

HB 2691 -- TAX REFORM

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STREAMLINED SALES AND USE TAX

This bill requires the Director of the Department of Revenue to enter into the "Streamlined Sales and Use Tax Agreement" with one or more states 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 bill requires all revenue generated under the Streamlined Sales and Use Tax Agreement that exceeds the amount of revenue that would have been collected without the agreement to be deposited in the State Road Fund. The bill 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 of adoption of the ordinance. 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 change (Section 32.087.18, RSMo);

(2) When a political subdivision changes the tax rate or the local sales tax boundary, the change must become effective on the first day of the calendar quarter 120 days after the sellers receive notice of the change (Section 32.087.19); and

(3) When specified political subdivisions repeal an existing tax, the repeal must become effective on the first day of the calendar quarter 120 days after notice to sellers (Sections 66.620 - 67.1545, 67.1775, 67.2000, and 67.2530).

The bill also:

(1) Requires the department to establish the necessary rules to implement the compliance provisions of the agreement. The state must be represented 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 (Sections 32.086 and 67.395 - 67.576);

(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 67.1545, 67.2030, and 67.2530);

(4) Defines "delivery charges," "food and food ingredients," "bottled water," "candy," "ancillary services," "lease or rental," and "purchase price" as they apply in the streamlined agreement. The bill also defines "engages in business activities within this state" and "maintains a place of business in this state" as they relate to the collection of taxes and defines "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 144.043 and 144.111 - 144.112);

(7) Requires the department director to participate in an online registration system that will allow sellers to register in this state and other member states. Registration with the central registration system and the collection of sales and use taxes in this state must not be used as a factor in determining whether the seller has nexus with this state for any tax at any time (Section 144.082);

(8) Requires the department director to establish rules and regulations for the remittance of sales and use taxes that allow for payments by all remitters and requires a seller to submit sales and use tax returns electronically in a simplified format approved and prescribed by the department director (Section 144.084);

(9) Requires a seller to be allowed a deduction from taxable sales for bad debts attributable to taxable sales that have become uncollectable (Section 144.105);

(10) Requires the department director to provide and maintain an electronic database that describes boundary changes for all taxing jurisdictions and the effective dates of the changes for sales and use tax purposes, a database of all sales and use tax rates for all taxing jurisdictions, and a database that assigns each five- and nine-digit ZIP code to the proper rates and taxing jurisdictions.

The department director must complete a taxability matrix and provide reasonable notice of changes in the taxability of products or services listed in the matrix. A seller or certified service provider cannot be held liable for reliance upon erroneous data provided by the department director on tax rates, boundaries, or taxing jurisdiction assignments (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 this state's participation in the streamlined agreement (Section 144.125); and

(12) Requires the department director to provide a monetary allowance under the automated collection system for sellers and certified service providers for collecting and remitting the state and local sales taxes. Currently, sellers are allowed to keep 2% for collecting and timely remitting the tax. Beginning January 1, 2019, the 2% timely filing deduction is eliminated (Sections 144.140 and 144.710).

SALES AND USE TAX

The bill:

(1) Authorizes a state and local sales and use tax exemption for sales of over-the-counter drugs to individuals with disabilities, and all sales of durable medical equipment, prosthetic devices, mobility enhancing equipment, and drugs dispensed by prescription (Section 144.030.2(19));

(2) Removes the opt-out option for local sales, changes the purchase limits on the back-to-school sales tax holiday from a per transaction limit to a per item limit and adds instructional materials and school computer supplies (Section 144.049); and

(3) Requires any out-of-state seller who voluntarily collects and remits use tax to file and remit the tax annually by January 31 of the following year (Section 144.655.7).

SINGLE SALES FACTOR APPORTIONMENT

Currently, a corporation can use three factor apportionment (property, payroll, & sales) or single factor (sales) apportionment to determine its Missouri taxable income when the corporation has both in-state and out-of-state income. This bill eliminates the three factor, requiring corporations to use single factor (Section 32.200).

INCOME TAX

Current law provides for a reduction in the top rate of income tax over a period of years from 6% to 5.5%, with each cut becoming effective if net general revenue collections meet a certain trigger. Beginning January 1, 2019, this bill eliminates some of the tax rate brackets so that the top tax rate is 5.3% for all income over \$8,000, indexed for inflation.

Beginning January 1, 2019, this bill authorizes a reduction in the top rate of income tax of .10% if the amount of tax credits redeemed in a fiscal year is lower than the average amount of tax credit redemptions in fiscal years 2015, 2016, and 2017 by at least \$150 million and a second reduction of .10% if the amount of tax credits redeemed in a fiscal year is lower than the average amount of tax credit redemptions in fiscal years 2015, 2016, and 2017 by at least \$300 million. Also, the bill authorizes a reduction in the top rate of income tax of .25% if the Supreme Court renders a decision, passes a law, or the U. S. Constitution is amended to enable Missouri to require out-of-state sellers with no physical presence in the state to collect and remit state and local sales tax (Sections 143.011 and 143.021).

CORPORATE INCOME TAX

Beginning January 1, 2019, this bill reduces the corporation tax rate from 6.25% to 4.25% (Section 143.071).

FEDERAL TAX DEDUCTION

Currently, an individual can deduct his or her federal income tax liability up to \$5,000 or if a combined return, up to \$10,000; and a corporation can deduct up to 50% of its federal income tax liability. Beginning January 1, 2019, this bill phases out this deduction for individuals based on taxable income limits and eliminates the deduction for corporations (Section 143.171).

MISSOURI WORKING FAMILY TAX CREDIT ACT

This bill establishes the "Missouri Working Family Tax Credit Act" which authorizes an individual income tax credit equal to 20% of any earned income tax credit claimed by the taxpayer on his or her federal income tax return, beginning on January 1, 2019. The credit cannot be refunded or carried forward. The Department of Revenue must notify taxpayers who may qualify for the credit and must contract with one or more nonprofit groups to contact non-English speaking individuals, elderly residents, tenants, and very low-income individuals who do not file tax returns to notify them annually of the credit. The department must prepare an annual

report containing the number of credits issued and claimed, the total amount of revenue expended, and the average value of the credits issued within certain income ranges.

The provisions of this credit will expire on December 31 six years after the effective date (Section 143.177).

WITHHOLDING TAX COMPENSATION

Currently, an employer is allowed to retain an amount between .5% to 2% of the amount of withholding tax due to the state if the employer timely remits the tax due on or before the due date. This bill eliminates such allowance beginning January 1, 2019 (Section 143.261).

CORPORATE APPORTIONMENT OF MISSOURI TAXABLE INCOME

ALLOCABLE INCOME

Net rents are royalties from real property located in the state, and capital gains from the sale of such property, are allocable to the state. Net rents and royalties from tangible personal property are allocable to the state to the extent that the property is used in this state, or in their entirety if the corporation's commercial domicile is in this state and is not organized or taxable by the state in which the property is utilized. Capital gains from the sale of tangible personal property is allocable to this state if the property had a situs in the state at the time of sale, or if the corporation's commercial domicile is in this state and is not organized or taxable by the state in which the property had a situs. Interest and dividends are allocable to Missouri if the corporation's commercial domicile is in this state. Patent and copyright royalties are allocable to this state to the extent that the patent or copyright is utilized in this state, or to the extent that the patent or copyright is utilized in a state in which the corporation is not taxable and the corporation's commercial domicile is in this state.

APPORTIONABLE INCOME

Apportionable income is apportioned to Missouri by dividing the total receipts of the corporation in this state during the tax period by the total receipts of the corporation everywhere during the tax period, and multiplying such result by the net income.

Receipts from the sale of tangible personal property is considered in this state if the property is delivered or shipped to a purchaser within this state, or if the property is shipped from a location in this state and the purchaser is the federal government

or the corporation is not taxable in the state of the purchaser. The Director of Revenue shall promulgate rules for determining the apportionment and allocation factors for certain industries that have unusual factual situations that produce inequitable results, under the apportionment and allocation provisions of this bill. In such a case, a corporation may petition the Director of Revenue (Sections 143.451, 143.455, 143.471, and 620.1350).

This bill provides that the method of allocation and apportionment elected by a corporation expires after 5 years, or whenever the Director of Revenue finds and notifies such corporation that such method is no longer applicable in Missouri, whichever occurs first. After an expiration or revocation, a corporation may elect to use the same or a different method. If no election is made, the corporation must comply with the allocation and apportionment provisions of this bill (Section 143.461).

CAPITOL COMPLEX TAX CREDIT ACT

Beginning January 1, 2018, this bill creates the "Capitol Complex Tax Credit Act" and authorizes a tax credit equal to 50% of any monetary donation and 30% of the value of any eligible artifact donation. The credit for monetary donations is refundable while the credit for donated artifacts is not refundable, but can be carried forward for up to four years or sold. The credits are capped at \$10 million per year and are on a first-come, first-served basis. Donations received after the cap is met will have priority the following tax year.

Monetary donations will be deposited into the newly created, "Capitol Complex Fund," and shall be segregated into two accounts: a rehabilitation and renovation account, and a maintenance account. Of the revenues deposited into the fund, 90% will go for the rehabilitation and renovation account and 7.5% of revenues deposited in the fund will go to the maintenance account. The remaining 2.5% of the funds may be used for fundraising, advertising, and administrative costs. The Commissioner of Administration will decide which projects, the methods of carrying out the projects, and the procurement of goods and services.

The provisions of this credit will sunset December 31 six years after the effective date (Section 620.3210).

The provisions of the bill will become effective January 1, 2019.