

HCS HB 517 & 754 -- IMPOSITION OF TAX ON GRATUITIES

SPONSOR: Higdon

COMMITTEE ACTIONS: Voted "Do Pass with Amendments" by the Standing Committee on Ways and Means by a vote of 7 to 1. Voted "Do Pass with HCS" by the Select Committee on Financial Institutions and Taxation by a vote of 10 to 0.

This bill specifies that mandatory gratuities imposed by a restaurant for a large group is not subject to state and local sales tax when the tip is included in the employee's tip income.

The bill limits the calculation of state income tax withholding on tips received by an employee in the course of his or her employment to the amount of total tips reported to the employer in a written statement and specifies that an employer cannot be obligated to pay withholding tax to the Department of Revenue for an employee's under-reported cash tip income. Missouri follows the federal Internal Revenue Code on how to determine the amount of cash tips that is taxable.

PROPOSERS: Supporters of HB 517 say that labor is not subject to tax and the bill keeps a mandatory gratuity from being double taxed. Sales tax is charged on the gratuity and income tax is charged to the employee when included in his or her income.

Supporters of HB 754 say that the restaurant owner should not be held responsible for an employee's under-reported tips. The Department of Revenue started an audit program where it matches credit card sales tips to reported cash sale tips and determines the restaurant owner has under-reported tip income. Tips vary between credit card sales and cash sales, with credit card tips usually higher because they are business related. The owner is assessed 6% of the amount determined under-reported. This is income that went to an employee not the owner and the owner doesn't have knowledge of the amount of under-reported cash tips. The owner must take the word of his or her employee. The burden should be on the employee who knowingly and willfully under-reported tips and not the employer.

Testifying for HB 517 were Representative Higdon; Missouri Society of CPAs; National Federation of Independent Business; Associated Industries of Missouri; Taxpayers Research Institute of Missouri; and Robert Bonney, II, Victor Allred, and Greg Hunsucker, Missouri Restaurant Association.

Testifying for HB 754 were Representative Hicks; Greg Hunsucker, Victor Allred, Robert Bonney, II, Todd Hulse, Missouri Restaurant

Association; Missouri Hotel And Lodging Association; Associated Industries of Missouri; National Federation of Independent Business; and Missouri Society of CPAs.

OPPONENTS: There was no opposition voiced to the committee on either bill.

OTHERS: Others testifying on HB 754 say that there is statutory authority to require income tax withholding on tips and allow the department to proceed with audits that estimate the amount of withholding tax assessed. Historically, the department checks to see that at least 8% was reported in tips on each sale. Sometimes auditors use higher standards. The department is actively engaged in this issue and is planning to meet with restaurant owners tomorrow.

Testifying on HB 754 was Department of Revenue.