raised from the .2% rate increase must be deposited into the state road fund to be used for various transportation projects, beginning January 1, 2014. The rate is raised by 0.1% each year for the second through fifth years. For all calendar years beginning on or after January 1, 2018, the state sales and use tax rate will be 4.6%. Currently, the rate for state sales and use tax is 4% (Sections 144.014, 144.020, 144.021, 144.440, 144.700, and 630.1100);

(2) Authorizes an exemption from state and local sales and use tax for fees paid to places of amusement, entertainment or recreation. The substitute also excludes places of recreation from the tax (Section 144.020);

(3) Authorizes a state and local sales and use tax exemption for the purchase of kidney dialysis equipment and enteral feeding systems (Section 144.030);

USE TAX NEXUS

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

(1) 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 (Section 144.605);

(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 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 (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 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 (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 common carrier acting through a subsidiary or agent (Section 144.605); and

(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).

The provisions relating to tax amnesty in Section 32.383 become effective July 1, 2013, and will expire December 31, 2016.

The provisions relating to the Streamlined Sales and Use Tax Agreement have an effective date of January 1, 2015.

The provisions relating to the sales and use tax rates in Sections 144.020 and 144.021, and the income tax rates in Sections 143.011, 143.021, 143.022, and 143.071 will not become effective until tax revenues collected in the current year exceed those collected in the prior year by at least $100 million.

The provisions regarding use tax nexus in Section 144.605 will expire January 1, 2015.

The provisions relating to tax amnesty in Section 32.383 contain an emergency clause.

PROPONENTS: Supporters say that this bill is a broad-based tax change. Currently, Missouri relies on the income tax too much while its sales tax is low compared to border states. Kansas is targeting Missouri businesses and offering incentives to encourage taxpayers to move to Kansas. The bill will help Missouri compete with Kansas. Missouri has lost congressional districts as taxpayers move. In 1936, there were 16, in 1970, 10, and now eight. We need to stop the shifting. The bill makes changes over a period of five years to give taxpayers their money back to spend in the economy and create jobs. Oklahoma passed a bill last year that increased its economy. Missouri has had no economic growth in the last four years. While Kansas cut $1.8 billion, this bill’s fiscal note is estimated at $477 million over five years. Tax credit reform is also needed as there was $629 million spent on tax credits this past year. The new growth will cover the cost of the bill. There is no tax increase on food. There is a small shift from income tax to sales tax. Many businesses pay use tax and this bill would increase costs in sales/use taxes and reduce corporate income tax liability. With the broad-based tax cut in Kansas, businesses close to the border can move to Kansas to save tax dollars and still keep the same customer base. The bill will help combat that. Small business is the engine of our economy and the bill will allow them to expand their businesses and grow jobs and the economy. We must reform the tax code in order to start economic growth and end Missouri’s stagnation. Nine states are looking at eliminating their income taxes. Missourians need to take a global look at its tax policy so that it is more equitable and just for all citizens. Missouri needs to be competitive with other states, but more important, to have a more just way to tax. Missouri is 48th out of 50th in its GDP growth.

Testifying for the bill were Senator Kraus; Associated Industries of Missouri; Missouri Retailers Association; Woody Cozad, Save Missouri Jobs; Jim Lembke, United for Missouri; National Federation of Independent Businesses; Missouri Chamber of Commerce and Industry; and Chuck Pierce, Missouri Society of Certified Public Accountants.

OPPONENTS: Those who oppose the bill say that it was developed as a reaction to the Kansas tax plan, which lowered tax rates and created an exemption for pass-through business income. There could be a budget shortfall of $1 billion, which would cause cuts to state services and schools. Opponents are also concerned that the large reduction in state revenue produced by the bill would shift many services to local governments. Property taxes are likely to increase as a result of the bill. The changes will be harder to fix in Missouri with the Hancock limits that require a vote of the people. We are concerned with low income citizens and senior citizens. They receive no tax decrease but only a tax increase with the increase in sales tax. Kansas had its bond rating downgraded, and we are not in favor of chasing them to the bottom. We are opposed to very steep tax changes, but support sales tax increases for services that are in need of funding. Education will receive less funding. We would rather fund state services. While revenues have increased the past three years, that was only after some serious drops. Missouri is in no financial condition to be voluntarily giving up current revenues, and the state's funding for public schools is already more than $600 million below what is required to fund its own school foundation formula, with no real plan to ever see full funding. Just in the Lee’s Summit School District, our current state aid is over $4 million less than our calculated entitlement. We have tightened our belt since the 2008-2009 school year. These are real cuts, that impact teachers, support staff, and students. We tried to increase our total tax levy but the taxpayers said no, enough is enough. We believe the significant, permanent tax cuts in the bill will materially eliminate the state’s capacity to maintain investment in K-12 education, higher education, and other essential services. We need a better solution.

We are looking for basic needs and basic fairness for our citizens. All people in Missouri should have true access to quality healthcare, decent housing, adequate nutrition and appropriate education. Missouri should fully fund and implement state and federal programs for health and mental health services, housing and homelessness services, food assistance programs, and all levels of public education. Missouri should support policies that empower people to overcome their economic circumstances and require all to pay their fair share in support to the common good. The bill will not help Missourians with basic needs or basic fairness. We are more than $4 billion below the point where a Hancock refund would be triggered in Missouri, some indication of the erosion of legislative support for our state's needs that has happened over the past 15 years. Missouri can do better by raising our state revenue to fund state programs. The bill makes an overall regressive tax worse. Instead, Missouri needs to work hard at reducing/eliminating tax credits.

Testifying against the bill were Missouri Budget Project; American Federation of Teachers; Kansas City Civic Council; Dr. David McGehee, Cooperating School Districts of Greater Kansas City; Missouri Association for Social Welfare; Missouri School Boards Association; Mike Lodewegen, School Administrators Coalition; Missouri National Education Association; Missouri Municipal League; and Missouri State Teachers Association.