

FIRST REGULAR SESSION

HOUSE BILL NO. 701

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FALKNER III.

1632H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 32.310, 144.605, and 144.757, RSMo, and to enact in lieu thereof four new sections relating to use taxes.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 32.310, 144.605, and 144.757, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 32.310, 144.605, 144.637, and 144.757, to read as follows:

32.310. 1. The department of revenue shall create and maintain a mapping feature on its official public website that displays sales **and use** tax information of political subdivisions of this state that have taxing authority, including the current tax rate for each sales **and use** tax imposed and collected. Such display shall have the option to showcase the borders and jurisdiction of the following political subdivisions on a map of the state to the extent that such political subdivisions collect sales **and use** tax:

- (1) Ambulance districts;
- (2) Community improvement districts;
- (3) Fire protection districts;
- (4) Levee districts;
- (5) Library districts;
- (6) Neighborhood improvement districts;
- (7) Port authority districts;
- (8) Tax increment financing districts;
- (9) Transportation development districts;
- (10) School districts; or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (11) Any other political subdivision that imposes a sales **or use** tax within its borders
18 and jurisdiction.

19 2. The mapping feature shall also have the option to superimpose state house of
20 representative districts and state senate districts over the political subdivisions.

21 3. A political subdivision collecting sales **or use** tax listed in subsection 1 of this section
22 shall provide to the department of revenue mapping and geographic data pertaining to the
23 political subdivision's borders and jurisdictions. The political subdivision shall certify the
24 accuracy of the data by affidavit and shall provide the data in a format specified by the
25 department of revenue. Such data shall be sent to the department of revenue by April 1, 2019,
26 and shall be updated and sent to the department if a change in the political subdivision's borders
27 or jurisdiction occurs thereafter.

28 4. The department of revenue may contract with another entity to build and maintain the
29 mapping feature.

30 5. By July 1, 2019, the department shall implement the mapping feature using the data
31 provided to it under subsection 3 of this section.

144.605. The following words and phrases as used in sections 144.600 to 144.745 mean
2 and include:

3 (1) "Calendar quarter", the period of three consecutive calendar months ending on March
4 thirty-first, June thirtieth, September thirtieth, or December thirty-first;

5 (2) "Engages in business activities within this state" includes:

6 (a) Maintaining or having a franchisee or licensee operating under the seller's trade name
7 in this state if the franchisee or licensee is required to collect sales tax ~~[pursuant to]~~ **under**
8 sections 144.010 to 144.525;

9 (b) Soliciting sales or taking orders by sales agents or traveling representatives;

10 (c) A vendor is presumed to engage in business activities within this state if any person,
11 other than a common carrier acting in its capacity as such, that has substantial nexus with this
12 state:

13 a. Sells a similar line of products as the vendor and does so under the same or a similar
14 business name;

15 b. Maintains an office, distribution facility, warehouse, or storage place, or similar place
16 of business in the state to facilitate the delivery of property or services sold by the vendor to the
17 vendor's customers;

18 c. Delivers, installs, assembles, or performs maintenance services for the vendor's
19 customers within the state;

20 d. Facilitates the vendor's delivery of property to customers in the state by allowing the
21 vendor's customers to pick up property sold by the vendor at an office, distribution facility,
22 warehouse, storage place, or similar place of business maintained by the person in the state; or

23 e. Conducts any other activities in the state that are significantly associated with the
24 vendor's ability to establish and maintain a market in the state for the sales;

25 (d) The presumption in paragraph (c) **of this subdivision** may be rebutted by
26 demonstrating that the person's activities in the state are not significantly associated with the
27 vendor's ability to establish or maintain a market in this state for the vendor's sales;

28 (e) Notwithstanding paragraph (c) **of this subdivision**, a vendor shall be presumed to
29 engage in business activities within this state if the vendor enters into an agreement with one or
30 more residents of this state under which the resident, for a commission or other consideration,
31 directly or indirectly refers potential customers, whether by a link on an internet website, an
32 in-person oral presentation, telemarketing, or otherwise, to the vendor, if the cumulative gross
33 receipts from sales by the vendor to customers in the state who are referred to the vendor by all
34 residents with this type of an agreement with the vendor is in excess of ten thousand dollars
35 during the preceding twelve months;

36 (f) The presumption in paragraph (e) **of this subdivision** may be rebutted by submitting
37 proof that the residents with whom the vendor has an agreement did not engage in any activity
38 within the state that was significantly associated with the vendor's ability to establish or maintain
39 the vendor's market in the state during the preceding twelve months. Such proof may consist of
40 sworn written statements from all of the residents with whom the vendor has an agreement
41 stating that they did not engage in any solicitation in the state on behalf of the vendor during the
42 preceding year provided that such statements were provided and obtained in good faith;

43 **(g) a. Beginning October 1, 2019, a vendor engages in business activities within this**
44 **state if:**

45 **(i) The cumulative gross receipts from the vendor's sales of tangible personal**
46 **property to purchasers for the purpose of storage, use, or consumption in this state are one**
47 **hundred thousand dollars or more during any twelve-month period, as determined under**
48 **subparagraph b. of this paragraph; or**

49 **(ii) The vendor enters into two hundred or more separate transactions for the sale**
50 **of tangible personal property to purchasers for the purpose of storage, use, or consumption**
51 **in this state during any twelve-month period, as determined under subparagraph b. of this**
52 **paragraph;**

53 **b. Following the close of each calendar quarter, a vendor shall determine whether**
54 **the vendor met either of the requirements provided under subparagraph a. of this**
55 **paragraph during the twelve-month period ending on the last day of the preceding**

56 **calendar quarter. If the vendor met either of such requirements for any such twelve-**
57 **month period, such vendor shall collect and remit the tax as provided under section**
58 **144.635 for a period of not less than twelve months, beginning not more than three months**
59 **following the close of the preceding calendar quarter, and shall continue to collect and**
60 **remit the tax for as long as the vendor is engaged in business activities in this state, as**
61 **provided under this paragraph, or otherwise maintains a substantial nexus with this state;**

62 (3) "Maintains a place of business in this state" includes maintaining, occupying, or
63 using, permanently or temporarily, directly or indirectly, by whatever name called, an office,
64 place of distribution, sales or sample room or place, warehouse or storage place, or other place
65 of business in this state, whether owned or operated by the vendor or by any other person other
66 than a common carrier acting in its capacity as such;

67 (4) "Person", any individual, firm, copartnership, joint venture, association, corporation,
68 municipal or private, and whether organized for profit or not, state, county, political subdivision,
69 state department, commission, board, bureau or agency, except the state transportation
70 department, estate, trust, business trust, receiver or trustee appointed by the state or federal court,
71 syndicate, or any other group or combination acting as a unit, and the plural as well as the
72 singular number;

73 (5) "Purchase", the acquisition of the ownership of, or title to, tangible personal property,
74 through a sale, as defined herein, for the purpose of storage, use or consumption in this state;

75 (6) "Purchaser", any person who is the recipient for a valuable consideration of any sale
76 of tangible personal property acquired for use, storage, or consumption in this state;

77 (7) "Sale", any transfer, barter, or exchange of the title or ownership of tangible personal
78 property, or the right to use, store, or consume the same, for a consideration paid or to be paid,
79 and any transaction whether called leases, rentals, bailments, loans, conditional sales, or
80 otherwise, and notwithstanding that the title or possession of the property or both is retained for
81 security. For the purpose of this law the place of delivery of the property to the purchaser, user,
82 storer, or consumer is deemed to be the place of sale, whether the delivery be by the vendor or
83 by common carriers, private contractors, mails, express, agents, salesmen, solicitors, hawkers,
84 representatives, consignors, peddlers, canvassers, or otherwise;

85 (8) "Sales price", the consideration including the charges for services, except charges
86 incident to the extension of credit, paid or given, or contracted to be paid or given, by the
87 purchaser to the vendor for the tangible personal property, including any services that are a part
88 of the sale, valued in money, whether paid in money or otherwise, and any amount for which
89 credit is given to the purchaser by the vendor, without any deduction therefrom on account of the
90 cost of the property sold, the cost of materials used, labor or service cost, losses or any other
91 expenses whatsoever, except that cash discounts allowed and taken on sales shall not be included

92 and "sales price" shall not include the amount charged for property returned by customers upon
93 rescission of the contract of sales when the entire amount charged therefor is refunded either in
94 cash or credit or the amount charged for labor or services rendered in installing or applying the
95 property sold, the use, storage, or consumption of which is taxable ~~[pursuant to]~~ **under** sections
96 144.600 to 144.745. The sales price shall not include usual and customary delivery charges that
97 are separately stated. In determining the amount of tax due ~~[pursuant to]~~ **under** sections 144.600
98 to 144.745, any charge incident to the extension of credit shall be specifically exempted;

99 (9) "Selling agent", every person acting as a representative of a principal, when such
100 principal is not registered with the director of revenue of the state of Missouri for the collection
101 of the taxes imposed ~~[pursuant to]~~ **under** sections 144.010 to 144.525 or sections 144.600 to
102 144.745 and who receives compensation by reason of the sale of tangible personal property of
103 the principal, if such property is to be stored, used, or consumed in this state;

104 (10) "Storage", any keeping or retention in this state of tangible personal property
105 purchased from a vendor, except property for sale or property that is temporarily kept or retained
106 in this state for subsequent use outside the state;

107 (11) "Tangible personal property", all items subject to the Missouri sales tax as provided
108 in subdivisions (1) and (3) **of subsection 1** of section 144.020;

109 (12) "Taxpayer", any person remitting the tax or who should remit the tax levied by
110 sections 144.600 to 144.745;

111 (13) "Use", the exercise of any right or power over tangible personal property incident
112 to the ownership or control of that property, except that it does not include the temporary storage
113 of property in this state for subsequent use outside the state, or the sale of the property in the
114 regular course of business;

115 (14) "Vendor", every person engaged in making sales of tangible personal property by
116 mail order, by advertising, by agent or peddling tangible personal property, soliciting or taking
117 orders for sales of tangible personal property, for storage, use, or consumption in this state, all
118 salesmen, solicitors, hawkers, representatives, consignees, peddlers or canvassers, as agents of
119 the dealers, distributors, consignors, supervisors, principals or employers under whom they
120 operate or from whom they obtain the tangible personal property sold by them, and every person
121 who maintains a place of business in this state, maintains a stock of goods in this state, or
122 engages in business activities within this state, and every person who engages in this state in the
123 business of acting as a selling agent for persons not otherwise vendors as defined in this
124 subdivision. Irrespective of whether they are making sales on their own behalf or on behalf of
125 the dealers, distributors, consignors, supervisors, principals or employers, they must be regarded
126 as vendors and the dealers, distributors, consignors, supervisors, principals, or employers must
127 be regarded as vendors for the purposes of sections 144.600 to 144.745.

144.637. 1. The director of revenue shall provide and maintain a database that describes boundary changes for all taxing jurisdictions and the effective dates of such changes for the use of vendors collecting the tax imposed under sections 144.600 to 144.745.

2. For the identification of counties and cities, codes corresponding to the rates shall be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates shall be in a format determined by the director.

3. The director shall provide and maintain a database that assigns each five- and nine-digit zip code to the proper rates and taxing jurisdictions. The lowest combined tax rate imposed in the zip code area shall apply if the area includes more than one tax rate in any level of taxing jurisdiction. If a nine-digit zip code designation is not available for a street address, or if a vendor is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the vendor may apply the rate for the five-digit zip code area. For purposes of this section, there shall be a rebuttable presumption that a vendor has exercised due diligence if the vendor has attempted to determine the nine-digit zip code designation by utilizing software approved by the director that makes this designation from the street address and the five-digit zip code applicable to a purchase.

4. The director may provide address-based boundary database records for assigning taxing jurisdictions and associated rates which shall be in addition to the requirements of subsection 3 of this section. The database records shall be in the same approved format as the database records required under subsection 3 of this section and shall meet the requirements developed under the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 119(a). If the director develops address-based assignment database records, vendors shall be required to use such database records. A vendor shall use such database records in place of the five- and nine-digit zip code database records provided for in subsection 3 of this section. If a vendor is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the vendor may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a vendor is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the vendor may apply the rate for the five-digit zip code area. For the purposes of this section, there shall be a rebuttable presumption that a vendor has exercised due diligence if the vendor has attempted to determine the tax rate and jurisdiction by utilizing software approved by the director and

37 **makes the assignment from the address and zip code information applicable to the**
38 **purchase. If the director has met the requirements of subsection 3 of this section, the**
39 **director may also elect to certify address-based databases provided by third parties for**
40 **assigning tax rates and jurisdictions. The databases shall be in the same approved format**
41 **as the database records under this section and shall meet the requirements developed**
42 **under the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 119(a). If**
43 **the director certifies an address-based database provided by a third party, a vendor may**
44 **use such database in place of the database provided for in this subsection.**

45 **5. The electronic databases provided for in subsections 1, 2, 3, and 4 of this section**
46 **shall be in downloadable format as determined by the director. The databases may be**
47 **directly provided by the director or provided by a third party as designated by the**
48 **director. The databases shall be provided at no cost to the user of the database. The**
49 **provisions of subsections 3 and 4 of this section shall not apply if the purchased product**
50 **is received by the purchaser at the business location of the vendor.**

51 **6. No vendor shall be liable for reliance upon erroneous data provided by the**
52 **director on tax rates, boundaries, or taxing jurisdiction assignments.**

144.757. 1. Any county or municipality, except municipalities within a county having
2 a charter form of government with a population in excess of nine hundred thousand, may, by a
3 majority vote of its governing body, impose a local use tax if a local sales tax is imposed as
4 defined in section 32.085 at a rate equal to the rate of the local sales tax in effect in such county
5 or municipality; provided, however, that no ordinance or order enacted ~~[pursuant to]~~ **under**
6 sections 144.757 to 144.761 shall be effective unless the governing body of the county or
7 municipality submits to the voters thereof at a municipal, county or state general, primary or
8 special election a proposal to authorize the governing body of the county or municipality to
9 impose a local use tax ~~[pursuant to]~~ **under** sections 144.757 to 144.761. Municipalities within
10 a county having a charter form of government with a population in excess of nine hundred
11 thousand may, upon voter approval received ~~[pursuant to]~~ **under** paragraph (b) of subdivision
12 (2) of subsection 2 of this section, impose a local use tax at the same rate as the local municipal
13 sales tax with the revenues from all such municipal use taxes to be distributed ~~[pursuant to]~~
14 **under** subsection 4 of section 94.890. The municipality shall within thirty days of the approval
15 of the use tax imposed ~~[pursuant to]~~ **under** paragraph (b) of subdivision (2) of subsection 2 of
16 this section select one of the distribution options permitted in subsection 4 of section 94.890 for
17 distribution of all municipal use taxes.

18 **2. (1) The ballot of submission, except for counties and municipalities described in**
19 **subdivisions (2) and (3) of this subsection, shall contain substantially the following language:**

20 Shall the _____ (county or municipality's name) impose a local use tax at the same rate
 21 as the total local sales tax rate, [~~currently _____ (insert percent);~~] provided that if the local sales
 22 tax rate is reduced or raised by voter approval, the local use tax rate shall also be reduced or
 23 raised by the same action? [~~A use tax return shall not be required to be filed by persons whose~~
 24 ~~purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar~~
 25 ~~year.] **Approval of this question will eliminate the disparity in tax rates collected by local**
 26 **and out-of-state sellers by imposing the same rate on all sellers.**~~

27 YES NO

28 If you are in favor of the question, place an "X" in the box opposite "YES". If you are
 29 opposed to the question, place an "X" in the box opposite "NO".

30 (2) (a) The ballot of submission in a county having a charter form of government with
 31 a population in excess of nine hundred thousand shall contain substantially the following
 32 language:

33 For the purposes of enhancing county and municipal public safety, parks, and job creation
 34 and enhancing local government services, shall the county be authorized to collect a local use
 35 tax equal to the total of the existing county sales tax rate [~~of (insert tax rate)~~], provided that if the
 36 county sales tax is repealed, reduced or raised by voter approval, the local use tax rate shall also
 37 be repealed, reduced or raised by the same voter action? Fifty percent of the revenue shall be
 38 used by the county throughout the county for improving and enhancing public safety, park
 39 improvements, and job creation, and fifty percent shall be used for enhancing local government
 40 services. The county shall be required to make available to the public an audited comprehensive
 41 financial report detailing the management and use of the countywide portion of the funds each
 42 year.

43 A use tax is the equivalent of a sales tax on purchases from out-of-state sellers by in-state
 44 buyers and on certain taxable business transactions. [~~A use tax return shall not be required to be~~
 45 ~~filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand~~
 46 ~~dollars in any calendar year.] **Approval of this question will eliminate the disparity in tax**
 47 **rates collected by local and out-of-state sellers by imposing the same rate on all sellers.**~~

48 YES NO

49 If you are in favor of the question, place an "X" in the box opposite "YES". If you are
 50 opposed to the question, place an "X" in the box opposite "NO".

51 (b) The ballot of submission in a municipality within a county having a charter form of
 52 government with a population in excess of nine hundred thousand shall contain substantially the
 53 following language:

54 Shall the municipality be authorized to impose a local use tax at the same rate as the local
 55 sales tax by a vote of the governing body, provided that if any local sales tax is repealed, reduced

56 or raised by voter approval, the respective local use tax shall also be repealed, reduced or raised
 57 by the same action? [~~A use tax return shall not be required to be filed by persons whose~~
 58 ~~purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar~~
 59 ~~year.~~] **Approval of this question will eliminate the disparity in tax rates collected by local**
 60 **and out-of-state sellers by imposing the same rate on all sellers.**

61 YES NO

62 If you are in favor of the question, place an "X" in the box opposite "YES". If you are
 63 opposed to the question, place an "X" in the box opposite "NO".

64 (3) The ballot of submission in any city not within a county shall contain substantially
 65 the following language:

66 Shall the _____ (city name) impose a local use tax at the same rate as the local sales tax,
 67 [~~currently at a rate of _____ (insert percent)~~] which includes the capital improvements sales tax
 68 and the transportation tax, provided that if any local sales tax is repealed, reduced or raised by
 69 voter approval, the respective local use tax shall also be repealed, reduced or raised by the same
 70 action? [~~A use tax return shall not be required to be filed by persons whose purchases from~~
 71 ~~out-of-state vendors do not in total exceed two thousand dollars in any calendar year.~~] **Approval**
 72 **of this question will eliminate the disparity in tax rates collected by local and out-of-state**
 73 **sellers by imposing the same rate on all sellers.**

74 YES NO

75 If you are in favor of the question, place an "X" in the box opposite "YES". If you are
 76 opposed to the question, place an "X" in the box opposite "NO".

77 (4) If any of such ballots are submitted on August 6, 1996, and if a majority of the votes
 78 cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the
 79 ordinance or order and any amendments thereto shall be in effect October 1, 1996, provided the
 80 director of revenue receives notice of adoption of the local use tax on or before August 16, 1996.
 81 If any of such ballots are submitted after December 31, 1996, and if a majority of the votes cast
 82 on the proposal by the qualified voters voting thereon are in favor of the proposal, then the
 83 ordinance or order and any amendments thereto shall be in effect on the first day of the calendar
 84 quarter which begins at least forty-five days after the director of revenue receives notice of
 85 adoption of the local use tax. If a majority of the votes cast by the qualified voters voting are
 86 opposed to the proposal, then the governing body of the county or municipality shall have no
 87 power to impose the local use tax as herein authorized unless and until the governing body of the
 88 county or municipality shall again have submitted another proposal to authorize the governing
 89 body of the county or municipality to impose the local use tax and such proposal is approved by
 90 a majority of the qualified voters voting thereon.

91 3. The local use tax may be imposed at the same rate as the local sales tax then currently
92 in effect in the county or municipality upon all transactions which are subject to the taxes
93 imposed ~~pursuant to~~ **under** sections 144.600 to 144.745 within the county or municipality
94 adopting such tax; provided, however, that if any local sales tax is repealed or the rate thereof
95 is reduced or raised by voter approval, the local use tax rate shall also be deemed to be repealed,
96 reduced, or raised by the same action repealing, reducing, or raising the local sales tax.

97 4. For purposes of sections 144.757 to 144.761, the use tax may be referred to or
98 described as the equivalent of a sales tax on purchases made from out-of-state sellers by in-state
99 buyers and on certain intrabusiness transactions. Such a description shall not change the
100 classification, form, or subject of the use tax or the manner in which it is collected.

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