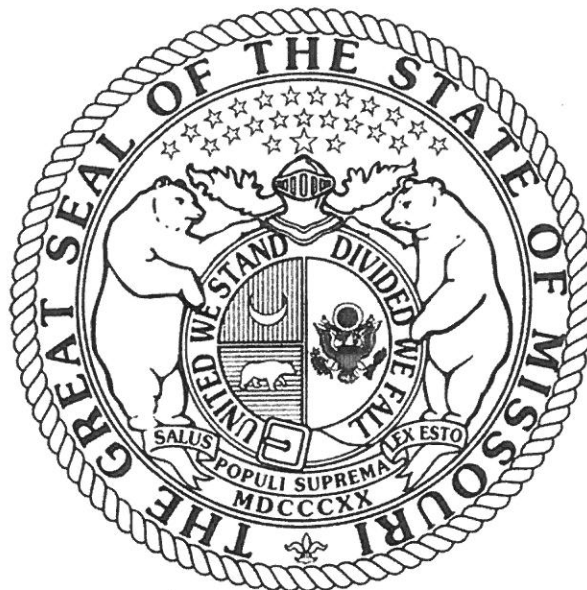


**FINAL REPORT  
OF THE  
STUDY COMMISSION  
ON  
STATE TAX POLICY**



**December 2017**  
Prepared by:  
Senate Research

December 31, 2017

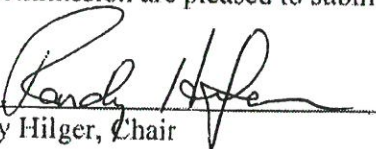
The Honorable Eric Greitens, Governor of the State of Missouri  
State Capitol Building, Room 216  
Jefferson City, MO 65101

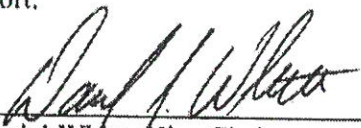
The Honorable Ron Richard, President Pro Tem of the Senate  
State Capitol Building, Room 326  
Jefferson City, MO 65101

The Honorable Todd Richardson, Speaker of the House of Representatives  
State Capitol Building, Room 308  
Jefferson City, MO 65101

Dear Mr. Governor, Mr. President, and Mr. Speaker:

The Study Commission on State Tax Policy has met, taken testimony, and discussed various facets of Missouri's tax structure. In this final report, we present the information received from various sources along with our observations and formal recommendations. The undersigned members of the Commission are pleased to submit the attached report.

  
Randy Hilger, Chair

  
Daniel White, Vice Chair

\_\_\_\_\_  
Senator Dan Hegeman

\_\_\_\_\_  
Senator Bob Onder


  
Senator Kiki Curls

  
Senator Jill Schupp

\_\_\_\_\_  
Representative Michael Butler

  
Representative Marsha Haefliger

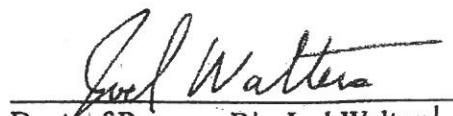


  
Representative Paul Curtman

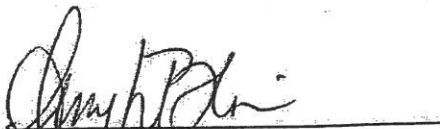
  
Representative Mike Kelley

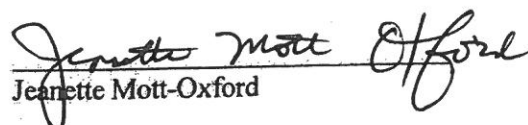
  
Representative Tracy McCreery

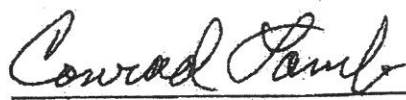
  
Treasurer Eric Schmitt

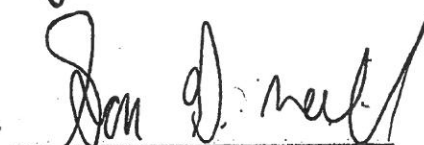
  
Dept. of Revenue Dir. Joel Walters<sup>1</sup>

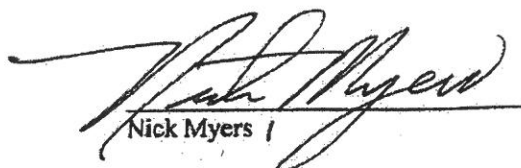
  
Dan Haug<sup>1</sup>

  
Amy Blouin

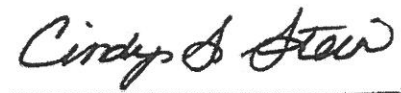
  
Jeanette Mott-Oxford

  
Conrad Lamb

  
Sara Neill

  
Nick Myers<sup>1</sup>

  
Jim Strubberg

  
Cindy Stein

<sup>1</sup> I hereby endorse this report as a thoughtful review of many of the issues facing the State, and possible actions to be considered, but do not endorse any specific proposal.

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## **I. Charge of the Study Commission**

The Study Commission on State Tax Policy (hereafter referred to as the “SCSTP”, “Study Commission” or simply “Commission”) was formed by SS/HB 384 in 2015 and is composed of twenty-two members representing both the public and private sectors. The Commission is charged with:

1. Making a complete, detailed review and study of the tax structure of the state and its political subdivisions including tax sources, the impact of taxes, collection procedures, administrative regulations, and all other factors pertinent to the fiscal operation of the state;
2. Identifying the strengths and weaknesses of state tax laws, and developing a broad range of improvements that could be made to modernize the tax system, maximize economic development and growth, and maintain necessary government services at an appropriate level;
3. Investigating measures and methods to simplify state tax law, improve tax compliance, and reduce administrative costs; and
4. Examining and studying any other aspects of state and local government which may be related to the tax structure of the state.

Section 136.450.3 requires the Commission to establish at least five hearing dates held in different geographic regions of the state and open to the public.

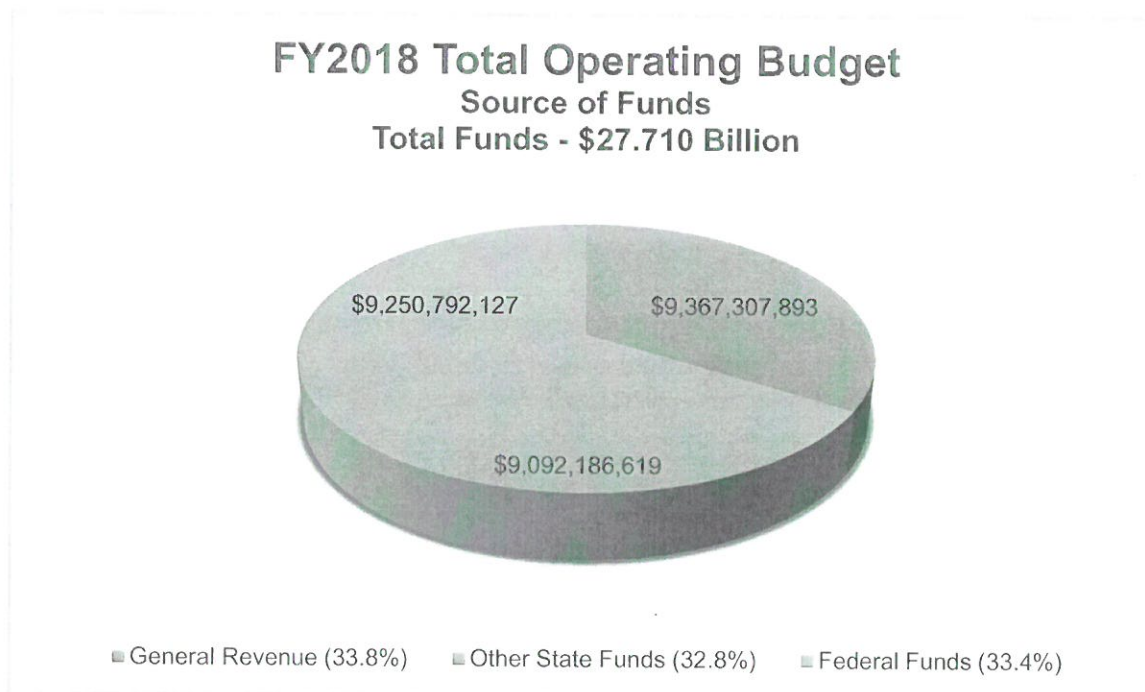
Over the course of 2016 and 2017, the Study Commission on State Tax Policy held public hearings and solicited public testimony in three different geographic regions throughout the state. Hearings were held on the following dates:

- |                      |  |
|----------------------|--|
| • February 25, 2016  | State Capitol, Jefferson City                |
| • June 8, 2016       | State Capitol, Jefferson City                |
| • August 17, 2016    | Springfield Chamber of Commerce, Springfield |
| • October 19, 2016   | Wainwright Building, St. Louis               |
| • November 15, 2016  | H&R Block World Headquarters, Kansas City    |
| • June 23, 2017      | State Capitol, Jefferson City                |
| • September 15, 2017 | State Capitol, Jefferson City                |

## **II. Introduction**

The tax regime in any given jurisdiction can be very complicated, and Missouri is no exception. Missouri residents and some other non-resident income-earners are taxed in Missouri across several jurisdictions. At the state level, taxpayers pay taxes such as income taxes, sales taxes, and excise taxes such as cigarette, beer/liquor, and gasoline taxes. At the local level, taxpayers will pay local sales tax, real and personal property tax, and taxes for various other districts such as school, ambulance, fire, and library districts. Complying with portions of this tax code can be simple: vendors will automatically calculate and collect your sales tax due when making a purchase at retail without any action needed by the taxpayer. However, compliance can be complicated for both businesses and individuals: businesses must collect sales tax only on taxable purchases; individuals must know what is or is not deductible from their income taxes. While the intent of this report is to provide in-depth analysis of certain portions of Missouri's tax structure and provide recommendations for improvement, some general information may be helpful for the everyday taxpayer seeking basic information on their state's tax laws.

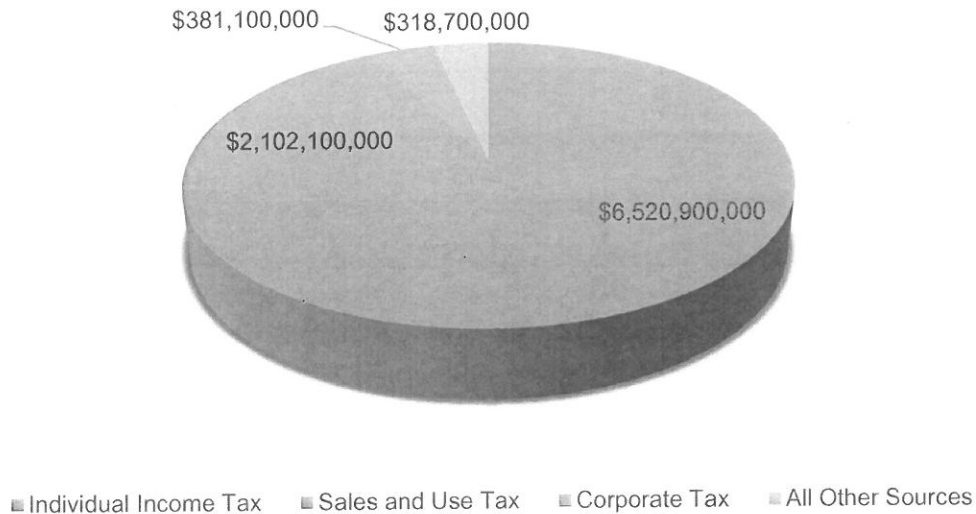
Missouri has a \$27.7 billion budget in fiscal year 2018 (July 1, 2017-June 30, 2018). The revenue to cover that budget comes from several sources. While about two-thirds of Missouri's overall revenue comes from Federal Funds and Other State Funds,<sup>2</sup> many of which are earmarked for specific expenditures, over \$9.3 billion comes from general revenue funds raised by the state's tax regime, such as income taxes and sales taxes<sup>3</sup>.



<sup>2</sup> See 2017 Annual Fiscal Report published by the Missouri Senate Appropriations Committee, available at <http://www.senate.mo.gov/17info/2017redbook.pdf> (last accessed December 29, 2017).

<sup>3</sup> See 2017 Annual Fiscal Report published by the Missouri Senate Appropriations Committee, available at <http://www.senate.mo.gov/17info/2017redbook.pdf> (last accessed December 29, 2017).

## Missouri General Revenue Fund Tax Revenue by Source



### Income Tax

Out of the \$27.7 billion budget, nearly \$9.4 billion represents Missouri's general revenue, \$9.2 billion represents federal funding, and \$9.1 billion represents "other state funds." The "other state funds" category includes non-income tax funding sources such as lottery proceeds, cigarette and tobacco taxes, gasoline taxes and some sales taxes – revenues that are generally earmarked for specified expenditures. Missouri's general revenue is comprised of individual income taxes, most statewide sales and use taxes, corporate income taxes, and a myriad of other miscellaneous taxes. While Missouri's individual and corporate income taxes represent just 37.5% of the state-based revenues,<sup>4</sup> these taxes represent 73.6% of Missouri's general revenue collections.

Taxpayers file individual and corporate income taxes with the Missouri Department of Revenue (hereafter referred to as simply "Department") every year. The Department is responsible for processing returns and enforcing Missouri's income tax laws, performing audits as necessary and refunding overpayments of tax paid by Missouri taxpayers. Missouri's income tax law is largely coupled to the federal Internal Revenue Code (hereafter referred to as "IRC" or "Code"). In essence, all Missouri individual taxpayers begin their state tax return by entering the federal adjusted gross income as the starting point. After applying any applicable deductions and

<sup>4</sup> For purposes of this sentence, "state-based revenues" include all funds other than funds provided by the federal government. The 37.5% was derived by dividing Missouri's individual and corporate income tax collections by state-based revenues, as defined immediately above. See 2017 Annual Fiscal Report published by the Missouri Senate Appropriations Committee, available at <http://www.senate.mo.gov/17info/2017redbook.pdf> (last accessed December 29, 2017).



exemptions, the resulting taxable income is subject to Missouri's income tax rate. Like the federal income tax, Missouri has a progressive income tax structure, with higher levels of income being subject to higher rates of tax. As of the 2017 tax year, the rates of Missouri income tax are as follows:

<b>If the Missouri taxable income is:</b>	<b>The tax is:</b>
Not over \$1,000.00	1.5% of the Missouri taxable income
Over \$1,000 but not over \$2,000	\$15 plus 2% of excess over \$1,000
Over \$2,000 but not over \$3,000	\$35 plus 2.5% of excess over \$2,000
Over \$3,000 but not over \$4,000	\$60 plus 3% of excess over \$3,000
Over \$4,000 but not over \$5,000	\$90 plus 3.5% of excess over \$4,000
Over \$5,000 but not over \$6,000	\$125 plus 4% of excess over \$5,000
Over \$6,000 but not over \$7,000	\$165 plus 4.5% of excess over \$6,000
Over \$7,000 but not over \$8,000	\$210 plus 5% of excess over \$7,000
Over \$8,000 but not over \$9,000	\$260 plus 5.5% of excess over \$8,000
Over \$9,000	\$315 plus 5.9% of excess over \$9,000

For example, an individual with \$40,000 of Missouri taxable income would have a tax liability of \$2,144. Taxable income can be reduced in a number of ways. Missouri has a standard deduction that is coupled to the value of the federal standard deduction - \$6,350 for an individual in 2017. As in the federal income tax, in lieu of the standard deduction a taxpayer may itemize his or her deductions. In addition to deductions and exemptions, Missouri has a robust series of tax credit programs, which can reduce a taxpayer's tax liability dollar for dollar.<sup>5</sup>

Missouri also taxes the income of corporations. Like the individual income tax, the corporate income tax is also tied to its federal tax, with Missouri taxable income being a corporation's federal taxable income adjusted according to statute. However, the corporate income tax is only applicable to income earned in Missouri. Although the apportionment of corporate income is beyond the scope of this introduction, see the discussion in the Income Tax Work Group Findings and Recommendations section below.

### Sales and Use Tax

In addition to the income tax, the state, local cities, counties and other districts levy sales and use taxes. In addition to supporting the state general revenue budget, Missouri utilizes dedicated sales

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<sup>5</sup> Although this report does not contain an in-depth discussion of Missouri's tax credit programs, see the report of the Governor's Committee on Simple, Fair, and Low Taxes.



taxes to support conservation and parks, and schools. Although sales and use tax makes up a smaller portion of the state budget, they — along with property taxes — comprise a large part of local budgets. Sales taxes are transactional taxes that are imposed on sales at retail of taxable products or services. Sales taxes are imposed across several jurisdictions in the state — at any given retail location, taxes will simultaneously be imposed by the state, the county, the municipality, and any special district in which the retail location is located. The state sales tax rate is 4.225%, with 3% going into the General Revenue Fund, 1% going to the School District Trust Fund, 0.125% going toward conservation, and 0.1% going toward soil and water conservation and state parks. Sales taxes levied by local jurisdictions vary in their rates, and local jurisdictions may only impose a sales tax if it is authorized by state law.

Not all sales are taxable, and not all taxable sales are taxed at the same rate. For example, food for home consumption is taxed at a reduced state rate. The sales tax law provides many exemptions for purchases that are not taxable at all. In addition to so-called product-based exemptions, Missouri also allows for use-based and entity-based exemptions. Use-based exemptions are exemptions that apply to a product based on what the product is used for. For example, a taxpayer purchasing a piece of equipment for personal use would be charged sales tax on the purchase. A business purchasing the same piece of equipment would be exempt from sales tax on the purchase if the equipment is used in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption. Entity-based exemptions are exemptions given to certain entities based on the type of organization, such as non-profit entities.

A use tax is effectively identical to a sales tax, but it applies to purchases from a vendor located outside the state and for which state and local sales tax is not collected. Rather than a tax placed on the purchase, like the sales tax, the use tax is imposed on the privilege of storing, using or consuming any article of tangible personal property within this state. Use tax is always due on such purchases. However, a taxpayer is not required to file a use tax return until the taxpayer makes \$2,000 worth of such purchases in a calendar year. The state use tax is imposed at the state level as well as at any local level which has passed such a use tax. The use tax rate is identical to the equivalent sales tax rate.

One of the most complex aspects of Missouri's sales and use tax law is how to determine which tax rates apply to a given purchase. For purchases made in Missouri at a retailer located in Missouri, such questions are straightforward — the local sales tax will be the rate in effect at the business location of the retailer. The question is more difficult when the purchase is made from a vendor without any physical location in Missouri, like a purchase from many online sellers. The U.S. Supreme Court has determined that states do not have the constitutional authority to impose the burden of collecting such taxes on vendors who are not physically located in the state. As a result, all states — Missouri included — forego billions of dollars in tax revenues from purchases that would otherwise be taxable. A more in-depth discussion of such nexus issues is included in the Sales and Use Tax Findings and Recommendations section.

### **III. Commission Activities**

#### **A. Summary of the February 25, 2016 meeting**

The Commission elected Randy Hilger as Chairman and Daniel White as Vice-Chairman.

The Commission split into three smaller Work Groups – one dealing with income taxes (“Income Tax Work Group”), another dealing with sales and use taxes (“Sales and Use Tax Work Group”), and one focused on tax administration (“Tax Administration Work Group”). Work Groups were charged with identifying baseline information, comparing that information with other entities and providing information to the Commission on how to move forward.

#### **B. Summary of the June 8, 2016 meeting**

The Commission met as a whole to discuss organizational and administrative issues. In the afternoon, the commission heard public testimony and conducted open discussion.

*Richard Moore – CenturyLink*

Mr. Moore asked the Commission to address state tax law issues for telephone companies. Specifically, he recommended changing the way business property is assessed, imposing 911 taxes on wireless customers and preventing government-owned competitors from receiving tax revenue.

*Todd Iveson – Missouri Department of Revenue*

Mr. Iveson discussed delays with the 2015 Missouri personal income tax refunds, citing increased fraud detection/prevention measures and cash flow issues as the causes of the delays. Specifically, increased fraud and increased protections against fraud have increased the workload for the Department in processing returns and disbursing refunds. Additionally, during April and May 2016, cash available in the General Revenue Fund for making tax refunds was impacted by required school distributions and repayment of short term borrowing from the Rainy Day Fund.

#### **C. Summary of the August 17, 2016 meeting**

Cindy Stein, chairperson of the Sales and Use Tax Work Group, reported on that group’s morning meeting. She discussed several areas of concentration including comparing rates in various jurisdictions, state and local use taxes, consolidation and simplification of exemptions, use tax enforcement and compliance, vendor discounts for timely payment, reviewing sales tax holidays, and the Streamlined Sales Tax Agreement.

Daniel White, chairperson of the Income Tax Work Group, reported on that group’s morning meeting. Topics discussed included potential changes to the federal income tax deduction, modernizing the income tax table, apportionment elections, clarifications to the “nexus” requirement, combined individual returns, and income tax elimination combined with sales tax expansion as policy issues and obtaining a better understanding of the Department of Revenue’s interpretation of federal law, removing or revising statutes and regulations that were previously invalidated, and updating filing requirements as technical issues for consideration.

Sen. Dan Hegeman, chairperson of the Tax Administration Work Group, reported on that group's morning meeting. The group discussed modernizing and improving technology at the Department of Revenue, taxpayer engagement through taxpayer assistance offices or online resources, formal processes for notification of tax changes, improved guidance from the Department of Revenue through less reliance on letter rulings and increased rulemaking, and better data availability.

The Commission outlined the following criteria for evaluating state tax policy:

- Transparency
- Stability
- Fairness
- Attractiveness
- Efficiency
- Adequacy

These six criteria are further explained in Section IV of this report.

The Commission heard public testimony.

*Ray McCarty – Associated Industries of Missouri*

Mr. McCarty testified on the response of the Department of Revenue to *Alberici Constructors, Inc. v. Dir. of Revenue* (Mo. 2015). He suggested that the Department use the formal rule promulgation procedures more to create clarity for business owners. Mr. McCarty also discussed the timely filing allowances for the remittance of withholding and sales and use taxes. He stated that these allowances compensate businesses for the costs of complying with tax laws.

*David Overfelt – Missouri Retailers Association, NFIB, Missouri Grocers' Association, Ozark Empire Grocers, Mid-American Grocers, Retail-Grocers-K.C., the Missouri Tire Industry Association, Western Retail Implements and Hardware Association, and the Missouri Hotel and Motel Association*

Mr. Overfelt argued that timely filing allowances compensate businesses with high costs of sales tax compliance. Brick and mortar retailers and consumers love the sales tax holiday and it helps retailers compete with online sellers. He supports adopting the Streamlined Sales Tax Agreement.

*Mike Sutherland – Missouri Budget Project*

Mr. Sutherland argued that the complexity of the current system is a problem and discussed implementing the Streamlined Sales Tax Agreement and a potential Earned Income Tax Credit.

*Todd Iveson – Missouri Department of Revenue*

Mr. Iveson discussed a recent Missouri Supreme Court decision (*Alberici Constructors, Inc. v. Dir. of Revenue* (Mo. 2015)). He explained that a Department of Revenue regulation regarding the



taxability of delivery charges had been an attempt to simplify the issue, but the Missouri Supreme Court disagreed with the regulation and reiterated its previously stated criteria. In late July 2016, the Department of Revenue sent letters notifying businesses of the Court's decision and the criteria for determining whether delivery charges are taxable.

*Chuck Pierce – Missouri Society of CPAs*

Mr. Pierce emphasized the need for private letter rulings for tax planning situations, but stated that more often clients come for advice after a transaction has already taken place. Increased rulemaking would be helpful, but letter rulings are still important as well.

**D. Summary of the October 19, 2016 meeting**

Sen. Dan Hegeman, chairperson of the Tax Administration Work Group, reported on that group's morning meeting. The group discussed modernizing computer systems at the Department of Revenue, taxpayer engagement, accuracy and availability of tax data for practitioners, personnel turnover at the Department of Revenue, letter rulings (frequency and application), and accessibility of Department policies for taxpayers and tax practitioners.

Daniel White, chairperson of the Income Tax Work Group, reported on that group's morning meeting. The group discussed modernizing the individual income tax rate table, reviewing the effectiveness of exemptions, and modernizing the corporate income tax base as priorities.

Cindy Stein, chairperson of the Sales and Use Tax Work Group, reported on that group's morning meeting. The group reviewed recent updates and changes, discussed implementing the Streamlined Sales Tax Agreement, and discussed recent Missouri Supreme Court decisions involving manufacturing exemptions.

The Commission heard public testimony.

*Dylan Grundman – Senior Policy Analyst with the Institute on Taxation and Economic Policy (ITEP)*

Mr. Grundman discussed principles used by ITEP in guiding tax policy. He also made several recommendations including a refundable Earned Income Tax Credit (based on the federal credit or entirely new), repealing the federal income tax deduction, reforming itemized deductions, revisiting SB 509 to address pass-through income, modernizing the income tax brackets, enacting combined reporting, and modernizing the sales tax. Finally, he outlined three paths to avoid: shifting from income to sales taxes, cutting income taxes to grow the economy, and engaging in a "race to the bottom" with nearby states.

*Dr. Howard J. Wall – Professor of Economics at Lindenwood University*

Dr. Wall argued that taxes create distortions in the market and lead to less economic activity. He testified that the problem with low-income individuals is not that their taxes are too high, but that

their income is too low. He favors broadening the tax base and lowering the rates to increase economic efficiency.

*Colleen Mulligan – Vision for Children at Risk*

Ms. Mulligan argued that the current tax structure does not provide appropriate support for families and children. She made three recommendations to the Commission: modernizing income tax rates, adopting the Streamlined Sales Tax Agreement to capture taxes on internet purchases, and enacting a refundable Earned Income Tax Credit.

**E. Summary of the November 15, 2016 meeting**

Cindy Stein, chairperson of the Sales and Use Tax Work Group, reported that the group had not met since the October meeting and had no new findings to report.

Daniel White, chairperson of the Income Tax Work Group, reported that the group had been working on three specific areas: modernizing the income tax rate table, reviewing the effectiveness of the various tax exemptions, and modernizing the corporate income tax base.

Sen. Dan Hegeman, chairperson of the Tax Administration Work Group, reported that the group has narrowed their focus to six areas: modernizing the computer systems of the Department of Revenue; increasing taxpayer engagement; obtaining better tax data for practitioners, especially from political subdivisions; personnel turnover at the Department of Revenue; the frequency and use of letter rulings compared to the use of full rules and regulations; and accessibility of Department of Revenue policies.

Randy Hilger, chairperson of the Commission, stated that the Commission received information from the Department of Revenue relating to comparative tax collection information from other states, and that the information would be posted on the Commission website. Mr. Hilger also asked the Commission whether it thought that the passage of Amendment 4 in November 2016 (the prohibition on new sales taxes) would affect Missouri's participation in the Streamlined Sales Tax Agreement. A representative from the Department of Revenue stated that it is still possible to participate but that it might be more complicated and would have to be reviewed further.

The Commission heard public testimony.

*Roberta Broeker, Missouri Department of Transportation*

Ms. Broeker testified on the state of transportation funding in Missouri. She discussed the current levels of funding for Missouri Department of Transportation ("MoDOT") and how that money is spent, where Missouri ranks in investment in transportation, what the average taxpayer pays for access to the transportation network, what the current deficiencies are costing the average taxpayer, and how much it would cost to fix the transportation system.

Ms. Broeker stated that the budget for MoDOT is approximately \$2.5 billion. She stated that most of the revenue comes from user fees, such as the fuel tax and motor vehicle and driver license fees, and from federal revenue. The remainder of the revenue comes from the state General Revenue



fund. Ms. Broeker stated that a portion of MoDOT outlays are distributed to cities, counties and other state agencies, while the majority of outlays go toward the construction and maintenance of roads and bridges, fleet and facilities, administration, and highway safety.

Ms. Broeker stated that, while Missouri has the seventh largest transportation network in the nation, it is forty-seventh in revenue spent per mile. Missouri also has the lowest fuel tax rate of all states in the surrounding region, and is forty-second in per capita highway spending.

Ms. Broeker stated that MoDOT would need approximately \$170 million to improve road and bridge conditions statewide, \$275 million to invest in projects that increase economic growth and safety, \$300 million for major interstate reconstruction, and \$80 million to improve multimodal transportation options.

*Jeanette Mott-Oxford, Empower Missouri*

Ms. Mott-Oxford made a presentation on the Tax Justice for a Healthy Missouri bill sponsored by Rep. Judy Morgan in 2016. Ms. Mott-Oxford stated that the Missouri income tax system is outdated and needs changes to ensure that Missouri's financial situation is sound for the future. She stated that the Tax Justice for a Healthy Missouri bill would address three principles: adequacy, fairness, and modernization. She stated that the bill would provide adequate revenue for the short and long term by adding \$921 million dollars in new tax revenue. The bill would also ensure fairness by balancing regressive sales taxes with progressive income taxes. Finally, she stated that the bill would allow modernization by ensuring that tax rates are able to change over time with inflation.

Ms. Mott-Oxford stated that the bill would accomplish these goals by broadening the tax brackets and adding new top rates, by introducing a \$200 refundable credit that is phased out for higher incomes, by removing the deduction for federal income taxes, and by creating a tax cut for all income levels.

*Council on State Taxation*

Mr. Hilger stated that the Council on State Taxation submitted a document regarding Missouri corporate income taxes, and that the document would be available on the Commission website.

**F. Summary of the June 23, 2017 meeting**

Daniel White, chairperson of the Income Tax Work Group, reported that the group is moving forward and was focusing on individual vs. corporate income taxes. He stated that, on the individual income tax side, the group would be looking at the possibility of implementing a state earned income tax credit that would be tied to the federal tax credit as well as the impact of the deduction for federal income taxes paid. On the corporate income tax side, Mr. White stated that the group would be focusing on whether to repeal, replace, or broaden the corporate income tax; reevaluating nexus standards; revising statutes in reaction to court rulings; the deduction for federal taxes paid; mandatory combined reporting; income apportionment elections; and statutory conformity with the IRC.



Conrad Lamb, chairperson of the Sales and Use Tax Work Group, reported that the group has been focusing on the complexity of the state's sales tax laws; the impact and relevance of sales tax holidays; sales tax exemptions; and discounts for the timely remittance of sales tax due. Mr. Lamb also stated that the group is discussing conflicting statutes relating to certain sales tax laws; the Administrative Hearing Commission's decisions and interpretations of tax law, and its notification to taxpayers of such changes; the use tax reporting law; and the adoption of the Streamlined Sales and Use Tax definitions.

Senator Dan Hegeman, chairperson of the Tax Administration Work Group, reported that the group has been discussing the interim report submitted by the Commission; the legislative fix for the *Alberici* court decision passed in SB 16; regional Dept. of Revenue offices for better service to taxpayers; regulations vs. letter rulings for disseminating information to taxpayers and tax preparers; and update on the Dept. of Revenue software system upgrade; the need to look at an appeals process; continued discussion of tax audit manuals; and the need for a good database of information (sales tax rates, etc.)

The Commission discussed tasks remaining to be accomplished before the statutory expiration of the Commission, and also discussed the final report to be completed by the end of the year.

Joel Walters, Director of the Department of Revenue, updated the Commission on the progress of the Governor's Committee on Simple, Fair, and Low Taxes. He stated that the Governor's Committee has completed all of its public hearings and town halls, and progress was being made on completing a final report by June 30. He stated that the report would largely be broken down into three sections: one focused on state tax credit programs, one focused on tax administration, and one focused on a larger vision for moving forward on tax policy in general. He stated that there is pretty broad consensus on many of the issues in the report, but that the work is not yet complete.

The Commission discussed how to handle the overlapping work of the Study Commission and the Governor's Committee. Vice-Chairman White stated that if there are overlapping areas, the Commission's report could acknowledge what the Governor's Committee position on that issue is and discuss any differences that the Commission has with the conclusions of the Governor's Committee. Senator Schupp agreed that it would be good to include a discussion of the Governor's Committee report wherever there is overlap in order to provide information about where each group is on the issue.

The Commission discussed the possibility that the governor could call for a special session on tax policy after the Governor's Committee report was released, and before the Commission completed its work in December. The Commission agreed that if that situation occurred, the Commission would like to provide some input to legislators before they acted. Nick Myers stated that the statute creating the Commission allows the Commission to issue as many reports as it likes, and that a smaller report could be given depending on what is included in the governor's call for a special session.

## **G. Summary of the September 15, 2017 meeting**

Joel Walters, Director of the Dept. of Revenue, made a presentation to the Commission on the work of the Governor's Committee on Simple, Fair, and Low Taxes. He stated that the Governor's Committee went through a very high quality process to produce their report. They held four town hall meetings and heard from over two hundred citizens about broad tax issues and reforms.

Director Walters stated that the final report focused on a handful of large state tax credits, but stated that the credits are only one piece of an overall package of tax reform that the state should consider. He stated that he was finalizing a white paper which will not be a set of recommendations, but will focus on a set of issues that we should be thinking about as a state when looking at tax policy. He stated that tax reform is important because it is a significant piece of the overall economic environment that attracts more business and creates more jobs. Director Walters stated that, while tax policy is not enough on its own to attract business, businesses tend to look at it first to see if they will get the returns that they want from their investment in the state.

Director Walters stated that tax policy is composed of two parts: substantive issues and the environment in which a taxpayer operates. Substantive issues include the tax base, tax rates, etc., and that Missouri needs an overall package of tax reforms. He stated that the tax credit reforms recommended by the Governor's Committee on Simple, Fair, and Low Taxes are one part of that overall package. The environment in which a taxpayer operates includes the taxpayer's bill of rights, a taxpayer advocate, local tax offices, etc. These are pieces that help make the Department of Revenue a place that helps people and businesses comply with the tax code. Director Walters stated that there were six principles that guided the Governor's Committee and that should guide the debate going forward:

1. Simple – The tax code should be simple to understand and comply with;
2. Fair – It should be a system that can be navigated without a team of accountants and lawyers;
3. Low – The tax rate should be low with a broad base; the system should not pick winners and losers by narrowing the base;
4. Efficient – The system should raise the revenue that needs to be raised;
5. Transparent – The system should be something that can be easily understood; it should not be a “gotcha” environment;
6. Stable - The revenue flow needs to be relied upon in a stable way from year to year;

Director Walters stated that the white paper he is working on will also include two other principles:

1. The system should move away from traditional income taxes, which can be an unstable source of revenue and incentivize the wrong behaviors;

2. The overall package should be revenue neutral because the current budget situation make it prudent to do so, and because other neighboring taxing jurisdictions have attempted to cut rates and reduce revenue to induce growth and have run into problems.

Director Walters stated that there are three general problems with our current tax policy:

1. Our mix of revenue relies too much on individual/corporate income taxes (~71-75% of revenue); this is an inefficient way to raise revenue, and does not incentivize the right behavior. Ms. Mott-Oxford asked whether Director Walters believes that tax rates really influence the behavior of ordinary Missourians. Mr. Walters stated that he believes it is simply less efficient to rely on income taxes. He stated that such policies tax the wrong transaction – they tax saving/income instead of consumption. Vice-Chairman White stated that individuals do take taxes into account on some decisions, such as moving to a new state or city, starting a new business, choosing a new job, etc. Ms. Blouin stated that she has seen research showing that people would pay more as a percentage of their income under a fair tax, in which the rate is flat across income levels. Mr. Walters stated that his recommendation is not a “fair tax”, but that they are similar principles in that they recommend less reliance on income tax.
2. We have a complex tax system. Director Walters stated that we have some 600 special exemptions and credits, etc., that makes it difficult for businesses to have certainty about the tax environment. He stated that it also creates unfairness by picking winners and losers by targeting credits and exemptions to certain groups.
3. We have an unstable revenue source. We have an over reliance on income tax, which can vary greatly in how much revenue it produces from year to year, especially when the economy hits a downturn.

Director Walters stated that the white paper will propose consideration of a number of possible options:

1. Tax credit reform from Governor’s Committee report
2. Eliminate the corporate income tax
3. Reduce the individual income tax rates
4. Take out exemptions in the sales tax law
5. Move to a gross receipts tax for corporations
  - (1) Such a tax taxes top line sales at a very low rate. The advantage is that it is a very low rate on a very broad base – there are few exemptions.
  - (2) This tax applies to sales instead of income. Vice-Chairman White asked Director Walters about nexus standards under a gross receipts tax. Director Walters stated that the nexus issue comes about when there is a question of collecting sales tax if a business does NOT have property or payroll in the state. He stated that Ohio has



taken the position that the gross receipts tax is an income tax and not a sales tax. Chairman Hilger asked what some of the workarounds would be for businesses with high sales numbers but tiny margins and small bottom lines. Director Walters stated that there are a few challenges for a gross receipts tax. The first is that it does not account for expenses, so small margin businesses get taxed on the whole sales amount. He stated that one possibility would be to carve out loss businesses or small businesses. Another challenge is that a gross receipts tax has pyramiding – the tax applies at all levels of production, so a product is taxed several times. He stated that it could be possible to exempt business-to-business transactions. The other big challenge is that, because it is such a low rate, it makes it easier to increase the rate later and raise very high amounts of revenue.

6. Remove pieces of the tax law that should not be a part of a well-functioning system, such as the allowance for on-time payment of withholding and sales taxes, the deduction for federal taxes paid, etc.
7. Implement an earned income tax credit (EITC), which could take the pressure off of the regressive nature of sales taxes. Mr. Myers stated that we should be careful about created an EITC that is tied to the federal credit because the U.S. Treasury says it is a high risk program. Vice-Chairman White stated that the Income Tax Work Group looked at that and there are instances of fraud, etc. that would automatically filter down to the state credit. He stated that there are steps that the federal government and some states have taken to mitigate those problems. The Work Group asked the Department of Revenue what it would take to implement a program not tied to the federal program, and they said it would take at least 12 full time employees. He stated that we also would not have the benefit of having the IRS police the program like it would if it were tied to the federal credit. Ms. Blouin stated that research has shown that a lot of the instances of fraud are simply errors, and that is something that can be fixed.
8. Look at indexing fuel taxes to inflation to raise infrastructure revenue.

*NOTE: While Director Walters detailed for the Study Commission the expected content of the "white paper" coming out of the work of the Governor's Committee on Simple, Fair and Low Taxes, no "white paper" has been issued as of this Commission's final report. Therefore, this report does not compare or contrast the Governor's Committee or Director Walter's recommendations with the Study Commission's recommendations.*

Vice-Chairman White presented the tentative recommendations of the Income Tax Work Group. He stated that the group focused on several income tax topics that were meaningful and relevant and that the state could improve on. He stated that the group also gathered research and data to analyze those issues. Vice-Chairman White stated that the group analyzed where Missouri sits relative to the federal government and to other states and asked what the area are that lead to inefficient and more complex tax laws.

#### **IV. Findings and Recommendations**

In preparing the following findings and recommendations, the Study Commission was tasked with evaluating Missouri's tax laws and with developing recommendations to improve the overall tax climate in the state. In doing so, the Commission was guided by several principles intended to make the tax laws of Missouri transparent, stable, fair, attractive, efficient, and adequate. A summary of these guiding principles is outlined below:

Transparent: The tax laws shall be administered by the Department of Revenue in a manner that entirely comports with the Missouri legislature's intended purpose and in a manner that eliminates ambiguities that require interpretation. Transparent tax laws are easy to understand and do not rely on another party (e.g., Missouri Department of Revenue, Missouri courts, or Missouri taxpayers) to unreasonably bear the burden of interpreting the laws. Laws that lack transparency impede tax return compliance, initiate taxpayer disputes, limit revenue collections, and increase costs of tax administration.

Stable: The tax structure shall be designed in a manner that facilitates reliable revenue collections and is free from volatility. Stable tax laws often disperse revenue collections across many industries, demographics, geographies, activities, and tax types.

Fair: Fair tax laws distribute the assignment of tax to demographics, geographies, industries, and activities in the proportion to the consumers of the government services to which they relate, coupled with the social desires of the legislature that are expressed within the fiscal budget process. Fair laws do not impose a significant portion of tax on one segment (or limited segments) of the population and are not regressive in nature.

Attractive: Attractive tax laws are designed to collect tax revenue in a manner that also promotes economic development within Missouri (i.e., more jobs, larger investment, and new businesses growth and expansion). Attractive laws directly and indirectly provide incentives to individuals and businesses to make Missouri an economically-feasible state to live, work, maintain a place of business, and expand. Attractive Missouri laws also entice individuals and businesses to stay in and/or relocate to Missouri and expand operations within the State of Missouri.

Efficient: The desired actions of the legislature are carried out in a cost-efficient manner. Efficient tax laws are limited in complexity and do not require significant changes to tax return compliance and costly tax administration, once enacted. Efficient laws also limit tax deductions, exemptions, and incentives to only the population of taxpayers whose decisions are significantly and positively influenced by the legislature's actions.

Adequate: The tax laws generate sufficient amounts of revenue to fund desired amounts of government services. An adequate tax system limits changes to the funding of desired government services due to unexpected revenue collections. While "adequacy" is a popular measure of a state's tax system, the SCSTP was not directed by the Legislature to determine a "desired level of government services" or otherwise define the amount of tax revenues Missouri's tax policy must generate. Views about the level of funding for government services are issues to be addressed by the Missouri General Assembly and were outside the scope of the Study Commission's review.



Despite the foregoing, the topic of adequacy is closely aligned with stability of tax revenue collections and efficiency of tax expenditures and, as such, were considered by the Study Commission.

### **Income Tax Work Group**

Pursuant to Section 136.450 RSMo. and the scope agreed to by members, the Income Tax Work Group of the SCSTP was charged with identifying strengths and weaknesses of existing Missouri income tax laws, opportunities to modernize the income tax system, ways to enhance economic development and growth, methods to improve the reliability and efficacy of tax revenue collections to fund necessary government services, opportunities to simplify the tax laws, ways to improve tax return compliance, and ways to reduce administrative costs. The bi-partisan Income Tax Work Group solicited input from many sources aimed at fulfilling its duties under the law specific to improving Missouri's system of taxing incomes of individuals and businesses to ensure the income tax laws are transparent, stable, fair, attractive, efficient, and adequate.

#### Income Tax Work Group Findings & Recommendations

The Income Tax Work Group's findings and recommendations are noted below. Recommendations to the Missouri General Assembly are emphasized in bold font. Recommendations are not listed in any particular order.

##### *I. Conformity to the Internal Revenue Code*

Missouri adopts the federal Internal Revenue Code (IRC) as in effect for the current taxable year in computing Missouri taxable income.<sup>6</sup> Terms used in the Missouri income tax law have the same meaning as those terms are defined in federal law, when used in a comparable context, unless a different meaning is clearly required under Missouri income tax law.<sup>7</sup> In effect, Missouri's income tax laws generally conform to the IRC and U.S. Treasury Regulations, with some exceptions. This conformity improves income tax compliance from the transparency obtained through the body of federal tax laws, regulations, and interpretations upon which Missouri taxpayers may rely. Conformity with the IRC and U.S. Treasury Regulations inherently simplifies Missouri's income tax laws, reduces costs of administering said income tax laws, and mitigates the burdens of tax compliance on Missouri taxpayers.

Despite the many benefits of conforming with provisions of the IRC and treasury regulations promulgated thereunder, directly linking Missouri's tax laws to federal tax laws permits the U.S. Congress and President to indirectly set tax policy for Missouri, which could severely alter Missouri income tax collections, unless the Missouri General Assembly takes proactive steps to delink state tax policy from federal tax policy. For example, Missouri currently conforms to the federal standard deductions available to individuals when computing their federal and Missouri income tax returns.<sup>8</sup> As such, Missouri's current FY18 budget contemplates the federal standard

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<sup>6</sup> Sec. 143.091, RSMo.

<sup>7</sup> Sec. 143.091, RSMo.

<sup>8</sup> Sec. 143.131.2, RSMo.



deductions of the following, as nominally adjusted for 2018:

Filing Status	Standard Deduction Amount
Single	\$6,350
Married Filing Jointly & Surviving Spouse	\$12,700
Married Filing Separately	\$6,350
Head of Household	\$9,350

On December 22, 2017, the “Tax Cut and Jobs Act” was signed by President Donald J. Trump. Among other provisions, this law substantially increased the federal standard deduction amounts to up to \$24,000 for married couples – nearly doubling the standard deduction – for tax years beginning on and after January 1, 2018.<sup>9</sup> Through the existing conformity to the federal standard deduction, Missouri’s taxpayers are now privy to an increased deduction on their federal and Missouri income tax returns barring any action by the Missouri General Assembly. Moreover, the Missouri General Assembly is subject to certain limitations on passing laws that would be enacted retroactively.<sup>10</sup> Consequently, the passage of the Tax Cut and Jobs Act by the U.S. Congress and President will adversely impact Missouri’s revenue collections by increasing taxpayers’ Missouri standard deduction without any actions by the Missouri General Assembly.

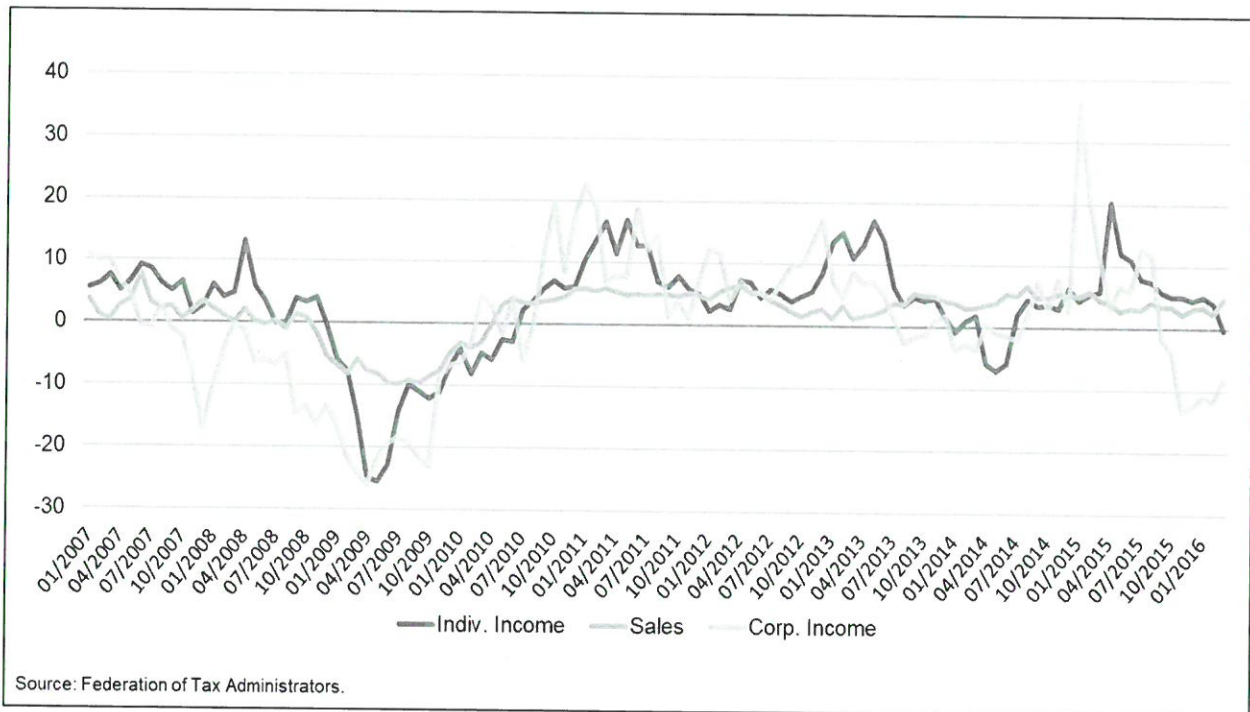
**Given the enactment of the Tax Cut and Jobs Act and the significant impact certain provisions will have on Missouri’s income tax revenue collections, the Commission recommends that the Missouri General Assembly conduct a thorough review of Missouri’s conformity with the IRC and consider decoupling from provisions that are not in the best interest of Missourians.**

## *II. Volatility of Income Taxes and Missouri’s Reliance on Individual Income Taxes*

Income taxes are structurally volatile as the amount of tax is tied to incomes earned by taxpayers. Income tax revenue collections increase when personal and corporate incomes increase. Depicted below is a chart showing the nation-wide year-over-year growth in state tax revenues on a monthly basis, broken into individual income, corporation income, and sales tax. The data are on a nominal basis with no adjustments for inflation or for tax law changes. As such, the fluctuations result from both economic trends and income tax policy changes. Out of these three common categories of state tax revenue collections, corporation income taxes are the most volatile and sales taxes are the least volatile.

<sup>9</sup> See H.R.1 - An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, available at [Congress.gov](https://www.congress.gov/bills/115/1) (December 22, 2017).

<sup>10</sup> See *e.g.*, *Graham Paper Co. v. Gehner*, 332 Mo. 155, 59 S.W.2d 49 (Mo. 1933).



Consistent with the chart depicted above, which summarizes the collections of all U.S. states, Missouri's corporate income tax revenue collections are the most volatile major source of revenue collection.<sup>11</sup> For example, Missouri's FY 2017 corporate income tax revenue collections **decreased by 16.2%**, when compared to FY 2016.<sup>12</sup> For the first five months of FY 2018, Missouri's corporate income tax revenue collections **increased by 16.6%** for the year.<sup>13</sup> While noted, Missouri corporate income tax revenue collections only account for 2.9% of Net General Revenue.<sup>14</sup> As outlined within the introductory section above, a more significant portion of the Missouri Budget comes from Missouri's individual income tax collections.

The primary issue with income tax volatility is the unpredictable nature of the revenue source. Missouri is highly susceptible to budgetary deficits and surpluses amid economic downturns and upswings, particularly when such a significant portion of tax revenue collections come from income taxes. This stability issue is exacerbated when income tax policies cause additional fluctuations. Missouri, like the U.S. federal government, took five years to rebound from the national recession that took place during 2008. It was not until Missouri's FY2013 did general revenue collections return to pre-2008 recession levels. In addition, Missouri tax policies for

<sup>11</sup> See Fiscal Year General Revenue Reports, available at <https://oa.mo.gov/budget-planning/revenue-information>.

<sup>12</sup> OFFICE OF ADMINISTRATION, DIVISION OF BUDGET & PLANNING, MONTHLY REVENUE REPORTS FOR CURRENT FISCAL YEAR BY MONTH [https://oa.mo.gov/sites/default/files/2017-06\\_GR\\_press\\_release.docx](https://oa.mo.gov/sites/default/files/2017-06_GR_press_release.docx) (last visited December 12, 2017).

<sup>13</sup> OFFICE OF ADMINISTRATION, DIVISION OF BUDGET & PLANNING, MONTHLY REVENUE REPORTS FOR CURRENT FISCAL YEAR BY MONTH [https://oa.mo.gov/sites/default/files/2017\\_11\\_GR\\_press\\_release.docx](https://oa.mo.gov/sites/default/files/2017_11_GR_press_release.docx) (last visited December 12, 2017).

<sup>14</sup> OFFICE OF ADMINISTRATION, DIVISION OF BUDGET & PLANNING, THE MISSOURI BUDGET FISCAL YEAR 2018 SUMMARY AT 8 [https://oa.mo.gov/sites/default/files/FY\\_2018\\_Budget\\_Summary.pdf](https://oa.mo.gov/sites/default/files/FY_2018_Budget_Summary.pdf) (last visited December 12, 2017).

several years have led to further reductions in income tax collections. Examples of these policies and the estimated fiscal impact related thereto include the following:<sup>15</sup>

<b>Tax Policy</b>	<b>Estimated Fiscal Impact when Enacted (in millions)</b>
HB 444 (2007) Income tax deduction for Social Security and nonprivate retirement benefits <sup>16</sup>	\$121.4
HB 1 (2007) Various new and amended income tax credit programs <sup>17</sup>	\$66.8
HB 191 (2009) Various new income tax incentives for job development <sup>18</sup>	\$62.9
SB 19 (2011) Repeal of franchise tax on corporations for the privilege of doing business in Missouri <sup>19</sup>	\$126.6

In order to foster a more stable structure, it is important to build a diverse revenue structure that relies on multiple tax sources and one which changes as the economy evolves. To address the stability issues caused by volatility in income taxes, other states have enacted or expanded more stable sales and transaction-based taxes. As provided by the Center on Budget and Policy Priorities, most states could improve their sales taxes and their tax systems in general with some expansion of the tax base to include services. According to the Center on Budget and Policy Priorities, levying sales taxes on services makes state tax systems fairer, more stable, more economically neutral, and easier to administer. Moreover, because state sales taxes are a major source of funding for schools, universities, health care, public safety, and other functions of state and local government, adding services to state sales tax bases can help states maintain their support for those functions, for instance during an economic downturn when state income tax revenues are declining. In theory, broadening the sales tax base can also avert other, less sound tax increases that otherwise might be enacted when a state needs new revenue.<sup>20</sup> While the Center on Budget and Policy Priorities finds that expansion of the sales tax base to include services could be beneficial, Missourians have enacted constitutional provisions which would prevent such action (as detailed below).

In addition to broadening the sales tax base by taxing new products and services, some states have

<sup>15</sup> The estimated fiscal impact of these tax policies is derived from the fiscal notes corresponding to the bills enacted into law. It should be noted that the chart reflects a **partial list of tax policies** enacted over the past several years that have contributed to additional volatility in Missouri's income tax revenue collections.

<sup>16</sup> Fiscal note to HB 444 (2007), available at <http://www.moga.mo.gov/Oversight/OVER07/fishtm/0761-11T.ORG.htm>.

<sup>17</sup> Fiscal note to HB 1 (2007), available at <http://www.moga.mo.gov/Oversight/OVER07/fishtm/2825-03N.ORG.htm>.

<sup>18</sup> Fiscal note to HB 191 (2009), available at <http://www.moga.mo.gov/Oversight/OVER09/fishtm/0837-11T.ORG.htm>.

<sup>19</sup> Fiscal note to SB 19 (2011), available at <http://www.moga.mo.gov/Oversight/OVER11/fishtm/0336-02T.ORG.htm>.

<sup>20</sup> CENTER ON BUDGET AND POLICY PRIORITIES, *EXPANDING SALES TAXATION OF SERVICES: OPTIONS AND ISSUES* (M. MAZEROV), 2009; <https://www.cbpp.org/sites/default/files/atoms/files/8-10-09sfp.pdf> (last visited December 12, 2017).



enacted new taxes to mitigate against income tax volatility. Ohio, for example, enacted a Commercial Activity Tax (CAT) in 2005 to replace the tangible personal property tax and corporate franchise tax (i.e., corporate income tax) when it passed House Bill 66.<sup>21</sup> The CAT is used to impose a tax on the privilege of doing business in Ohio and is measured by gross receipts. With respect to preventing volatility in tax revenue collections, the following chart demonstrates that Ohio's CAT substantially stabilized Ohio's budget, even amid the 2008 economic downturn:

	2004	2005	2006*	2007*	2008*	2009*	2010	2011	2012	2013**
Ohio Corporate Franchise Tax Collections	\$870.6	\$1,111.6	\$1,105.9	\$1,125.7	\$754.6	\$521.4	\$142.3	\$237.2	\$117.4	-
Ohio Commercial Activity Tax Collections	-	-	\$273.4	\$594.9	\$961.4	\$1,179.4	\$1,342.1	\$1,506.6	\$1,656.0	\$1,521.8
<b>Ohio Total Tax Collections</b>	<b>\$870.6</b>	<b>\$1,111.6</b>	<b>\$1,379.3</b>	<b>\$1,720.6</b>	<b>\$1,716.0</b>	<b>\$1,700.8</b>	<b>\$1,484.4</b>	<b>\$1,743.8</b>	<b>\$1,773.4</b>	<b>\$1,521.8</b>

Figures in (\$millions)

\*CAT Phase-In Years

\*\*Repeal of Corporate Franchise (Income) Tax for financial institutions and enactment of Financial Institutions Tax

Improving the stability of tax collections by further diversifying Missouri's revenue streams will be a challenge because some of the most feasible and modern methods of taxation would be subject to constitutional limitations would be contrary to decisions made by Missouri voters and previous sessions of the General Assembly. The reasons are outlined immediately below.

#### a. Constitutional Limitations

In November 2016, Missourians voted to add Article X, Section 26 to Missouri's Constitution, which was known as Amendment 4 on the November 2016 ballot ("Amendment 4").<sup>22</sup> Amendment 4 prohibits the imposition of sales, use, or similar transaction-based taxes on any service or transaction that was not subject to such taxes on January 1, 2015.<sup>23</sup> In effect, this constitutional amendment limits the General Assembly's ability to broaden Missouri's sales tax base by subjecting additional services to sales tax.

In 1980, Missouri's Constitution was amended to add Article X, Sections 16-24, commonly referred to as the Hancock Amendment (the "Hancock Amendment"). The Hancock Amendment restricts the amount of personal income that can be used to fund state government. No more than 5.6% of taxpayers' personal income can be used to fund state government unless the revenue

<sup>21</sup> OHIO DEPARTMENT OF TAXATION, FISCAL YEAR 2015 ANNUAL REPORT: COMMERCIAL ACTIVITY TAX SECTION, [http://www.tax.ohio.gov/Portals/0/communications/publications/annual\\_reports/2015\\_annual\\_report/2015\\_AR\\_Section\\_2\\_Commercial\\_Activity\\_Tax.pdf](http://www.tax.ohio.gov/Portals/0/communications/publications/annual_reports/2015_annual_report/2015_AR_Section_2_Commercial_Activity_Tax.pdf) (citing Ohio's 2005 House Bill 66).

<sup>22</sup> State of Missouri General Election Results, MISSOURI SECRETARY OF STATE, <http://enr.sos.mo.gov/> (last visited December 12, 2017).

<sup>23</sup> See MO. CONST. ART. X, § 26.

increase is approved by a vote of the people. In 2016, Missouri was \$4.1 billion under that threshold.<sup>24</sup> Section 18 of Article X also places a monetary cap on the amount of new annual revenues that the General Assembly may produce without a vote of the people.<sup>25</sup> For FY 2017, the threshold for new annual revenues would be an increase of \$101.5 million.<sup>26</sup>

b. Corporate Franchise Tax Repeal

The Missouri General Assembly previously repealed the longstanding corporation franchise tax, which was anticipated to reduce Missouri's Corporate Income and Franchise Tax collection category by \$126.6 million annually, starting in Missouri's FY 2016.<sup>27</sup> The Income Tax Work Group merely notes that diversifying tax collections by enacting a new corporation franchise tax in Missouri is unlikely given the legislature's prior actions.

**To improve stability in tax revenue collections the Commission recommends that the Missouri General Assembly create a well-rounded tax structure so that Missouri is better able to maintain balance when economic conditions impact different revenue streams. By using a variety of tax sources, Missouri will be able to minimize dramatic fluctuations. During this rebalancing of Missouri's tax revenue sources, the Commission recommends that the Missouri General Assembly consider additional or new non-income taxes to fund any future tax increases.**

*III. Ambiguous Tax Filing Requirement Threshold for Corporations and Other Business Entities*

Businesses, including corporations and flow-through entities, are generally subject to income taxes when they are licensed to do business or are doing business in Missouri.<sup>28</sup> Unlike most other states, Missouri's "doing business" standard (or "nexus" standard) is broad and ambiguous. Businesses located or headquartered within Missouri generally file tax returns and pay Missouri income tax because their activities in Missouri clearly exceed the doing business standard. Alternatively, out-of-state business taxpayers are currently required to interpret existing statutes and constitutional law to subjectively determine whether the business activities conducted within Missouri are sufficient enough to trigger a tax filing obligation and pay Missouri income taxes. As a result, it is the view of the Income Tax Work Group that some amount of income tax revenue is lost because of Missouri's ambiguous nexus statutes.

In 2002 the Multistate Tax Commission (MTC) adopted a model rule, Factor Presence Nexus Standard for Business Activity Taxes, in an effort to promote uniformity among the states and

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<sup>24</sup> See MO. CONST. ART. X, § 18; see also Missouri Auditor, Administration, Review of Article X Sections 16 through 24, Constitution of Missouri, Year Ended June 30, 2016 (May 2017) (page 1), available at <https://app.auditor.mo.gov/AuditReports/CitzSummary.aspx?id=567>.

<sup>25</sup> MO. CONST. ART. X, § 18.1

<sup>26</sup> See OFFICE OF ADMINISTRATION, DIVISION OF BUDGET & PLANNING, THE MISSOURI BUDGET FISCAL YEAR 2018 SUMMARY AT 8 [https://oa.mo.gov/sites/default/files/FY\\_2018\\_Budget\\_Summary.pdf](https://oa.mo.gov/sites/default/files/FY_2018_Budget_Summary.pdf) (last visited December 12, 2017).

<sup>27</sup> See Missouri department of revenue fiscal analysis of SB 19 (2011), available at <http://www.moga.mo.gov/Oversight/OVER11/fishtm/0336-02T.ORG.htm> (last visited December 12, 2017).

<sup>28</sup> See RSMO 143.441 and 143.071.



create a simple bright-line nexus test for business activity taxes in response to the proliferation among the states of a wide variety of nexus standards. Pursuant to this rule, a taxpayer establishes nexus with a state for business activity tax purposes if the taxpayer exceeds any of the following apportionment factor numerator thresholds in that state during a tax period:

- \$50,000 of property;
- \$50,000 of payroll;
- \$500,000 of sales; or
- 25% of total property, total payroll, or total sales.

In 2005 Ohio became the first state to impose a factor presence nexus standard, which adopted the MTC thresholds for purposes of determining whether a business is subject to the state's commercial activity tax (CAT).<sup>29</sup> Since then, factor presence nexus standards have been adopted in a variety of states, including Alabama,<sup>30</sup> California,<sup>31</sup> Colorado,<sup>32</sup> Connecticut,<sup>33</sup> Michigan,<sup>34</sup> New York,<sup>35</sup> Tennessee,<sup>36</sup> and Virginia.<sup>37</sup> While the application of these types of standards may be suspect in light of the U.S. Supreme Court's recent forays back into Due Process and Commerce Clause analysis, early litigation has gone against the taxpayers<sup>38</sup> and more states are expected to adopt factor presence nexus standards in the near term to (i) adapt tax laws to modern businesses, the activities of which are often conducted remotely; (ii) improve transparency by clearly informing taxpayers of their tax obligations; and (iii) improve administration of the tax laws by relying upon objective criteria rather than forcing taxpayers and the Department of Revenue to each interpret subjective tax laws.

**To modernize Missouri's tax policies to current business practices, improve transparency regarding tax filing requirements for businesses with activities in Missouri, and make Missouri's tax system more efficient, the Commission recommends that the Missouri General Assembly enact legislation adopting the MTC's Factor Presence Nexus Standard for Business Activity Taxes. Enacting such legislation would clarify the income tax filing responsibilities of most companies doing business within Missouri. This action is anticipated to have limited to no impact on in-state businesses but would clarify when out-of-state taxpayers are required to pay Missouri corporate income tax.**

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<sup>29</sup> Ohio Rev. Code Section 5751.01(H)(3).

<sup>30</sup> Ala. Code §40-18-31.2.

<sup>31</sup> Cal. Rev. & Tax Code §§23101(b) and (d).

<sup>32</sup> Colo. Code Regs. §39-22-301.1.

<sup>33</sup> Conn. Gen. Stat. §12-216a.

<sup>34</sup> Mich. Comp. Laws §206.621(1).

<sup>35</sup> N.Y. Tax Law §209.1.

<sup>36</sup> Tenn. Code §67-4-702.

<sup>37</sup> Va. Code §58.1-400.

<sup>38</sup> See, e.g., *L.L. Bean, Inc. v. Levin*, No. 2010-2853 (Ohio Bd. Tax App. 3/6/14) (settled on appeal, 11/20/14); *Newegg, Inc. v. Testa*, No. 2012-234 (Ohio Bd. Tax App. 2/26/15); and *Crutchfield, Inc. v. Testa*, No. 2012-926 (Ohio Bd. Tax App. 2/26/15).



#### *IV. Inefficient Tax Expenditures*

Missouri is one of only a handful of states to allow individual and corporate taxpayers to deduct their federal income tax from their state taxable income.<sup>39</sup> For the 2014 tax year, Missouri lost over \$578.0 million of tax revenues due to the individual income tax deduction for federal income taxes paid, and lost \$73.1 million of tax revenues due to the corporate income tax deduction for federal income taxes paid. Given that the deductions are available to all individual and corporate taxpayers without any link between the amount of credit and behavior, these two income tax deductions result in inefficient tax giveaways.

Proponents of these deductions often cite the need of these deductions to prevent double taxation. Opponents of these deductions often cite the regressivity, as low-income families are largely shielded from federal income taxes, and do not benefit from the state deduction of federal income taxes paid. Irrespective of the rationale cited, Missouri could more efficiently and effectively address regressivity through more common and efficient mechanisms (e.g., the earned income tax credit for individuals or other credits for corporations).

**To improve fairness and efficiency, the Commission recommends that the Missouri General Assembly repeal the individual and corporate income tax deductions for federal income taxes paid. Repealing Missouri's federal income tax deductions will enable the General Assembly to use funds to more efficiently incentivize behavior, including but not limited to tax rate reduction, tax credits, and individual income tax rate bracket modernization, as described under Section VII of this report. The repeal, without offsetting revisions to rates, credits or tax brackets, would result in an increased tax liability between \$0 - \$600 annually for each household and would be subject to constitutional limitations.**

#### *V. Improve Transparency of Missouri's Income Tax Laws and Uniformity Between States*

During the review of Missouri's income tax laws by the Income Tax Work Group, several Missouri statutes and regulations were found to be onerous, ambiguous, and even unconstitutional. A brief overview of these provisions and recommendations related thereto are outlined below.

##### *a. Consolidated Return Election for Corporations*

Section 143.431.3(1) RSMo. currently provides that “[i]f an affiliated group of corporations files a consolidated income tax return for the taxable year for federal income tax purposes and fifty percent or more of its income is derived from sources within this state as determined in accordance with section 143.451, then it may elect to file a Missouri consolidated income tax return...” This statutory language became effective January 1, 1973. Since 1973, the underlined

<sup>39</sup> *Why States That Offer the Deduction for Federal Income Taxes Paid Get it Wrong* INSTITUTE ON TAXATION AND ECONOMIC POLICY (Aug. 01, 2011), <http://itep.org/why-states-that-offer-the-deduction-for-federal-income-taxes-paid-get-it-wrong/> (last accessed December 12, 2017). Montana is the most comparable to Missouri's deduction, with a cap of \$5,000 for single and \$10,000 for married couples. However, Montana also requires its taxpayers to itemize their state return in exchange for utilizing the Federal Income Tax Deduction. Oregon has a cap of \$5,950, and the deduction gradually phases out for higher income earners. It should be noted that corporate taxpayers are entitled to deduct fifty-percent of their federal corporate income tax from their state taxable income.

phrase triggered much controversy and in 1998, the Missouri Supreme Court held that the underlined phrase violated the Commerce Clause of the U.S. Constitution in that it discriminated against interstate commerce by favoring in-state (Missouri) businesses.<sup>40</sup> As a result of the Missouri Supreme Court's severance of the offending provision, the only requirement for electing a consolidated return remains to be that the taxpayer's affiliated group file a federal consolidated return. The Missouri Supreme Court instructed taxpayers to ignore the underlined phrase that placed a "fifty percent test" as a qualification to the consolidated return election.

Within current statutes, and because the legislature has not yet amended Section 143.431.3(1) RSMo to formally eliminate the fifty percent test, many taxpayers erroneously believe they are precluded from electing to file a consolidated return because of the explicit statutory language that remains - statutory language that should be removed from Section 143.431.3(1) RSMo. to harmonize the statutes with precedential case law.

**To simplify the tax law by making more transparent the eligibility requirements for electing the consolidated income tax return, reducing costs of administration (i.e., Department of Revenue costs of resolving many disputes that continue to be generated by the existing statute) and resolution (i.e., the Missouri judiciary's costs of resolving disputes that do not get resolved administratively by the Department of Revenue), the Commission recommends that the Missouri General Assembly amend Section 143.431.3(1) RSMo such that it reads:**

**If an affiliated group of corporations files a consolidated income tax return for the taxable year for federal income tax purposes ~~and fifty percent or more of its income is derived from sources within this state as determined in accordance with section 143.451,~~ then it may elect to file a Missouri consolidated income tax return. The federal consolidated taxable income of the electing affiliated group for the taxable year shall be its federal taxable income.**

**Removing the consolidated return provision that conflicts with longstanding and undisputed judicial decisions makes Missouri statutes more transparent, improves tax compliance, and reduces administrative costs and unnecessary disputes.**

b. Elimination of Transactions Between Affiliates Filing a Consolidated Missouri Corporate Income Tax Return

Missouri, like many other states and the federal government, permits affiliated taxpayers to file consolidated corporate income tax returns (i.e., a single tax return instead of a tax return for each affiliate that conducts business within Missouri). In addition, many states require unitary affiliates to file a single tax return on which the activity of the entire business enterprise is reported. In nearly all instances, transactions between affiliates are eliminated, and therefore disregarded.

Unlike other states, Missouri regulations provide that "for the purposes of determining the amount of sales or business transactions under the interstate division of income methods provided

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<sup>40</sup> See *General Motors Corp. v. Dir. Of Revenue*, 981 S.W.2d 561 (Mo. banc 1998).

in sections 143.451.2 and 143.461 RSMo and in the Multistate Tax Compact, the term sales and business transactions shall include all intercompany sales (business transactions) as defined in Treas. Reg. section 1.1502-13.”<sup>41</sup> Through this language, the Missouri Department of Revenue has effectively promulgated a rule that does not disregard (i.e., does not eliminate) transactions between affiliates when computing the tax of an affiliated group of corporations, which U.S. Treas. Reg. § 1.1502-13 generally requires. Only Missouri and Florida recognize transactions between affiliates when computing state income tax liability when such a consolidated (or combined) income tax return is filed.

Eliminating transactions between affiliates negates the effects of certain tax avoidance schemes and prevents distortion of the tax liability. By recognizing intercompany transactions, Missouri is exposed to illicit taxpayer behaviors that may decrease tax revenue collections. In addition, the fact that only Missouri and one other state requires income tax of an affiliated group of corporations to be computed in this manner undermines the goal of simplicity. Finally, by permitting illicit behaviors without penalty, Missouri is inherently treating compliant, well-intentioned taxpayers unfairly.

**To reduce complexity and improve fairness within Missouri’s tax code, the Commission recommends the Missouri General Assembly to enact a statute that requires the elimination of related party transactions between members of affiliated entities participating in the same consolidated corporate income tax return. Simultaneously, the Commission recommends the repeal of Regulation 12 CSR 10-2.045(19). Consequently, Missouri statutes will be more uniform with federal and other state’s tax laws, and will improve fairness within Missouri tax laws.**

#### *VI. Corporate Income Tax Apportionment*

The Due Process and Commerce Clauses of the U.S. Constitution require that states offer multistate businesses permissible methods of apportioning income so that double taxation would not occur if all states enacted uniform methods of apportionment.<sup>42</sup> The Uniform Division of Income for Tax Purposes Act (UDITPA) addressed one of the most fundamental features of state corporate income and franchise taxes – division of the tax base among the multiple states in which a taxpayer does business (i.e., apportionment). The Act was developed by the Uniform Law Commission over 60 years ago, in 1957, and consisted of an apportionment method the contained an equally-weighted property, payroll, and sales factors. This Multistate Tax Compact (MTC) apportionment method, codified in Missouri law in Section 32.200, RSMo in 1967, was once enacted, in whole or in part, by thirty-four states either as a stand-alone statute, as part of the Multistate Tax Compact, or both.

The U.S. and global economy have changed significantly since 1967. Though much of UDITPA continues to work well, many states have amended the sales factor weightings because the equal

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<sup>41</sup> 12 C.S.R. tit., 10-2.045(19).

<sup>42</sup> See *Exxon Corporation v. Wis. Dep’t of Revenue*, 447 U.S. 207 (1980). See also U.S. CONST. amend. XIV § 1; CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS, AND INTERPRETATION 1656-57 (Johnny H. Killian & George A. Costello, eds 1992), <https://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-15.pdf>



weight assigned to the property and payroll factors provides a disincentive to investment and employment in a given state. In addition, certain business enterprises, such as financial institutions and public utilities, are precluded from electing the MTC apportionment formula, thus requiring each state to create an alternative apportionment method for these businesses to utilize. To remove the disincentive and unnecessary complexity of multiple apportionment formulae, nearly all states that have amended their apportionment laws in recent years have (i) enacted a single-factor sales apportionment formula and use “market-sourcing” to determine the jurisdiction in which sales are allocated, **and** (ii) simultaneously repealed the antiquated MTC apportionment method, or iteration thereof.

Prior to 2013, Missouri offered all taxpayers the following apportionment methods:

**Option 1 – Multistate Tax Compact Formula (Section 32.200, RSMo)** - Equally-weighted three-factor formula based on the average of property, payroll, and sales factors (enacted in 1967).

**Option 2 – Business Transaction Single Factor Apportionment Formula (Section 143.451.2(2), RSMo)** - Single-factor sales formula based on sales being “wholly within Missouri, wholly without Missouri, or partly-within and partly-without Missouri” (enacted in 1927).

**Options 3, 4, 5, and 6 – Industry-Specific apportionment formulas apportioned based on the ratio of miles (Section 143.451.3, RSMo., Section 143.451.4, RSMo., and Section 143.451.5, RSMo.).**

**Option 7 – “Other Approved Method” (Section 143.461.2, RSMo.)** - Method that permits the Department of Revenue to approve a method not otherwise permitted or required by law (enacted in 1972).

In 2013, the Missouri Legislature followed the trend of other states and modernized Missouri apportionment laws. The 2013 Legislature offered the following additional apportionment method to taxpayers:

**Option 2A – Optional Single Sales Factor Apportionment Formula (Section 143.451.2(3), RSMo)** - Single-factor sales formula based on the location of the taxpayer’s customer (i.e., “market-sourcing”). This method was enacted in 2013 and clarified in 2015 because of the Department of Revenue’s interpretation of the 2013 statute.

The enactment of the optional single factor apportionment formula in 2013 brought uniformity between Missouri and other states that amended their corporate income tax apportionment laws for modern business practices while removing the additional income tax costs of increasing jobs and investment in their states. Unlike other states, however, Missouri did not repeal the traditional apportionment formulae. Instead, Missouri added a new optional apportionment method that taxpayers may elect to use each year. Consequently, most out-of-state headquartered companies, whose property and payroll are predominately located outside of Missouri, do not elect the new optional apportionment formula. Alternatively, in-state companies, who desire to avoid the penalty

placed on jobs and investment in Missouri though the MTC method (which is two-thirds based on property and payroll location) use the new optional single factor formula.

**To retain the modernized and simplified apportionment formula and improve stability and efficiency within Missouri's income tax laws, the Commission recommends that the Missouri General Assembly consider the actions of other states to further streamline the method of apportioning income and adapt tax policies to reflect modern business practices. For Missouri, this could include the elimination of outdated apportionment methods (e.g., the repeal the two antiquated apportionment options that primarily benefit companies based outside of Missouri (i.e., repeal Section 32.200, Art. IV(17), RSMo and Section 143.451.2(2), RSMo). If the Missouri General Assembly repeals all or portions of Section 32.200, the Commission recommends that (i) the Department of Revenue maintain Missouri's membership with the Multistate Tax Commission; (ii) the Legislature re-enact provisions of the Multistate Tax Compact unrelated to the apportionment factor to continue the efficient process of administering tax laws uniformly; and (iii) the Legislature simultaneously enact the factor-presence nexus standard (as outlined above).**

**These recommendations could modernize and simplify Missouri's corporate income tax laws and eliminate inefficient incentives currently available to taxpayers located (and primarily based) outside of Missouri. As a result, Missouri's corporate income tax revenue collections could substantially increase, almost entirely from companies primarily located outside of Missouri. Using federal taxable income of all U.S. businesses as the potential population of taxpayers,<sup>43</sup> and the Missouri population percentage as a reasonable proxy of the market-sourcing percentage,<sup>44</sup> Missouri income tax revenue collections could increase to \$520,303,931, nearly 200 percent of the budgeted \$274,600,000 in FY 2018 corporate tax revenue collections.<sup>45</sup>**

## *VII. Individual Income Tax Structure*

Despite the fact that defining "adequacy" (as defined above) was not a core duty of the Income Tax Work Group, significant time was spent brainstorming and deliberating alternatives to modify the graduated tax rate brackets, which currently impose the highest rate of 5.9 percent on incomes over \$9,000. Significant impediments to meaningful reformation of the tax brackets include (i) the abovementioned constitutional and statutory limitations; (ii) the significant cost of modifying the tax brackets; and (iii) ideological and social differences. Despite the foregoing, the Income Tax Work Group received and reviewed various alternatives to determine whether meaningful reformation of the tax brackets was possible after several decades of inaction.

Making meaningful modifications of the tax rate brackets must generally coincide with other tax policy changes to be passed in accordance with the Missouri constitution and Missouri statutes.

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<sup>43</sup> 2013 Income subject to tax of \$1,258,482,675,000. See IRS SOI Tax Stats – 2013 Corporation Complete Report at p.2 (available at <https://www.irs.gov/uac/soi-tax-stats-irs-data-book>).

<sup>44</sup> UNITED STATES CENSUS BUREAU (2016), Missouri population of 6.093 million / U.S. population of 323.1 million = 1.89% Missouri population percentage.

<sup>45</sup> \$1,258,482,675,000 (federal taxable income) x 35% (federal tax rate) x 1.89% (Missouri population/apportionment percentage) x 6.25% (Missouri tax rate).



The foregoing is due to the significant magnitude changes to the tax rate brackets has on Missouri revenue collections. Consequently, the Income Tax Work Group received and reviewed various, revenue-neutral, ways that Missouri could, within constitutional and statutory limitations, make significant modifications to the existing individual income tax rate bracket. One example of this type of individual income tax overhaul includes:

1. Condensing the 10 individual income tax rate brackets to 7 brackets, with top bracket over \$160k at a 6.0% tax rate;
2. Repealing the federal income tax deduction;
3. Imposing a \$20,000 limit (i.e., cap) on Missouri itemized deductions; and
4. Enacting a 10% refundable Tax Credit for Working Families.<sup>46</sup>

If enacted, this example would be revenue-neutral and would pass constitutional muster. However, some members of the SCSTP analogized the Tax Credit for Working Families with the earned-income tax credit (EITC) program administered by the IRS and expressed concerns over the percentage of reported errors within the IRS's EITC program. Other SCSTP members expressed concerns over the refundability of the tax credit, limitations on itemized deductions, and enacting laws that would increase taxes on Missourians. While the Income Tax Work Group concludes that individual income tax bracket reform is possible, the concerns expressed by certain SCSTP members are valid and the Missouri General Assembly should carefully consider these issues prior to passing legislation.

**The Commission has no specific recommendation to the Missouri General Assembly regarding the individual income tax structure but notes herein the limitations and considerations that could ultimately result in a tax rate bracket that aligns better with graduated tax rate brackets that exist in other states.**

## **Sales and Use Tax Work Group**

The Sales and Use Tax Work Group's findings and recommendations are noted below. Recommendations to the Missouri General Assembly are emphasized in bold font. Recommendations are not listed in any particular order.

### *1. Missouri's Sales and Use Tax System Has Become Very Complex*

Sales and use tax is a significant revenue source for the state of Missouri, its counties and municipalities, and a growing number of other political subdivisions. Missouri's sales and use tax system is complex and difficult to comply with and administer.

One of the sources of complexity in Missouri's sales and use tax is the large (and growing) number of political subdivisions authorized to levy sales and use taxes. Per the Missouri Department of

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<sup>46</sup> The foregoing individual income tax overhaul was computed to be revenue-neutral and constitutional, subject to validation of ITEP calculations submitted on May 8, 2017.



Revenue's Fiscal Year 2015 Annual Report, the Department collected and distributed \$6.5 billion in sales and use taxes; \$3.4 billion in state sales and use taxes, and \$3.1 in local sales taxes for 1,182 different taxing jurisdictions. That report indicates the Department collected and distributed the following local taxes:

<b>Type of Levying Entity</b>	<b># of Entities</b>	<b>Reported Amount of Tax Distributed</b>
County Sales/Use Taxes	114	\$1,364,029,317
City Sales/Use Taxes	665	\$1,550,329,818
Ambulance District Sales Taxes	53	\$49,247,153
Emergency Service District Sales Taxes	5	\$13,184,536
Fire Protection District Sales Taxes	16	\$16,945,905
Hospital District Sales Taxes	1	\$394,732
Public Library District Sales Taxes	1	\$1,202,701
Regional Jail District Sales Taxes	1	\$1,035,556
Regional Recreational District Sales Taxes	1	\$5,383
Tourism Community District Sales Taxes	1	\$7,936,743
Zoological District Sales Taxes	1	\$16,515,801
Transportation Development District Sales Taxes <sup>(1)</sup>	172	\$71,639,918
Community Improvement District Sales and Use Tax <sup>(1)</sup>	135	\$37,294,833
Community Development District Sales Tax <sup>(1)</sup>	16	\$3,600,215
<b>Total<sup>(1)</sup></b>	<b>1,182</b>	<b>\$3,132,416,611</b>
<sup>(1)</sup> Collections for some small districts (less than 6 registered sellers) are not reported to preserve confidentiality. Therefore, this number is slightly less than the actual amount collected and distributed.		

A second source of complexity is that some of these local taxes are a sales tax only (tax applies to retail sales within the political subdivision), and while others are both a sales tax and a use tax (a use tax applies to the storage, use or consumption of the property, typically purchased from an out-of-state seller). While political subdivisions may not impose a use tax higher than the sales tax rate, there is no requirement that all local sales taxes have a corresponding use tax. Therefore, sellers - and purchasers - must make a determination of whether the transaction is a "Missouri retail sale" subject to any local sales tax, or not a Missouri retail sale, in which case the transaction may be subject to a local use tax. A little over half – 59 of the 114 counties impose a use tax. At the municipal level, 111 of the 665 cities with a sales tax impose a use tax.

A third source of complexity is "sourcing" – i.e. where the sale is taxed. Ignoring a number of exceptions, such as metered utilities and drop-shipment transactions, Missouri retail sales (in-state) are sourced to the seller's location, whereas use tax transactions are subject to tax where the purchaser first receives the goods. Therefore, the "type" of transaction impacts not only the tax rate, but which local tax jurisdiction receives the tax and which tax rate applies. This adds complexity for sellers trying to collect and report tax correctly, for purchasers seeking to confirm they are being taxed correctly, and for the Department in performing audits and distributing tax revenues accurately.

A fourth level of complexity is special tax rates (known as “rate differences”) or exemptions that apply to one type of good or service, or one type of tax, but not the other (also known as “base differences”). Base differences require sellers (and purchasers) to be cognizant that certain items may be subject to one tax, and require more complex coding of products in point-of-sale systems. Rate differences also require more complex system coding and special reporting on tax returns. Examples of current Missouri base or rate differences include (but are not limited to):

- Certain food products are subject to a lower rate of tax.
- Domestic utilities are exempt from the state sales tax, but may be subject to local sales taxes.
- Utilities, chemicals, materials and machinery/equipment used in certain manufacturing and mining operations may be exempt from state sales tax, state use tax, and local use tax, but subject to local sales taxes.
- Both the Transportation Development District taxes and the Community Improvement District taxes have base differences with the statewide sales tax.

Layering each of these complexities results in myriad of taxes and tax rates that create significant compliance hurdles for both sellers and purchasers.

As an example, there are 102 possible tax rates for transactions occurring in just the city of Lee’s Summit, a city of 93,000 residents. The Missouri Department of Revenue’s First Quarter 2017 sales and use tax rate chart indicates 2,281 different taxing jurisdictions levying sales or use taxes, resulting in a potential for 13,686 different local tax rates statewide.

What started as a very simple tax in the 1930’s has become an expensive and burdensome tax for retailers and consumers to comply with. Not only have we created a very complex system, but there are legislative proposals each year that would add to that complexity. Legislation was introduced during the 2016 and 2017 legislative sessions which would have allowed additional types of Missouri political subdivisions the authority to impose sales or use taxes, and which would exempt certain types of purchases from state sales or use taxes but not local sales or use taxes (i.e. additional “base differences”).

Reducing the complexity – or “simplification” - of Missouri’s sales and use tax structure would reduce compliance burdens on retailers, purchasers and the Department. Unfortunately, as one Commission member concluded, *“It’s hard to put that genie back into the bottle”*. Especially at the local level - city and county governments and literally hundreds of special taxing districts - have issued long-term bonds which are to be repaid with dedicated sales or use taxes. While the Study Commission did not come up with an overall solution to eliminating this complexity, we do agree that all future legislative proposals should be evaluated to avoid adding additional complexity. As discussed later in this report, the primary objective of the Streamlined Sales Tax Project “(hereafter referred to as “Streamlined Agreement” or simply “Streamlined”) is to simplify sales and use tax compliance and administration. Proposed legislation to conform Missouri’s sales tax laws to the Streamlined Agreement has been introduced in multiple legislative sessions. While the Missouri General Assembly has not passed Streamlined legislation, evaluating any proposed sales tax legislation’s impact on complexity, and avoiding passing new sales tax legislation

containing provisions that run counter to Streamlined Agreement principles, will minimize barriers to Missouri one day conforming to the Streamlined Agreement.

**The Commission recommends the General Assembly carefully review all proposed sales and use tax legislation with the goal of avoiding additional complexity. Specifically, legislative proposals which expand the types of local jurisdictions authorized to impose sales and use taxes, create additional tax base differences, or create any other type of complexity should be carefully evaluated.**

## *II. Sales and Use Tax Rates and Tax Burden*

Another issue identified by the Study Commission is how Missouri's cumulative sales and use tax rates have dramatically increased over the last several decades, and how much of the taxing "capacity" is now "lost" to the state due to local tax authorizations. The state sales and use tax rate is currently 4.225%. Of this, 3% goes to General Revenue, 1% is for Education<sup>47</sup>, 1/8% is earmarked for Conservation<sup>48</sup>, and is 1/10% earmarked for Parks and Soil and Water Conservation<sup>49</sup>.

Statewide sales and use tax have significantly decreased as a percentage of state General Revenue Fund receipts. While Missouri's 4.225% state sales and use tax rate is relatively low compared to most states, Missouri statutes allow cities, counties and special tax districts to levy a wide variety of general and special purpose sales and use taxes. Those local taxes have increased dramatically over the last 10 years, resulting in the following examples of cumulative rates:

- St. Louis County, within the St. Louis County Port Improvement District and Lemay Community Improvement District - 9.363%
- City of Arnold, within the Rock Township Ambulance District, Rock Community Fire protection District, Jefferson County Emergency Service District, Ridgcrest Community Improvement District and Ridgcrest Transportation Development District – 10.350%
- City of Belton, within the Belton-Cass Regional Transportation Development District and the TXRH Community Improvement District – 10.975%
- City of Richmond Heights, within the Cheshire Community Improvement District and Cheshire Transportation Development District – 11.113%
- City of St. Louis, within the CB54215975 Transportation Development District and the Loop Trolley Transportation Development District – 11.179%

Following the November 2017 election on "Proposition P" in the City of St. Louis, the top cumulative state and local sales tax rate in a Missouri taxing jurisdiction will be 11.679% effective January 1, 2018 - almost 12%! Only 36% of the sales tax collected in this district will be state sales tax; 64% will be local sales taxes. By authorizing a plethora of local sales and use taxes, the General Assembly has effectively "limited" the state's capacity to raise additional sales and use

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<sup>47</sup> Sec. 144.700, RSMo.

<sup>48</sup> Art. IV, Sec. 43(a), MO. CONST.

<sup>49</sup> Art. IV, Sec. 47(a), MO. CONST.



tax revenues for services and programs paid for from the state's General Revenue Fund. At some point, voters experience "rate fatigue", and may become unwilling to vote for higher sales tax rates, regardless of the merits of the program or service that needs funding.

Additionally, Missouri voters passed Proposition 4 in November 2016, which requires any expansion of the sales tax base (i.e. what goods or services the tax is levied on) to be passed by the electorate, rather than by the General Assembly. So while our national economy is transforming from a "manufacturing" or "goods-based" economy to a "services" economy, we Missourians have limited the General Assembly's ability to adjust our sales tax laws to match that macroeconomic trend.

**The Commission does not have a formal recommendation on this point, but we thought this to be important information and analysis for the General Assembly and taxpayers to be aware of. While it may be somewhat of an oversimplification, we have literally "boxed" ourselves into a tax rate and tax base situation that effectively limits the future contribution the sales and use tax can make in funding state services and programs without a state-wide vote.**

### *III. Sales Tax Holidays*

Missouri sales tax law sets forth two separate sales tax holidays, the "Back to School Holiday"<sup>50</sup> and the "Show Me Green Sales Tax Holiday"<sup>51</sup>. During the three-day "Back to School" sales tax holiday each August, certain school related purchases, such as clothing, school supplies, computers, and other items as defined by the statute, are exempt from sales tax for this time period only. The sales tax holiday applies to state sales taxes and to local sales taxes when a local jurisdiction chooses to participate in the holiday. However, local jurisdictions can choose to not participate in the tax holiday if they enact an ordinance to not participate and notify the Missouri Department of Revenue.

During the "Show-Me Green Sales Tax Holiday" for a week each April, the state exempts the state sales tax on retail sales of qualifying "Energy Star" certified new appliances, up to one thousand five hundred dollars per appliance. According to the Energy Star website, trash compactors, conventional ovens, ranges and stoves currently do not receive an energy star rating. Therefore, although the statute anticipates that some day they may receive the energy star rating, tax will continue to apply to purchases of these items during the Show-Me Green Sales Tax Holiday. Cities, counties and other local taxing districts may also participate in this sales tax holiday by enacting an ordinance exempting their locally imposed sales tax during the Show-Me Green Sales Tax Holiday period.

Advocates for the sales tax holidays argue that the exemptions are a highly visible way of assisting low-income consumers and spurring consumption. However, according to a recent report from the nonpartisan Tax Foundation, "sales tax holidays miss the mark in their intended effect and may actually do more harm than good". The report details the history of the holidays and explains why they are misleading, lead to unstable revenue, increase tax code complexity, and distract

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<sup>50</sup> Sec. 144.049, RSMo.

<sup>51</sup> Sec. 144.526, RSMo.

policymakers from real tax reform. It has been noted that some common retail discounts have been reduced or eliminated during these time periods now that the sales tax holidays have been implemented.

**The Commission recommends the General Assembly consider elimination of Sales Tax Holidays.**

#### *IV. Sales Tax & State Withholding Tax Timely Filing Allowance*

Retailers that collect Missouri sales tax or vendors use tax and remit those taxes to the Missouri Department of Revenue on or before the date they are due are allowed retain what is known as a “Timely Filing Allowance”. The current timely filing allowance set forth in Sections 144.140 and 144.710, RSMo is 2%. Thus, if a retailer collects \$1,000 in tax and remits that tax to the Department on a timely basis, it is allowed to retain \$20 as a collection fee. In 2015, timely filing allowances collectively amounted to over \$110,000,000 in taxes paid by Missouri consumers but not paid to the state or local taxing authorities. The Sales and Use Tax Work Group received input from multiple stakeholders regarding the timely filing allowance.

When comparing this policy with other states, Missouri has one of the most generous timely filing allowances in the nation. Seventeen states do not allow any discounts or collection allowance. Many other states cap or limit the annual amount vendors can keep. Only four states, including Missouri, have no limit on the amount of vendor compensation a retailer may receive. Most retailers receive less than \$1,500 annually from the 2% timely filing allowance, but for very large retailers, the 2% timely filing allowance can result in significant collection compensation. It is relevant to note that originally retailers were allowed a 3% timely filing allowance, but the statutory allowance rate was reduced to 2% many years ago.

Proponents of reducing or eliminating the 2% timely filing allowance argue that Missouri’s 2% allowance is one of the most generous tax collection allowances in the country, and the moneys being paid to retailers could be used to fund state and local services and programs. Many large retailers have multiple retail locations in other states that do not allow them to keep 2% of taxes collected in those states, and may not provide any compensation or allowance at all. When considering the largest retailers doing business in Missouri who have corporate headquarters in other states or countries, tens of millions of tax dollars paid by Missouri consumers are leaving the state benefiting these large corporations.

Retailers argue Missouri has one of the most complicated sales and use tax structures in the nation; therefore the timely filing allowance is needed as compensation for collecting these taxes. Additionally, the vast majority of retail “business to consumer” sales involve credit cards. Retailers typically pay the credit card companies 2% or more for transaction processing fees - which includes sales tax charged on the card - so essentially all of the timely filing allowance received by retailers goes to credit card companies, rather than to offset the retailer’s cost of collecting and complying with Missouri’s tax code. Large multistate retailers incur significant costs for tax compliance software that track rates and the taxability of millions of product codes (better known as “SKUs”). Even smaller retailers incur sales tax compliance costs most of us never consider – software, detailed Point-Of-Sales systems, maintaining customer exemption



certificate documentation, and engaging external accountants to handle sales tax audits. Many retailers incur compliance costs not proportionate to the sales tax they actually collect. Consider Missouri retailers selling grocery items that qualify for the low rate food tax. Most of the food items they sell are taxed at a very low rate. Their 2% timely filing allowance is based on those low rate collections, but they have to absorb significant additional costs to classify and ring up each food item SKU correctly – either subject to the full rate of tax or the lower food rate.

#### **Withholding Tax:**

When Missouri employers file state income tax withholdings for their employees, they also receive a “timely filing allowance” if these taxes are remitted on or before the due date<sup>52</sup>. These allowances are calculated at different rates, depending on the amount of annual withholdings: 2% up to \$5,000, 1% from \$5,001 to \$10,000, and ½% over \$10,000. After employers withhold \$10,000, they are entitled to one-half percent compensation for the balance of the year. In 2015 this amounted to about \$25,000,000 of state income taxes withheld from Missouri workers but not paid into the state treasury. It is our understanding Missouri is the only state which provides employers a “timely filing allowance” for remittance of withholding taxes.

**The Study Commission recommends the General Assembly consider elimination of withholding timely filing allowance. The Commission did not come to a consensus recommendation on the sales/use tax timely filing allowance. If the General Assembly determines that the current 2% allowance is not the appropriate vendor compensation, it may want to consider a reduction in the percentage rate rather than a “cap” on the allowance, which would discriminate against large retailers and retailers with complex tax compliance requirements, such as retail grocers.**

#### *V. Sales and Use Tax Exemptions*

Missouri sales tax laws provide a wide range of exemptions from the sales and use tax. While most of these exemptions are codified into a primary exemption statute<sup>53</sup>, many exemptions are codified outside of that exemption statute. Some exemptions are codified in statutes outside of the “Sales Tax Law”<sup>54</sup>, making it even more difficult for taxpayers to locate the exemptions.

In addition to inconsistent placement in Missouri statutes, the exemptions have been revised and/or expanded over the last 70 years, without the benefit of reorganization or consolidation. As a result, there are multiple exemptions addressing related subject matter, and in some situations, exemptions which may overlap other exemptions. Appendix A outlines a schedule of the 211 Missouri sales and use tax exemptions as of January 1, 2016. As an example, there are 28 separately identified agricultural exemptions. There are more than a dozen exemptions applicable to transportation – trucking, railroads and air carriers – with inconsistent application based on how the vehicle or aircraft is registered, used or it’s carrying capacity. Consolidating and organizing exemptions within the statutes may reduce complexity, making compliance easier for taxpayers and reducing the Department of Revenue’s administration efforts and cost.

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<sup>52</sup> Sec. 143.261, RSMo.

<sup>53</sup> Sec. 144.030, RSMo.

<sup>54</sup> Ch. 144, RSMo.



Finally, many of Missouri sales tax exemptions are quite old and are not reflective or appropriate for modern times. For example, similar to most states, Missouri sales tax law contains an exemption for “prosthetic devices”. However, the statutory exemption applies to prosthetic devices “as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act”. While this was useful guidance when the exemption was originally passed, it is very outdated. Many current medical devices, which are recognized as “prosthetic devices” by other states and qualify for their prosthetic device exemption, were not even conceived of by device manufacturers, much less classified by the federal government, in 1980. The lack of an up-to-date definition results increases complexity and controversy for device manufacturers and retailers, device purchasers, the Department, and even the Administrative Hearing Commission.

**The Commission recommends the General Assembly consider an overhaul of Missouri’s sales and use tax exemptions, codifying them for easy use by taxpayers, eliminating redundant or unnecessary exemptions, and updating definitions to minimize unnecessary controversy.**

#### VI. Changing Judicial View of Missouri's Manufacturing Exemptions

Historically, the Missouri Supreme Court recognized that Missouri’s sales and use tax exemptions for manufacturing machinery and equipment<sup>55</sup> were intended as economic development tools. There are numerous examples of this over the last quarter of a century of Missouri sales tax case law. Beginning in 1970, in the *West Lake Quarry* case (*West Lake Quarry & Material Co., Inc. et al. v. Schaffner*, Supreme Court of Missouri 451 S.W.2d 140 (Mo. banc 1970)), the Court stated, “Obviously, the purpose of exempting machinery and equipment used in manufacturing or mining products to be sold for final use or consumption is to encourage the development of such enterprises to produce products in this state which are subject to sales tax when sold and thus build up the economy of this state.”

In the 46 years since the *West Lake Quarry* decision, the Court has considered the purpose of these exemptions in deciding controversies between taxpayers and the Department of Revenue:

- In its 1981 *Ozark Lead Company* decision<sup>56</sup>, the Court stated, “Although the exemption is construed strictly against the taxpayer, that requirement should not nullify the legislative purpose in making the exemption available. As pointed out in *West Lake*, one object of the exemption is to stimulate the economy by encouraging the production of products which are subject to the sales tax. An equally important object of such exemption is the furtherance of industrial development in the state, regardless of whether the products involved might become subject to the Missouri sales tax. *Floyd Charcoal Co. v. Director of Revenue*, 599 S.W.2d 173, 177 (Mo. banc 1980)”.
- In its 1996 *Concord Publishing House* decision<sup>57</sup>, when considering the application of the plant expansion exemption, the Court stated, “We have previously allowed the exemption

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<sup>55</sup> Sec. 144.030.2(5) and (6), RSMo.

<sup>56</sup> *State ex rel. Ozark Lead Company*, Supreme Court of Missouri 610 S.W.2d 954 (Mo. banc 1981)

<sup>57</sup> *Concord Publishing House, Inc., fka Cape Mississippi Development, Inc., dba Southeast Missourian v. Director of Revenue* 916 S.W.2d 186 (Mo. banc 1996)

for items purchased without evidence of physical expansion. *Noranda*, 599 S.W.2d at 4 (laboratory equipment); *Bridge Data*, 794 S.W.2d at 206 (computer hardware). Furthermore, such a limited interpretation would unduly restrict the legislature's purpose in passing the exemption. The legislature did not intend to fill the Missouri landscape with towering industrial plants, but to increase the number of products on which sales tax could be assessed."

- In its 2001 decision in *Lincoln Industrial*<sup>58</sup>, the Court stated, "In construing an ambiguous statute, the ultimate guide is the intent of the legislature." "In this particular case, the exemption and others were enacted by the legislature to encourage the production of items ultimately subject to sales tax and to encourage the location and expansion of industry in Missouri."
- In its 2002 *Southwestern Bell* decision<sup>59</sup>, frequently referred to as "Bell I", the Court stated, "... even though the term "manufacturing" ordinarily evokes images of a factory producing some physical product, the court has recognized that the sales tax statutes must be interpreted in light of the modern technology of the "information age." In *Bridge Data Co. v. Director of Revenue*, 794 S.W.2d 204 (Mo. banc 1990), the taxpayer supplied detailed securities information, primarily to institutional investors. It claimed the replacement exemption and plant expansion exemption on computer hardware used to process the financial information. The court concluded that Bridge performed manufacturing, as what came out of the system was clearly different from what went into it, and the statutes contained no "explicit requirement that the product be 'tangible'" in order for the manufacturing exemptions to apply."

When the Legislature fails to act in the face of the Court's or Commission's decision it "must be presumed to have accepted the judicial or administrative construction" of the statute<sup>60</sup>. Far from rejecting the above decisions of the Missouri Supreme Court interpreting the manufacturing exemptions, the General Assembly accepted those decisions and even expanded the manufacturing exemptions. For instance, in 1996, it removed the "product or design change" condition to qualify for the replacement machinery and equipment exemption<sup>61</sup>. In 1998, it exempted parts of machinery and equipment<sup>62</sup>. Also in 1998, the General Assembly provided a broadened definition of manufactured "product", which may be tangible personal property or a taxable service<sup>63</sup>.

In 2007 the General Assembly enacted Senate Bill 30, which provided expanded exemptions for machinery and equipment, and new exemptions for chemicals, materials and utilities consumed in manufacturing or processing. In addition, Senate Bill 30 broadly applied the expanded exemption to the manufacturing or processing of "any product", not just tangible personal property or services subject to sales tax.

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<sup>58</sup> *Lincoln Industrial, Inc. v. Director of Revenue* 51 S.W.3d 462 (Mo. banc 2001)

<sup>59</sup> *Southwestern Bell Telephone Co. v. Director of Revenue* 78 S.W.3d 763 (Mo. banc 2002)

<sup>60</sup> *State ex rel. Howard Electric Cooperative v. Riney*, 490 S.W.2d 1, 9 (Mo. 1973); see also *William A. Straub, Inc., v. City of St. Louis*, 506 S.W.2d 377, 380 (Mo. 1974); *Jacoby v. Missouri Valley Drainage Dist. of Holt County*, 163 S.W.2d 930, 939 (Mo. 1942); cf. *Medicine Shoppe International, Inc. v. Director of Revenue*, 156 S.W.3d 333, 334 (Mo. banc 2005)

<sup>61</sup> L. 1996, H.B. No. 1237

<sup>62</sup> L. 1998, S.B. No. 936

<sup>63</sup> L. 1998, S.B. No. 627



Despite the legislature's implicit acceptance of the Court's interpretations of the manufacturing exemptions from 1970 through 2005, the legislature's 1996 and 1998 expansions of the exemptions, and the 2007 expansion of the manufacturing exemptions through Senate Bill 30, in 2010 the Missouri Supreme Court began to view the manufacturing exemptions through a "different and more restrictive lens". In his dissenting opinion in the *Brinker Missouri* case<sup>64</sup>, Justice Price noted, in response to the majority's interpretation that production activities must be performed at a "plant", "*Prior decisions of this Court repeatedly have allowed a broad interpretation of manufacturing plants and processes for purposes of this exemption...Again, this Court repeatedly has allowed a broad interpretation of what output is sufficient to be considered manufacturing...The legislature enacted sections 144.030.2(4) and (5) to "encourage the production of items ultimately subject to sales tax and to encourage the location and expansion of industry in Missouri...By applying an unduly narrow construction to this exemption, the majority frustrates the legislative intent of creating jobs and nurturing small business in Missouri."*

Since the 2010 *Brinker* decision, the Missouri Supreme Court has continued to apply a narrow "strictly construed against the taxpayer" standard in applying these exemptions. In a series of cases from 2012-2015 cases (*Aquila*, *AAA Laundry*, *Union Electric*, *Ben Hur*, and *Fred Weber*), the Court espoused and applied a new, but undefined "industrial connotation" criterion, in ruling against taxpayers seeking to qualify for the manufacturing exemptions. In the latest decision on this issue<sup>65</sup> decided April 15, 2016, the Court overturned an Administrative Hearing Commission decision that had concluded, based on precedents from several of the 1970 through 2005 cases cited above, that IBM's customer MasterCard used computers it purchased from IBM for "manufacturing and "processing", and thus qualified for the manufacturing exemption.

The Court's decision in IBM not only impacted MasterCard by denying it an exemption that other Missouri companies using computer hardware in similar capacities had qualified for, but the Court used the decision to forcefully communicate its new "narrower" view of these exemptions. The Court stated, "*Greater familiarity with computer and other electronic technology and greater experience with the application of the word "manufacturing" in cases such as Brinker, Ben Hur, Fred Weber and Union Electric, have demonstrated that expanding the statutory definition of "manufacturing" in the Bell cases put the Court too far down a slippery slope. To the extent cases such as Bell I and Bell II suggest that an expansive interpretation of the word "manufacturing" is authorized by the "manufacturing" exemption, and to the extent that they hold that the electronic transfer of voices is itself manufacturing as that term is used in the exemption, they are no longer to be followed.*" In Footnote 5 of the IBM decision, the Court further stated, "*In addition, to the extent that the Commission and IBM read this Court's cases prior to Bell I and II to permit a broad rather than a narrow reading of exemptions, they are in error. The Commission should have read the exemption narrowly and held that the mere transmission and analysis of computer information is not the manufacturing of a product.*"

We identified two criteria relevant to this condition:

- Taxpayers should be provided clear and consistent guidance on the purpose and breadth of statutory exemptions.
- Tax policy of the state should be promulgated by the elected General Assembly, not the Court. While it is the Court's responsibility to interpret the statutes, it should not be within

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<sup>64</sup> *Brinker Missouri, Inc. v. Director of Revenue* 319 S.W.3d 433 (Mo. banc 2010)

<sup>65</sup> *IBM Corp. v. Dept. of Revenue* 491 S.W.3d 535 (Mo. banc 2016)



the Court's purview to overturn long-standing exemption interpretations which the General Assembly has implicitly accepted.

The Court's decision and footnote in *IBM*, and the recent cases (*Aquila*, *AAA Laundry*, *Union Electric*, *Ben Hur*, and *Fred Weber*) invoking a new "industrial connotation" requirement, undermine almost a half a century of precedents interpreting these manufacturing exemptions. As a result, taxpayers, tax practitioners, and the Department's auditors reviewing taxpayer's records, become uncertain as to how to apply these exemptions. Such uncertainty can have a significant detrimental effect on taxpayer investments in the state, and thwart the state's efforts to attract new businesses to locate or expand in Missouri.

The General Assembly passed "stop gap" legislation in both the 2016 and 2017 legislative sessions which prohibits the Department of Revenue from issuing notices based on the *IBM* decision until August 28, 2018. This legislation provides an opportunity for the General Assembly to consider the matter more fully before the Department takes action based on the Court's *IBM* decision.

**The Commission recommends the General Assembly clarify the purpose and breadth of the manufacturing exemptions. Specifically, the legislation should clarify if there is an "industrial connotation" requirement controlling where or in what context the manufacturing or processing activity must take place in order to qualify for the exemption, and provide the Missouri Supreme Court guidance on how the exemptions are to be construed.**

#### VII. Specific Sales Tax Provisions Needing Legislative Review

The Study Commission's Sales and Use Tax Work Group identified the following specific statutory provisions which merit legislative reconsideration:

1. DOCUMENTED WATERCRAFT "IN-LIEU" TAX - Under Section 306.016 RSMo, the purchase or use of a boat or vessel "documented" by the United States Coast Guard and operated Missouri waters is exempt from state and local sales or use tax, and is instead subject to an "in lieu watercraft tax". The "in lieu watercraft tax" is collected by the Department of Revenue and appropriated for use by the Missouri State Water Patrol. The in lieu tax rates established in the statute are:

<b>Purchase Price of Watercraft</b>	<b>Tax Due</b>
Less than \$15,000	\$500
\$15,001 to \$30,000	\$650
\$30,001 to \$50,000	\$1,000
\$50,001 to \$100,000	\$1,400
\$100,001 to \$150,000	\$2,000
\$150,001 to \$200,000	\$3,000
\$200,001 to \$250,000	\$4,000
\$250,001 to \$300,000	\$5,000
\$300,001 to \$350,000	\$5,500
\$350,001 to \$400,000	\$6,000
\$400,001 to \$450,000	\$6,500
\$450,001 to \$500,000	\$7,500
\$500,001 to \$550,000	\$8,500
\$550,001 to \$650,000	\$9,500
\$650,001 to \$750,000	\$10,500
\$750,001 and above	Add an additional \$1,500 for each \$100,000 increment

Essentially, this provision taxes large watercraft at an effective 1.50% tax rate, while motor vehicles, RVs, trailers and smaller boats are subject to sales tax at the full cumulative state and local sales tax rates. To illustrate the discrimination, consider a family in Springfield, Missouri, purchasing a \$50,000 pontoon boat or fishing boat. The \$50,000 pontoon or bass boat is subject to a 7.6% sales tax, amounting to \$3,800 in sales tax, while a documented yacht with the same purchase price is only subject to a \$1,000 “in-lieu” tax. Purchasers at the top end of the scale provided in the statute – purchasing a \$750,000 yacht which would normally be subject to \$57,000 sales tax at 7.6%, only have to pay a \$10,500 in-lieu tax, a savings of 81.6%. This provision not only favors the wealthy that can afford a large yacht, but it deprives cities and counties local sales taxes that would otherwise be collected on such sales.

2. **PARTIAL EXEMPTION DISADVANTAGES IN-STATE BUSINESSES** - Under Section 144.054.2 RSMo, purchases of electricity, gas, or propane, water, coal, and energy sources, chemicals, machinery, equipment, and materials used or consumed in the manufacturing, processing, compounding, mining, or producing of any product, or used or consumed in the processing of recovered materials, or used in research and development related to



manufacturing, processing, compounding, mining, or producing any product, are exempt from state sales and use tax and local use tax, but not local sales tax.

The last provision in this subsection - which makes such purchases subject to local sales taxes but not local use taxes - was added to the enacting legislation to minimize the impact of the expanded manufacturing exemption on local tax revenues. While that is a reasonable tax policy purpose, as enacted it encourages manufacturers buy from out-of-Missouri suppliers rather than businesses down the street. To illustrate the impact, consider a manufacturer in Kansas City, Missouri, that each year purchases \$500,000 of consumables to be used in its manufacturing operations – industrial gasses, chemicals, abrasives, polishing media, solvents, etc. If it purchases such items from suppliers outside Missouri – even if the supplier is located just across the state line in Kansas City, Kansas – it owes no state or local tax on such purchases. But if the manufacturer purchases such items from a Missouri supplier, it owes local sales taxes on such purchases. Purchasing that \$500,000 of goods each year from Kansas City, Missouri suppliers could cost the manufacturer \$21,875 to \$31,875 in local sales tax – tax that it would save by purchasing from suppliers outside Missouri.

Missouri offers a variety of economic development incentives to attract businesses to locate and expand in Missouri. The local sales tax carve-out in this exemption has the exact opposite impact – it encourages businesses to purchase from other states rather than from Missouri businesses. Our state tax policy should not encourage manufacturers to do business with out-of-state suppliers and disadvantage Missouri suppliers.

3. INTEREST DIFFERENTIAL – Under Missouri sales tax law, sellers that report and/or remit sales or vendor collected use tax late (after the statutory due date) are subject to loss of the 2% timely filing discount, late filing penalties (termed “additions to tax”) and statutory interest. Similarly, purchasers that fail to report and remit consumers use tax when due are subject to late filing penalties and statutory interest. The statutory interest rate charged on underpayment or late payment of tax is significantly different than the statutory interest charged on overpayments.

The statutory interest rate for late and underpayments, set by Sections 32.065 and 144.170 RSMo is the adjusted prime rate charged by banks<sup>66</sup>, which is currently 4% per annum. However, the interest rate for overpayments is set by Section 32.068 RSMo, and is based on the average rate of return on all funds invested by the state treasurer, which is currently only 9/10<sup>th</sup> of 1%. Given that the statutes provide penalties for failing to file returns or pay taxes on a timely basis, the rate of interest on underpayments and overpayments should be the same. Having a rate of interest charged on underpayments that is currently more than four times the rate of interest paid on overpayments is inequitable to taxpayers.

**The Commission recommends the General Assembly review each of the above statutory provisions and implement legislation to make the tax – and administration of the tax - more equitable to all taxpayers.**

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<sup>66</sup> Sec. 32.065, RSMo and Regulation 12 CSR 10-41.010(1).



### VIII. Limitations on State Taxation of "Remote Sellers"

As indicated in *Section I* above, the Missouri sales tax applies to "Missouri retail sales" – i.e. sales by in-state sellers to in-state purchasers. Like all of the states with a sales tax, Missouri also levies a complimentary "use tax", a tax on the "storage, use or consumption" of tangible personal property in the state. Sales which are "Missouri retail sales" are exempt from the use tax, so the use tax essentially is a tax purchases from out-of-state sellers. The use tax is designed to "compliment" the sales tax, by taxing goods purchased from out-of-state, eliminating the incentive for purchasers to buy out-of-state to avoid the sales tax. The use tax may be collected by an out-of-state seller registered to collect that tax, or alternatively, it may be self-remitted by the purchaser if the out-of-state seller does not collect Missouri use tax.

While Missouri has levied its use tax for 57 years, it is widely misunderstood - and ignored - by individual taxpayers and many businesses. When consumers make a catalog purchase, or buy online, they frequently see information indicating the seller only collects tax in one, or possibly just a few states – states where they have a "physical presence". And to most Missourians that is interpreted as "No Tax!" In reality, their purchase is subject to a tax - the use tax. And it has been since 1959.

Unique to Missouri, Missouri statutes do not require the filing of a Consumers Use Tax Return until the consumer has purchased more than \$2,000 of goods subject to the tax each calendar year. This \$2,000 filing threshold is not an "exemption" (i.e. it does not exempt the first \$2,000 in purchases from the tax). Rather, the entire amount of all purchases are subject to the tax, but there is no reporting requirement until the cumulative purchase amount exceeds \$2,000 each year. With this background, the Sales and Use Tax Work Group reviewed what Missouri has done to enforce collection of the use tax, and what it is allowed to do under federal limitations.

Enforcement of the use tax may be may consist of three separate but related efforts:

- Enforcement efforts directed at in-state business purchasers
- Enforcement efforts directed at in-state individual consumer purchases
- Enforcement efforts directed at out-of-state sellers

**In-State Business Purchasers** - In general, the Missouri Department of Revenue appears to focus its use tax enforcement efforts on in-state businesses. The Department registers in-state businesses to file Consumer's Use Tax returns when the business obtains its tax ID# for sales and withholding taxes. Businesses registered to file Consumers Use Tax Returns that fail to file returns receive Nonfiler Notices and are subject to collection efforts. And the Department conducts use tax compliance audits on businesses at the same time as it performs sales tax audits.

**In-State Individual Consumers** – The Missouri Department of Revenue has not taken the same level of effort to enforce use tax collection efforts with individual consumers. In 2011 only 168 Missourians filed Consumers Use Tax Returns, remitting \$205,087 in use tax payments. While 27 states have a line on their individual income tax returns for individuals to report untaxed purchases and calculate/remmit the use tax, Missouri eliminated this reporting line from the Missouri 1040 Individual Income Tax Return several years ago. There is a section on the Department's

website which explains the applicability of the use to individuals and provides instructions on how to prepare and file an individual a Consumers Use Tax Return, but in reality, almost no one does. The Department also provides instruction regarding the Consumers Use Tax in the Individual Income Tax Instruction Booklet, but with the advent of electronic filing, that booklet receives little use. As on-line shopping has become more and more popular, the number of Missourians purchasing more than \$2,000 of goods annually from out-of-state sellers and filing Consumers Use Tax Returns should have, but has not, dramatically increased. The Missouri Department of Revenue does not routinely conduct consumers use tax audits on individual taxpayers. Many times, the cost of enforcing use tax compliance on individual consumers outweighs the tax collected, and in general, states have not found individual consumer use tax enforcement to be the most effective use of limited resources.

**Out-of-State Sellers** – Since enforcement of the use tax with individual consumers is “inefficient”, more and more states are focusing their laws and their use tax enforcement efforts, on “remote” (out-of-state) sellers. Management of the Missouri Department of Revenue indicates they have not focused significant efforts on identifying out-of-state sellers that should be collecting Missouri use tax on their sales into the state, but rather have focused resources on enforcement with business consumers. While the above describes how the use tax operates and Missouri’s enforcement efforts, any discussion of use tax collection and enforcement must consider the limitations states face in imposing use tax collection responsibilities on remote sellers.

The U.S. Constitution prohibits states from imposing laws that would burden interstate commerce. The U.S. Supreme Court's 1992 ruling in *Quill Corp. v. North Dakota* (“*Quill*”) limits states to collecting use taxes from remote retailers who have a substantial nexus with the taxing state. In *Quill*, the Court adopted the *Complete Auto Transit Inc. v. Brady* test, which evaluates burdens on interstate commerce according to two inquiries: one, whether a fair share of taxation between intrastate and interstate commerce is maintained; and two, whether, the state’s levy of a tax disadvantages a remote (out-of-state) seller. Under *Quill*, a state may impose tax collection duties on a remote seller only if the remote seller has a substantial nexus (physical presence) in that state. Since the Constitution grants Congress the power to regulate interstate commerce, it is within Congress’ power to pass federal legislation granting states broader authority to tax remote sellers.

Across the U.S., brick-and-mortar retailers have been vocal about their disadvantage under *Quill*, which allows online retailers without a physical presence in a state to effectively make tax-free sales. In addition to placing Missouri retailers at a competitive disadvantage, the inability to effectively collect use tax on consumer purchases impacts both Missouri and the local tax jurisdictions which impose a local use tax. A University of Tennessee study estimated a national aggregate \$11.4 billion annual tax revenue loss from states' inability to collect tax on sales from non-nexus online retail transactions in 2012. More recently, a University of Missouri analysis estimated if both state and federal legislation had been in place in 2014 to allow Missouri to tax remote sellers, Missouri would have captured an additional \$358 million in state and local sales and use tax revenue. Combined, the average rate for state and local sales and use taxes in Missouri is 7.805 percent, which includes a 3 percent state general revenue sales tax, 1.225 percent in earmarked state sales taxes, and an average local tax of 3.58 percent. Based on the portions of the



total that each comprise, in 2014, collections would have resulted in the following increased revenues<sup>67</sup>:

- State General Revenue: \$137.6 million
- State Education (Proposition C): \$45.9 million
- State Conservation: \$5.7 million
- State Parks/Soil: \$4.6 million
- Localities: \$164.2 million

Since the *Quill* decision almost 25 years ago, there have been three types of efforts to resolve the prohibition on taxing remote sellers:

- Streamlined Sales Tax
- Attempts at federal legislation
- State legislation/litigation

**Streamlined Sales Tax** - responding to the *Quill* court's concern that the uncoordinated patchwork of state tax laws poses undue administrative burdens on interstate commerce, some states have undertaken efforts to harmonize their tax laws. The Streamlined Sales Tax Project began in 2000 to "simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance." The project initially focused on a few main areas of simplification, including streamlining administration of sales/use taxes to a single state-level agency; uniform definitions, establishing a uniform tax base, at least within the boundaries of the state, such that the same goods would be taxed or exempted; and simplifying tax rates so that one rate applies statewide. The result of the Streamlined Project is the Streamlined Sales and Use Tax Agreement ("SSUTA"). To date, 24 states - more than half of the 45 states which levy a general sales/use tax - have adopted the SSUTA, and conformed their sales tax laws and regulations to the Agreement's requirement. It should be noted that while the SSUTA as it exists today is a significant step forward in simplifying sales and use taxes, several of the original simplification tenets of the Streamlined Project were abandoned.

**Attempts at Federal Legislation** - The Marketplace Fairness Act is the most well-known federal attempt to reform *Quill*. The bill's most recent iteration was introduced in 2015 and awaits passage in the U.S. Senate. While previous versions stalled in Congress, the 2015 version was introduced soon after Justice Anthony M. Kennedy indicated that at least one member of the U.S. Supreme Court is willing to revisit the *Quill* rule. In his concurrence in *Direct Marketing Association v. Brohl*, Justice Kennedy said that "dramatic technological and social changes that have taken place in our increasingly interconnected economy" are "now inflicting extreme harm and unfairness on the states" as a result of the *Quill* decision.

The Marketplace Fairness Act of 2015 builds directly on top of the SSUTA by authorizing its member states to require remote retailers to collect and remit use taxes, regardless of tax nexus. States that are not voluntary member states of the Streamlined Agreement could receive that federal authorization to tax remote sellers by enacting sales and use tax laws that conform to specified "minimum simplification requirements". The law would exempt small remote sellers with gross remote receipts of \$1 million or less from the use tax collection requirements. Other

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<sup>67</sup> [https://ipp.missouri.edu/wp-content/uploads/sites/2/2014/06/internet\\_sales\\_and\\_use\\_tax.pdf](https://ipp.missouri.edu/wp-content/uploads/sites/2/2014/06/internet_sales_and_use_tax.pdf)



federal legislative proposals to address the taxation of remote sellers include the Remote Transactions Parity Act of 2015 and the Online Sales Simplification Act. While there are multiple proposed solutions, none of them appear to be gaining momentum in Congress.

**State Legislation/Litigation** – Absent a federal solution, many states have been implementing a number of alternative solutions. Several states, including Missouri (via Senate Bill 23 in 2013), have passed what is commonly referred to as “click-thru” legislation, which imposes a use tax collection responsibility on out-of-state sellers who enter into agreements with in-state residents or businesses for internet sales referrals or “click-thru” sales. As currently defined in Section 144.605 RSMo, an out-of-state seller is presumed to “engage in business activities within this state” and have substantial nexus with Missouri if it:

1. Sells a similar line of products as the vendor and does so under the same or a similar business name
2. Maintains an office, distribution facility, warehouse, or storage place, or similar place of business in the state to facilitate the delivery of property or services sold by the vendor to the vendor's customers
3. Delivers, installs, assembles, or performs maintenance services for the vendor's customers within the state
4. Facilitates the vendor's delivery of property to customers in the state by allowing the vendor's customers to pick up property sold by the vendor at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in the state, or
5. Conducts any other activities in the state that are significantly associated with the vendor's ability to establish and maintain a market in the state for the sales

Additionally, the statute provides that "an out-of-state seller shall be presumed to engage in business activities within Missouri if the vendor enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website, an in-person oral presentation, telemarketing, or otherwise, to the vendor, if the cumulative gross receipts from sales by the vendor to customers in the state who are referred to the vendor by all residents with this type of an agreement with the vendor is in excess of ten thousand dollars during the preceding twelve months."

As expanded in 2013, Missouri's out-of-state seller nexus standards are similar to many states, but not as aggressive as some other states. For example, Colorado passed legislation requiring remote sellers to notify their Colorado customers of their Colorado use tax liabilities and established an annual requirement for remote sellers that do not collect Colorado use taxes to report all untaxed transactions to the Colorado Department of Revenue. The Colorado law imposes significant penalties on out-of-state sellers that do not comply with the reporting requirements, and as a result, out-of-Colorado sellers may elect to voluntarily collect and remit the Colorado use tax rather than comply with the reporting requirements or face significant penalties. This Colorado reporting law was challenged, and recently survived judicial scrutiny. Kentucky, Louisiana, Oklahoma, Pennsylvania, South Carolina, South Dakota, and Vermont have recently enacted similar reporting statutes, and such proposals are being considered by a number of other states. Remote sellers' failure to comply with these reporting statutes can be costly – even more expensive than actually

collecting and remitting the state's taxes – leading remote sellers to “voluntarily” register rather than risk substantial penalties for failure to comply with these reporting requirements.

In an effort to challenge the *Quill* precedent, South Dakota implemented legislation effective May 1, 2016 requiring remote sellers, without any physical presence in the state of South Dakota, to register and collect and remit the South Dakota tax if the remote seller's gross revenue of sales of tangible property, any products transferred electronically, or services delivered into South Dakota exceeds \$100,000 per year, or if the remote seller has 200 or more separate sales transactions in the state per year. The legislation's sponsor told the press that the law, which has provisions directly contrary to the *Quill* rule, was designed at least in part to draw a legal challenge in the hope of overturning *Quill*. The law provides that once litigation has been filed, enforcement is stayed until the matter is finally adjudicated. And the law has provisions to expedite the matter through the courts.

The case challenging the South Dakota law, *State of South Dakota v. Wayfair Inc., Overstock.com, Inc. and NewEgg Inc.* was recently decided against the state by the South Dakota Supreme Court. The state appealed to the U.S. Supreme Court, but as of this report writing, the Court has not indicated if it will accept the case. In the *DMA v. Brohl* case, Justice Kennedy stated, “*The Internet has caused far-reaching systemic and structural changes in the economy, and, indeed, in many other societal dimensions. Although online businesses may not have a physical presence in some states, the Web has, in many ways, brought the average American closer to most major retailers. A connection to a shopper's favorite store is a click away - regardless of how close or far the nearest storefront. Today buyers have almost instant access to most retailers via cell phones, tablets, and laptops. As a result, a business may be present in a state in a meaningful way without that presence being physical in the traditional sense of the term.*” “*Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court's holding in Quill. A case questionable even when decided, Quill now harms States to a degree far greater than could have been anticipated earlier. The instant case does not raise this issue in a manner appropriate for the Court to address it. It does provide, however, the means to note the importance of reconsidering doubtful authority. The legal system should find an appropriate case for this Court to reexamine Quill and Bellas Hess.*” Even if the Court does not accept the *Wayfair* case as the vehicle to ultimately challenge *Quill*, it seems likely that the *Quill* “physical presence” standard will be reconsidered by the Court in the near future.

Legislation to modify Missouri's sales and use tax laws to conform to the Streamlined Agreement was introduced in each of the last several legislative sessions. It is important to understand that Missouri's ability to require remote sellers to collect and remit our use tax, while essential to effective enforcement of the tax, will ultimately be decided by the federal courts, or Congress, or both. Passage of legislation to conform Missouri's sales and use tax laws with the SSUTA, will not immediately give Missouri the authority to tax all remote sellers. But it may position Missouri to begin enforcing our use tax laws if, and when Congress or the courts eliminate or modify the current nexus limitations. Regardless of whether the ultimate resolution comes from the courts or from Congress, it appears likely that in order to avail themselves of additional taxing authority, states will have to meet some minimum simplification requirements – requirements that Missouri's overly complex sales tax system are not likely to meet. To the extent Missouri can take steps to simplify the tax, whether by adoption of the SSUTA or simply avoiding measures which add



further complexity, it may benefit both current taxpayers and potentially position Missouri for the future.

**The Commission has a multi-part recommendation with regards to this situation:**

- **Our most preferred solution - the Commission recommends the General Assembly strongly consider modifying Missouri's sales and use tax statutes and regulations to conform to the Streamlined Sales Tax Agreement. This will reduce complexity and position Missouri to more quickly begin imposing use tax collection requirements on remote sellers if and when nexus requirements are changed by the U.S. Supreme Court or Congress. Experience in other states indicates that even with the current enforcement limitations under *Quill*, some number of remote sellers are likely to voluntarily begin to collect Missouri tax if the state joins Streamlined, resulting in additional revenue for the state and local jurisdictions that impose use taxes.**
- **Our next-best solution, if the General Assembly is not willing to completely conform to the Streamlined Agreement, is to consider modifying Missouri's existing sales tax law to incorporate many of the definitions and terms in the Streamlined Agreement. This would also reduce complexity by making Missouri more uniform with Streamlined states, and move us "closer" to the expected requirements for taxation of remote sellers.**
- **The least preferred – but still positive solution -- would be to modify Missouri's sales tax laws to meet the minimum standards for remote seller taxation contained in the Marketplace Fairness Act (or similar federal legislation). While this would do little to resolve complexity, it would - similar to options one and two - position Missouri to more quickly begin imposing use tax collection requirements on remote sellers if and when nexus requirements are changed by the U.S. Supreme Court or Congress.**

**Last, separate from and in addition to the three solutions outlined above, the Commission recommends the General Assembly consider adoption of Remote Sales Tax Reporting legislation similar to Colorado, Kentucky, Louisiana, Oklahoma, Pennsylvania, South Carolina, South Dakota, and Vermont. Adoption of such reporting requirements with significant noncompliance penalties is expected to cause a significant number of remote sellers that do not currently collect and remit Missouri use taxes to voluntarily register and begin collecting taxes for Missouri and local jurisdictions imposing use taxes.**

### **Tax Administration Work Group**

The Study Commission's Tax Administration Work Group has focused its efforts on understanding the current administration of tax policy by the Missouri Department of Revenue (DOR) and identifying areas of deficiency or need for improvement. The Work Group was particularly focused on the experiences and interactions between taxpayers or tax preparers and the DOR in identifying these areas of deficiency or need for improvement. Through public testimony, Work Group meetings and the experiences of Work Group members, the following key focus areas were identified:

1. Technology and Modernization at Department of Revenue
2. Department of Revenue/Taxpayer Engagement and Communication



3. Turnover of Frontline Department of Revenue Personnel
4. The Use of Letter Rulings in Tax Administration
5. Public Accessibility to Department of Revenue Policies
6. Accuracy of Data Used by Department of Revenue for Sales and Use Tax Application

The Tax Administration Work Group's findings and recommendations are noted below. Recommendations to the Missouri General Assembly are emphasized in bold font. Recommendations are not listed in any particular order.

#### *I. Technology and Modernization at DOR*

Technological deficiencies and need for modernization at the Department of Revenue has been a long held complaint by taxpayers and tax preparers. The mainframe/COBOL based system used by the Department has long passed its usefulness and limited the ability of the Department to effectively and efficiently meet the needs of taxpayers and tax preparers in filing their taxes or resolving deficiencies and ensuring accuracy in filing.

As these problems have long since been identified, Department staff informed the Work Group that the Department is currently in the process of fully transitioning from the mainframe/COBOL based system to an integrated system. This system will allow the Department to greatly improve their ability meet the needs of taxpayers and tax preparers, improve the tax filing experience, improve the ability of the different divisions of the Department to communicate with one another, and to improve the ability of the Department to gather information to resolve disputes and work with taxpayers and preparers to ensure accurate filing.

According to Department staff, the transition from the COBOL system to the new integrated system has begun with the Sales and Use Tax System in the fall of 2016. The Income Tax System is scheduled to be completed and online in the fall of 2017, and by January of 2018 withholding taxpayers should be able to file electronically in a common format.

The Work Group was pleased with the effort by the Department to resolve these technological deficiencies and modernize its systems. The Work Group will continue to monitor this progress as these additional systems are scheduled to be online. Additionally, the Work Group is interested in gathering a further understanding of the full capabilities of the system as it is utilized by taxpayers, tax preparers and the Department.

**The Commission recommends that the General Assembly continue to monitor and support the progress of the conversion and modernization of the Department's integrated systems. Additionally, we encourage the General Assembly to encourage the Department (through the budget process) to continue to provide these enhancements for the taxpayers of the State of Missouri in a reasonable timeline, understanding the need to protect taxpayer's security and efficacy of the new system.**

## II. Department/Taxpayer Engagement and Communication

In public testimony and through the experiences of Tax Administration Work Group members, there has been an expressed frustration on behalf of taxpayers and tax preparers in communicating with or seeking information from the Department. As taxpayers or tax preparers are preparing filings or have questions regarding tax issues, they have expressed difficulties in obtaining sufficient answers or not being able to easily access an individual at the Department that can assist them. In evaluating these issues, the Work Group focused on: the closing of Department Taxpayer Assistance Offices, the establishment of the Office of Taxpayer Advocate, and the notification process for changes in sales and use tax interpretations.

### a. Department of Revenue Taxpayer Assistance Offices

The primary change that has occurred and been identified as the source of this breakdown in communication has been the permanent closing of Department of Revenue Taxpayer Assistance Offices. These offices were previously located throughout the state in St. Louis, Kansas City, Springfield, St. Joseph, Joplin, Cape Girardeau, and Jefferson City. Taxpayers and tax preparers expressed that these offices were invaluable in quickly answering questions and assisting in tax compliance. The locations of these offices were generally convenient for taxpayers and tax preparers.

The functions of the Taxpayer Assistance Offices were transitioned to a Jefferson City call center. Accordingly, call center volume has increased significantly and legislators have received numerous complaints from taxpayers unable to have their questions or issues resolved in a timely manner by the Department.

It is the understanding of the Work Group that the closure of these offices was a cost savings measure and the cost to begin reinstating the Taxpayer Assistance Offices has been estimated at \$2-3million, though more detailed figures are unknown at this time.

### b. Office of Taxpayer Advocate

The Office of the Taxpayer Advocate was established in Missouri Statute with the passage of HB 384 in 2015. The authority of the Office of the Taxpayer Advocate is to communicate with any taxpayer regarding any tax issues that the taxpayer is experiencing; to communicate with any employees of the Department of Revenue regarding a taxpayer's tax issues; and to have access to any records held by any department or agency regarding a taxpayer's tax issues<sup>68</sup>.

Though this position has been created in statute in order to better assist taxpayers in their interactions with the Department, the position has yet to be appointed by the governor and the office has yet to receive funding.

### c. Notification Process for Changes in Sales and Use Tax Interpretations

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<sup>68</sup> Sec. 37.650, RSMo.

For several years, sellers of taxable tangible personal property or services in Missouri who were responsible for collecting sales or use taxes complained that the Department was changing sales and use tax interpretations without notifying the impacted sellers of those changes. Additionally, sellers reported that the Department was enforcing changes instituted by an administrative hearing commission decision or a decision of a court of competent jurisdiction that a reasonable person would not be aware of without notification. This enforcement frequently came through the application of these interpretations during a Department audit of the seller, a process that commonly became known as “notification by audit”.

In order to address these concerns and improve compliance with changes in sales and use tax interpretations, a notification process was established with the passage of Senate Bill 18 in 2015. This bill amended RSMO 144.012 in order to ensure that sellers affected by a change in sales and use tax interpretations are notified by the Department of those changes before those taxes are required to be collected.

In actual practice, this notification process is only initiated once a change in interpretation occurs or has been established. A decision by the Director of the Department, the administrative hearing commission or a court is not a certainty and can occur at any time. Therefore, the unknown timing of a decision and the relative newness of the notification requirement has resulted in a current lack of a standardized notification process and the Department is still determining how to best identify the affected taxpayers that are in need of notification.

**The Commission recommends the following to enhance taxpayer engagement and communication:**

- **That the Department consider re-opening the Taxpayer Assistance Offices regionally, or at the very least a centralized office to work directly with tax professionals and taxpayers;**
- **That the Department appoint and staff the Office of Taxpayer Advocate as established by statute to communicate with taxpayers regarding any tax issue; and**
- **That the Department to develop a standardized method of notification upon changes to the sales and use tax interpretations and a process to field questions associated with such notification.**

### *III. Turnover of Frontline Department of Revenue Personnel*

In addition to the closure of the Department’s Taxpayer Assistance Offices, it was reported to the Work Group that a contribution to the frustration of taxpayers and tax preparers in their interactions with Department may be the result of high turnover of personnel. Department management reported to the Work Group that there is approximately a 30% annual turnover of personnel in the Department’s Audit Division and a 50% annual turnover in the call center, where most of those employees move to other state agencies. According to analysis by Department management, a move to another position within the Department is generally “job stress” driven, while a move outside the Department is usually driven by compensation.



**The Commission recommends the Department work with the General Assembly to reduce the turnover within the Department, thereby providing some continuity and stability within the Department to the benefit of the taxpayers.**

#### *IV. Frequency and Use of Letter Rulings*

The Work Group received testimony from business groups and tax preparers regarding the Department's increased use of letter rulings process in administering changes in tax law or interpretation rather than the use of the administrative rulemaking process. The administrative rules process is a detailed process for the establishment of an administrative rule requiring the relevant department or agency issuing the rule to engage with the public in drafting the rule.

According to the information provided by the Department (see Appendix B), the issuance of letter rulings by the Department has grown exponentially, while the administrative rule process has rarely been utilized. From July 2008 through June 2016, there were 1,038 letter rulings but only 16 administrative rules.

According to the Department website:

“A letter ruling is the Department of Revenue's response to a taxpayer's request for specific information about the tax treatment of a particular facet of the taxpayers' business or personal situation. The letter ruling is confidential, specific to the facts of the situation, and is binding on the Department of Revenue with respect to the taxpayer requesting the ruling for three years from the issue date of the letter. Letter rulings are not binding on the Department of Revenue with respect to any *other* taxpayers.”

However, the experience of taxpayers and tax preparers has been that the individual letter rulings are ultimately broadly applied and potentially used as department policy. This occurs most often during an audit. Additionally, as a matter of practice, when a letter ruling and an administrative rule are in conflict, the letter ruling prevails only for the individual holding the letter ruling.

The increased use of letter rulings, lack of utilization of the administrative rule making process, and the increased conflict between letter rulings, administrative rules and other relevant Department or judicial decisions has resulted in significant confusion amongst taxpayers and tax preparers.

**The Commission recommends the Department utilize the administrative rule making process to allow for input from the general public and to gain consistency of interpretation. Additionally, we recommend the Department to make such rulings readily available to the public and to remove from the Code of State Regulations (and other relevant databases) rules that have been superseded by judicial, legislative or administrative action.**

#### *V. Department of Revenue Policies and Accessibility*

According to tax preparers that provided information to the Tax Administration Work Group, the Department of Revenue does not make available to the public its policy or audit manuals.

Conversely, the Internal Revenue Service currently makes a policy and audit manual available to the public, and practitioners frequently use it as a resource to quickly answer questions and improve compliance with the law. Tax preparers indicated that the availability of a Department of Revenue policy or audit manual would mutually beneficial to the taxpayers, tax preparers and the state.

The Work Group also heard testimony from members about the development of state Offers of Compromise similar to those utilized by the Internal Revenue Service at the federal level. This would bring more uniformity and consistency to the process. It will also provide tax resolution options to citizens that are similarly afforded to them on the federal level.

**The Commission recommends that the Department make its policy directives and audit manual available for public use, thus mirroring the current policy of the Internal Revenue Service.**

#### *VI. Accuracy of Data Used by Department of Revenue for Sales and Use Tax Application*

In determining the applicable sales and use tax rates, the Department on data submitted by county clerks, municipalities and special taxing districts. However, during discussions amongst the Work Group it was expressed that there is a concern that the data that is submitted to the Department can often be outdated or incomplete. Obtaining data from local entities or special taxing districts has been challenging as a result of the limited data available in that entity's Geographic Information System (GIS). Finally, according to Department staff, the current license held by the Department with the state's GIS contractor does not allow for full functionality of the GIS overlays. The cost of obtaining a license to achieve full functionality is not known at this time.

The Department currently maintains a portal on its website for a taxpayer or seller to look up their applicable jurisdictions in calculating a rate: <https://dors.mo.gov/tax/strgis/input.jsp> However, as previously indicated, the system relies on the accurate compliance of taxing entities and the GIS system does not have full functionality.

As a result of these limitations, it was expressed to the Work Group that most businesses in Missouri do not rely on the state for this data and they instead develop their own systems, maps and overlays.

**The Commission recommends the General Assembly work with the State Tax Commission, the Department of Revenue, and local authorities to develop or enhance a process of notification of changes to the various taxing district and the associated tax rates/tax rate changes.**



## V. Appendices

### Appendix A Listing of Missouri Sales and Use Tax Exemptions and Exclusions

Generally, Missouri taxes all retail sales of tangible personal property and certain enumerated taxable services. However, there are a number of exemptions and exclusions from Missouri's sales and use tax laws. Although exemptions and exclusions both result in a transaction not being taxed, they operate differently.

Reference #	Classification	Year Enacted	Bill	Statute	Description
1	Agricultural	1939	HB 91	<u>144.030.2(1)</u>	Feed for livestock and poultry which is to be used in the feeding of livestock to be sold ultimately in processed form or otherwise at retail. [Changed to remove limitation. See 1998 SB 936.]
2	Agricultural	1939	HB 91	<u>144.030.2(1)</u>	Grain to be converted into foodstuffs which are to be sold ultimately in process form at retail.
3	Agricultural	1943	HB 251	<u>144.030.2(1)</u>	Limestone or fertilizer which is to be used for liming or fertilizing crops and seed which is to be used for seeding crops, which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail.
4	Agricultural	1949	HB 303	<u>144.030.2(1)</u>	Spray materials which are to be used for spraying growing crops, fruit trees or orchards, the crop of which when harvested will be sold ultimately in processed form at retail. [1969 HB 34 changed spray materials to poisons registered under the provisions of the Missouri Economic Poisons Law and added clarifying language.]
5	Agricultural	1961	SB 360	<u>144.030.2(8)</u>	Animals and poultry used for breeding or feeding purposes.
6	Agricultural	1979	SB 218	<u>144.030.2(23)</u>	All sales of feed additives mixed with feed for livestock or poultry.



7	Agricultural	1979	SB 218	<u>144.030.2(23)</u>	All sales of propane or natural gas, electricity, and diesel fuel used exclusively for drying agricultural crops.
8	Agricultural	1979	SB 218	<u>144.030.2(23)</u>	All sales of new and used farm machinery and equipment, and repair or replacement parts for new and used farm machinery and equipment, other than airplanes, motor vehicles and trailers, which is: (a) manufactured exclusively for agricultural purposes [1980 HB 1812 changed 'manufactured' to 'used']; (b) used on land owned or leased for the purpose of producing farm products; and (c) used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail.
9	Agricultural	1979	SB 218	<u>144.030.2(23)</u>	One-half of each purchaser's purchase of diesel fuel which is: (a) manufactured exclusively for agricultural purposes [1980 HB 1812 changed 'manufactured' to 'used']; (b) used on land owned or leased for the purpose of producing farm products; and (c) used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail.
10	Agricultural	1994	SB 477	<u>144.030.2(23)</u>	All sales of medications or vaccines administered to livestock or poultry in the production of food or fiber.
11	Agricultural	1994	SB 477	<u>144.030.2(23)</u>	All sales of pesticides used in the production of crops, livestock or poultry for food or fiber.
12	Agricultural	1994	SB 477	<u>144.030.2(23)</u>	All sales of bedding used in the production of livestock or poultry for food or fiber.
13	Agricultural	1995	SB 374	<u>144.045</u>	The definition of "farm machinery" under section 144.030.2(22) is expanded to include machinery or

					equipment whether or not attached to a vehicle or real property.
14	Agricultural	1995	SB 374	<u>144.047</u>	All sales of aircraft used solely for aerial application of agricultural chemicals shall be considered farm machinery and exempt as other farm machinery under section 144.030.2(22).
15	Agricultural	1996	HB 1466	<u>144.010.1(4)</u>	Definition of "Livestock" added to sales tax law to include cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich and emu, aquatic products as defined in section 277.024, RSMo, elk documented as obtained from a legal source and not from the wild, goats, horses, other equine, or rabbits raised in confinement for human consumption. [2005 SB 355 added "llamas, alpaca, buffalo"] (Expands common definition of livestock to allow farm exemptions found in sections 144.030.2(1), (22), (29), and (32) and 144.063 for these animals, birds and aquatic products.)
16	Agricultural	1996	HB 1466	<u>144.030.2(30)</u>	All livestock sales when either the seller is engaged in the growing, producing or feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering or leasing of such livestock.
17	Agricultural	1998	SB 936	<u>144.030.2(23)</u>	Lubricants used exclusively for farm machinery and equipment.
18	Agricultural	1998	SB 936	<u>144.030.2(33)</u>	Pesticides or herbicides used in the production of crops, aquaculture, livestock or poultry. [Overlaps with section 144.030.2(22).]
19	Agricultural	1998	SB 936	<u>144.030.2(35)</u>	Grain bins for storage of grain for resale.
20	Agricultural	2003	HB 600	<u>144.030.2(23)</u>	All supplies solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants,

						chukar, quail, or for producing milk for ultimate sale at retail.
21	Agricultural	2005	SB 355	<u>144.030.2(23)</u>		Field drain tile for agricultural use.
22	Agricultural	2007	SB 30	<u>144.030.2(34)</u>		Utilities purchased for research and development of agricultural/biotechnology and plant genomics products.
23	Agricultural	2007	SB 30	<u>144.030.2(34)</u>		Tangible personal property purchased for research and development of agricultural/biotechnology and plant genomics products.
24	Agricultural	2008	SB 931	<u>144.053.1</u>		All new or used farm tractors, repair or replacement parts for new or used farm tractors, supplies and lubricants and such other new or used machinery and equipment used exclusively, solely, and directly for the planting, harvesting, processing, or transporting of a forestry product.
25	Agricultural	2008	SB 931	<u>144.063</u>		All fencing materials used for agricultural purposes.
26	Agricultural	2008	SB 931	<u>144.063</u>		All purchases of motor fuel which are used for agricultural purposes.
27	Agricultural	2008	SB 931	<u>144.063</u>		All purchases of motor fuel for planting, harvesting, processing, or transporting of a forestry product.
28	Agricultural	2014	SB 727	<u>144.527</u>		Provides a sales and use tax exemption for farm products sold at farmers markets. The exemption does not apply to farm products sold by persons or entities with sales of at least \$25,000 from participating in farmers markets.
29	Air Pollution	1967	SB 19	<u>144.030.2(15)</u>		Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution.
30	Aircraft	1975	SB 3	<u>144.030.2(21)</u>		All sales of aircraft to common carriers for storage or for use in interstate commerce.



31	Aircraft	1994	HB 1578	<u>144.043</u>	New light aircraft, light aircraft kits, parts or components manufactured or substantially completed within this state, when such new light aircraft, light aircraft kits, parts or components are sold by manufacturer to a purchaser who is nonresident of this state, who will transport the light aircraft, light aircraft kit, parts or components outside this state within ten days after the date of purchase, and who will register any light aircraft so purchased in another state or country.
32	Aircraft	1996	HB 1466	<u>144.030.2(19)</u>	Samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples.
33	Aircraft	2008	SB 930	<u>144.030.2(41)</u>	All materials and replacement parts purchased for use directly upon, and for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants, and aircraft accessories.
34	Aircraft	2008	SB 930	<u>144.030.2(41)</u>	All equipment purchased for use directly upon, and for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants, and aircraft accessories.
35	Business Transfers	1979	SB 218	<u>144.011.1(1)</u>	The transfer by one corporation of substantially all of its tangible personal property to another corporation pursuant to a merger or consolidation effected under the laws of the state of Missouri or any other jurisdiction.
36	Business Transfers	1979	SB 218	<u>144.011.1(2)</u>	The transfer of tangible personal property incident to the liquidation or cessation of a taxpayer's trade or business, conducted in proprietorship, partnership or corporate form, except to the extent any transfer is made in the ordinary course of the taxpayer's trade or business.

37	Business Transfers	1979	SB 218	<u>144.011.1(3)</u>	The transfer of tangible personal property to a corporation solely in exchange for its stock or securities.
38	Business Transfers	1979	SB 218	<u>144.011.1(4)</u>	The transfer of tangible personal property to a corporation by a shareholder as a contribution to the capital of the transferee corporation.
39	Business Transfers	1979	SB 218	<u>144.011.1(5)</u>	The transfer of tangible personal property to a partnership solely in exchange for a partnership interest therein.
40	Business Transfers	1979	SB 218	<u>144.011.1(6)</u>	The transfer of tangible personal property by a partner as a contribution to the capital of the transferee partnership.
41	Business Transfers	1979	SB 218	<u>144.011.1(7)</u>	The transfer of tangible personal property by a corporation to one or more of its shareholders as a dividend, return of capital, distribution in the partial or complete liquidation of the corporation or distribution in redemption of the shareholder's interest therein.
42	Business Transfers	1979	SB 218	<u>144.011.1(8)</u>	The transfer of tangible personal property by a partnership to one or more of its partners as a current distribution, return of capital or distribution in the partial or complete liquidation of the partnership or of the partner's interest therein.
43	Business Transfers	1979	SB 218	<u>144.011.2</u>	The assumption of liabilities of the transferor by the transferee incident to any of the transactions enumerated in the above subdivisions (1) to (8) of subsection 1 of this section shall not disqualify the transfer from the exclusion described in this section, where such liability assumption is related to the property transferred and where the assumption does not have as its principal purpose the avoidance of Missouri sales or use tax.
44	Common Carrier	1967	SB 19	<u>144.030.2(12)</u>	Railroad rolling stock for use in transporting persons or property in interstate commerce.

45	Common Carrier	1982	SB 471	<u>144.030.2(27)</u>	Sales of fuel consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire, on navigable rivers bordering on or located in part in this state, if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such river.
46	Common Carrier	1985	SB 363	<u>144.030.2(12)</u>	All sales of motor vehicles licensed for a gross weight of 24,000 thousand pounds or more or trailers used by common carriers, as defined in section 390.020, RSMo, solely in the transportation of persons or property in interstate commerce.
47	Common Carrier	1993	HB 913	<u>144.805.1</u>	All sales of aviation jet fuel in a given calendar year to common carriers engaged in the interstate air transportation of passengers and cargo, and the storage, use and consumption of such aviation jet fuel by such common carriers, if such common carrier has first paid to the state of Missouri, in accordance with the provisions of this chapter, state sales and use taxes pursuant to the foregoing provisions and applicable to the purchase, storage, use or consumption of such aviation jet fuel in a maximum and aggregate amount of one million five hundred thousand dollars of state sales and use taxes in such calendar year.
48	Common Carrier	1993	HB 913	<u>144.807.1</u>	Purchase or storage by any common carrier engaged in the interstate air transportation of persons and cargo of tangible personal property, other than catered food and beverage products purchased for in-flight consumption and aviation jet fuel, within the state of Missouri, which tangible personal property is purchased or stored in the state of Missouri and is subsequently transported out of state by the common carrier and is used by the common



					carrier in the conduct of its business as a common carrier.
49	Common Carrier	2007	SB 22	<u>144.030.2(12)</u>	Expanded exemption for common carriers purchasing motor vehicles to include common carriers not operating solely in interstate commerce.
50	Exemption & Exclusions	1939	HB 91	<u>144.010</u>	Creation of the sales tax exemption laws.
51	Exemption & Exclusions	1939	HB 91	<u>144.010.1(2)</u>	Isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business does not constitute engaging in business, within the meaning of this article. [1977 SB 367 limits to annual sales of \$3,000 or less.]
52	Exemption & Exclusions	1939	HB 91	<u>144.010.1(6)</u>	Sales by the Missouri Department of Transportation. [State Highway Department excluded from the definition of "person" for purposes of sales tax law.]
53	Exemption & Exclusions	1939	HB 91	<u>144.030</u>	Creation of the sales tax exemption laws.
54	Exemption & Exclusions	1939	HB 91	<u>144.030.1</u>	Sales in commerce between Missouri and any other state or foreign country.
55	Exemption & Exclusions	1939	HB 91	<u>144.030.1</u>	Sales prohibited from taxing under the Constitution or laws of the United States of America or Missouri Constitution.
56	Exemption & Exclusions	1939	HB 91	<u>144.030.2(1)</u>	Motor fuel subject to an excise or sales tax under another law of Missouri.
57	Exemption & Exclusions	1939	p. 1457	<u>262.250</u>	All state fair entry fees.

58	Exemption & Exclusions	1961	SB 360	<u>144.030.2(10)</u>	The rental of films, records, or any type of sound or picture transcriptions [1988 SB 709 limited exemption by adding "for public commercial display" after "transcriptions."]
59	Exemption & Exclusions	1961	SB 360	<u>144.030.2(11)</u>	Pumping machinery and equipment used to propel products delivered by pipelines, engaged as common carriers.
60	Exemption & Exclusions	1967	SB 19	<u>144.030.2(17)</u>	Tangible personal property purchased by a rural water district.
61	Exemption & Exclusions	1973	HB 46	<u>144.011.1(9)</u>	Reusable containers used in connection with the sale of tangible personal property contained therein for which a deposit is required and refunded on return.
62	Exemption & Exclusions	1977	SB 367	<u>144.010.1(10)</u>	Excludes sales of computer printouts, computer output on microfilm or microfiche to a purchaser to enable the purchaser to obtain for his or her own use the desired information contained in such computer printouts.
63	Exemption & Exclusions	1977	SB 367	<u>144.010.1(10)</u>	Excludes sales of computer-assisted photo compositions.
64	Exemption & Exclusions	1977	SB 367	<u>144.010.1(2)</u>	Added exclusion to definition of business that sales of tangible personal property in the course of a partial or complete liquidation of a household, farm, or nonbusiness enterprise are excluded from sales tax.
65	Exemption & Exclusions	1979	SB 218	<u>144.011.1(10)</u>	The purchase by persons operating eating or food service establishments, of items of a nonreusable nature which are furnished to the customers of such establishments with or in conjunction with the retail sales of their food or beverage. Such items shall include, but not be limited to, wrapping or packaging materials and nonreusable paper, wood, plastic and aluminum articles such as containers, trays, napkins, dishes, silverware, cups, bags, boxes, straws, sticks and toothpicks.

66	Exemption & Exclusions	1979	SB 218	<u>144.011.1(9)</u>	The transfer of reusable containers used in connection with the sale of tangible personal property contained therein for which a deposit is required and refunded on return.
67	Exemption & Exclusions	1979	SB 218	<u>144.030.2(24)</u>	All sales of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil for domestic use and in any city not within a county, all sales of metered or unmetered water service for domestic use. Local sales tax can be reimposed under section 144.032.
68	Exemption & Exclusions	1979	SB 218	<u>144.030.2(25)</u>	All sales of handicraft items made by the seller or the seller's spouse if the seller or the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such sales do not constitute a majority of the annual gross income of the seller.
69	Exemption & Exclusions	1979	SB 218	<u>144.030.2(26)</u>	All excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code.
70	Exemption & Exclusions	1982	SB 475	<u>144.034</u>	All sales of advertising by legal newspapers, advertising agencies, broadcast stations, and standardized outdoor billboard advertising are sales of nontaxable services.
71	Exemption & Exclusions	1985	SB 152	<u>144.011.1(12)</u>	Excludes from sale tax: The transfer of a manufactured home other than: (a) A transfer which involves the delivery of the document known as the "Manufacturer's Statement of Origin" to a person other than a manufactured home dealer, as defined in section 700.010, RSMo, for purposes of allowing such person to obtain a title to the manufactured home from the department of revenue of this state or the appropriate agency or officer of any other state; (b) A transfer which involves the delivery of a "Reposessed Title" to a resident of this state if the tax imposed by sections 144.010 to 144.525 was not paid on the transfer of the



					manufactured home described in paragraph (a) of this subdivision.
72	Exemption & Exclusions	1986	SB 437	<u>144.030.2(18)</u>	All amounts paid for admission to museums, zoos and planetariums owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or corporation.
73	Exemption & Exclusions	1986	HB 957	<u>144.037</u>	All sales at retail made through the use of federal food stamp coupons.
74	Exemption & Exclusions	1986	HB 957	<u>144.038</u>	All sales at retail for which federal government coupons or vouchers under the supplemental feeding for women, infants and children program are used as payment.
75	Exemption & Exclusions	1986	SB 461	<u>313.085</u>	All sales of bingo supplies, equipment or cards, including pull-tab cards, to any organization duly licensed to conduct bingo pursuant to sections 313.005 to 313.085.
76	Exemption & Exclusions	1988	HB 1400	<u>144.012</u>	Reduces the amount subject to sales tax on vending machine sales to 135% of the net cost of the property vended during the reporting period.
77	Exemption & Exclusions	1988	HB 957	<u>144.039</u>	All purchases of all tangible personal property made by, or on behalf of, a state senator or state representative if such purchases are made from funds in such state senator's or state representative's state expense account.

78	Exemption & Exclusions	1988	HB 957	<u>144.062</u>	All sales of tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities for: (1) A county, other political subdivision or instrumentality thereof exempt from taxation under subdivision (10) of section 39 of article III of the Constitution of Missouri; (2) An organization sales to which are exempt from taxation under the provisions of subdivision (19) of subsection 2 of section 144.030; (3) Any institution of higher education supported by public funds or any private not-for-profit institution of higher education, exempt from taxation under subdivision (20) of subsection 2 of section 144.030; or (4) Any private not-for-profit elementary or secondary school exempt from taxation under subdivision (22) of subsection 2 of section 144.030.
79	Exemption & Exclusions	1990	HB 1315	<u>209.255</u>	Telephone surcharges imposed to recoup the costs of deaf relay services and distribution programs.
80	Exemption & Exclusions	1991	HB 39	<u>144.030.2(28)</u>	All sales made to an interstate compact agency created pursuant to sections 70.370 to 70.441, RSMo, (Bi-State Development Agency) and sections 238.010 to 238.100, RSMo, (Kansas City Area Transportation Authority) in the exercise of the functions and activities of such agencies as provided pursuant to compacts.
81	Exemption & Exclusions	1994	SB 477	<u>144.030.2(24)</u>	Adds to domestic use utility exemption all purchases of utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units.
82	Exemption & Exclusions	1994	SB 477	<u>144.044</u>	Exempts 40 percent of the purchase price of a new manufactured home.

83	Exemption & Exclusions	1994	SB 477	<u>144.062.2</u>	Adds to exemption all sales of tangible personal property and materials used or consumed in constructing, repairing or remodeling facilities for: (1) A county, other political subdivision or instrumentality thereof exempt from taxation under subdivision (10) of section 39 of article III of the Constitution of Missouri; (2) An organization sales to which are exempt from taxation under the provisions of subdivision (19) of subsection 2 of section 144.030; (3) Any institution of higher education supported by public funds or any private not-for-profit institution of higher education, exempt from taxation under subdivision (20) of subsection 2 of section 144.030; or (4) Any private not-for-profit elementary or secondary school exempt from taxation under subdivision (22) of subsection 2 of section 144.030.
84	Exemption & Exclusions	1994	SB 692	<u>262.250</u>	Exempts from tax any entry fee or charge authorized by the State Fair Commission.
85	Exemption & Exclusions	1994	SB 740	<u>313.821</u>	Exempts from tax any state or local admission fees imposed upon excursion gambling boat operators that are collected from each passenger boarding such excursion gambling boat.
86	Exemption & Exclusions	1995	HB 414	<u>144.030.2(28)</u>	Computers, computer software, and computer security systems purchased for use by architectural, engineering or accounting firms headquartered in this state. For the purposes of this subdivision, "headquartered in this state" means the office for the administrative management of at least four integrated facilities operated by the taxpayer is located in the state of Missouri. [1997 HB 491 removed accounting firms.]
87	Exemption & Exclusions	1995	SB 374	<u>144.045</u>	Exempts as nontaxable services charges for court transcripts, depositions, compressed transcripts, exhibits, computer disks containing any such item, or



					copies of any such item which are prepared by a court reporter.
88	Exemption & Exclusions	1996	HB 1466	<u>144.030.2(18)</u>	Admission charges to "fairs" added to exemption.
89	Exemption & Exclusions	1996	HB 1237	<u>144.030.2(22)</u>	All admission charges and entry fees to the Missouri state fair or any fair conducted by a county agricultural and mechanical society organized and operated pursuant to sections 262.290 to 262.530, RSMo.
90	Exemption & Exclusions	1996	HB 1466	<u>144.030.2(31)</u>	Barges which are to be used primarily in the transportation of property or cargo on interstate waterways.
91	Exemption & Exclusions	1998	SB 627	<u>144.020.1(4)</u>	Excluded any amounts paid for access to the Internet or interactive computer services. [SB 627 added definition of telecommunications service under Section 144.010.]
92	Exemption & Exclusions	1998	SB 936	<u>144.030.2(36)</u>	Feed which is developed for and used in the feeding of pets owned by a commercial breeder when such sales are made to a commercial breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo.
93	Exemption & Exclusions	1999	HB 516	<u>144.518</u>	Machines or parts for vending machines used in a commercial, coin operated amusement business and vending machines used in a commercial vending business where sales tax is paid on the gross receipts derived from the use of commercial, coin-operated amusement machines. [2007 SB 30 exempts from tax all gross receipts for the temporary use of coin operated amusement devices.]
94	Exemption & Exclusions	1999	HB 139	<u>144.811</u>	Any equipment purchased by a federally licensed commercial or public broadcast station when such equipment purchase is made as a result of federal mandate and the technological change that results.

95	Exemption & Exclusions	2000	SB 896	<u>144.815</u>	Bullion and investment coins.
96	Exemption & Exclusions	2003	SB 11	<u>144.817</u>	Tangible personal property that is donated to the State of Missouri without charge within one year of purchase.
97	Exemption & Exclusions	2005	SB 68	<u>144.030.2(39)</u>	Sales of tickets to any collegiate athletic championship event that is held in a facility owned or operated by a governmental authority or commission, a quasi governmental agency, a state university or college or by the state or any political subdivision thereof, including a municipality, and that is played on a neutral site and may reasonably be played at a site located outside the state of Missouri
98	Exemption & Exclusions	2007	SB 22	<u>144.030.2(40)</u>	All purchases made by a sports complex authority created under section 64.920, RSMo.
99	Exemption & Exclusions	2007	SB 30	<u>144.054.3</u>	All sales and purchases of tangible personal property, utilities, services, or any other transaction when such sales are made to or purchases are made by a contractor for use in fulfillment of any obligation under a defense contract with the United States government.
100	Exemption & Exclusions	2007	SB 30	<u>144.054.3</u>	All sales and leases of tangible personal property by any county, city, incorporated town, or village, provided such sale or lease is authorized under chapter 100, RSMo, and such transaction is certified for sales tax exemption by the department of economic development.
101	Exemption & Exclusions	2007	SB 22	<u>144.062</u>	Added any authority exempt from taxation under section 144.030.2(39) and the department of transportation or the state highways and transportation commission to the pass-through exemption.
102	Exemption & Exclusions	2007	SB 30	<u>144.518</u>	All gross receipts for the temporary use of coin operated amusement devices.

103	Exemption & Exclusions	2008	HB 2058	<u>144.057</u>	All tangible personal property included on the United States munitions list, as provided in 22 CFR 121.1, sold to or purchased by any foreign government or agency or instrumentality of such foreign government which is used for a governmental purpose.
104	Exemption & Exclusions	2009	HB 683	<u>144.054.4</u>	All sales and purchases of tangible personal property, utilities, services, or any other transaction that would otherwise be subject to the state or local sales or use tax when such sales are made to or purchases are made by a private partner for use in completing a project under sections 227.600 to 227.669, RSMo. (Missouri Public Private Partnerships Transportation Act)
105	Exemption & Exclusions	2010	HB 1442	<u>144.030.2(40)</u>	All purchases by a sports complex authority created under section 64.920, and all sales of utilities by such authority at the authority's cost that are consumed in connection with the operation of a sports complex leased to a professional sports team.
106	Exemption & Exclusions	2010	SB 928	<u>144.030.2(42)</u>	Exempts sales of sporting clays, wobble, skeet, and trap targets to any shooting range or similar place of business for use in normal course of business.
107	Exemption & Exclusions	2010	SB 928	<u>144.030.2(42)</u>	Exempts money received by a shooting range or similar place of business from patrons held by a shooting range or similar place of business for redistribution as the conclusion of the shooting event.
108	Exemption & Exclusions	2010	SB 0795	<u>274.180</u>	Cooperative Marketing Associations organized under Chapter 274 pays an annual fee of ten dollars only, in lieu of all franchise or license or corporation or other taxes, including state sales taxes, or taxes or charges upon reserves held by it for members.



109	Exemption & Exclusions	2013	SB 23	<u>144.030.2(18)</u>	All amounts paid or charged for admission or participation or other fees paid by or other charges to individuals in or for any place of amusement, entertainment or recreation, games or athletic events owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or corporation, provided, however, that a municipality or other political subdivision may enter into revenue-sharing agreements with private persons, firms, or corporations providing goods or services, including management services, in or for the place of amusement, entertainment or recreation, games or athletic events, and provided further that nothing in this subdivision shall exempt from tax any amounts retained by any private person, firm, or corporation under such revenue-sharing agreement;
110	Exemption & Exclusions	2015	SB 149	<u>144.8101(11)</u>	Creates state and local sales and use tax exemptions for data storage centers and allows municipalities to enter into loan agreements, or sell, lease, or mortgage municipal property for a technology business facility project.
111	Manufacturing Full Rate	1939	HB 91	<u>144.030.2(1)</u>	Fuel consumed in manufacturing or creating gas, power, steam, and electrical current to be sold ultimately at retail.
112	Manufacturing Full Rate	1939	HB 91	<u>144.030.2(1)</u>	Fuel consumed in furnishing water to be sold ultimately at retail.

113	Manufacturing Full Rate	1961	SB 360	<u>144.030.2(2)</u>	Machinery, machinery parts, and materials and manufactured goods which when used in manufacturing, processing, compounding, mining, producing or fabricating become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, mining, producing, or fabricating and which new personal property is intended to be sold ultimately for final use or consumption.
114	Manufacturing Full Rate	1961	SB 360	<u>144.030.2(3)</u>	Equipment, replacement parts, and materials purchased for use directly upon, and for the repair and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property.
115	Manufacturing Full Rate	1961	SB 360	<u>144.030.2(5)</u>	Machinery and equipment, replacing and used for the same purposes as the machinery and equipment replaced by reason of design or product changes, which is purchased for and used directly for manufacturing or fabricating a product which is intended to be sold ultimately for final use of consumption.
116	Manufacturing Full Rate	1961	SB 360	<u>144.030.2(6)</u>	Machinery and equipment purchased and used to establish new or to expand existing manufacturing mining or fabricating plants in the state if such machinery is used directly in manufacturing, mining or fabricating a product which is intended to be sold ultimately for final use or consumption.
117	Manufacturing Full Rate	1961	SB 360	<u>144.030.2(7)</u>	Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to the United States government or to any agency of the United States government.
118	Manufacturing Full Rate	1961	SB 360	<u>144.030.2(9)</u>	News print used in newspapers published for dissemination of news to the general public.

119	Manufacturing Full Rate	1965	HB 626	<u>144.030.2(2)</u>	Materials and manufactured goods which are ultimately consumed in the manufacturing process by becoming, in whole or in part, a component part or ingredient of steel products intended to be sold ultimately for final use or consumption.
120	Manufacturing Full Rate	1967	SB 19	<u>144.030.2(13)</u>	Electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, exclusive of the cost of electrical energy so used.
121	Manufacturing Full Rate	1967	SB 19	<u>144.030.2(14)</u>	Anodes which are used or consumed in manufacturing, processing, compounding, mining, producing or fabricating and which have a useful life of less than one year.
122	Manufacturing Full Rate	1979	SB 218,	<u>144.030.2(5)</u>	The materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in manufacturing, mining, fabricating or producing a product.
123			HB 726		
124	Manufacturing Full Rate	1979	SB 218,	<u>144.030.2(6)</u>	The materials and supplies solely required for the installation or construction of such machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating plants.
125			HB 726		
126	Manufacturing Full Rate	1995	HB 414	<u>144.030.2(5)</u>	Machinery and equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state.
127	Manufacturing Full Rate	1995	HB 414	<u>144.030.2(5)</u>	Materials and supplies required solely for the operation, installation or construction of such machinery and equipment, purchased and used to establish new, or to



					replace or expand existing, material recovery processing plants in this state.
128	Manufacturing Full Rate	1995	HB 414	<u>144.046</u>	All sales of separately measured electrical current to manufacturers of batteries in this state for conversion to stored chemical energy in new lead-acid storage batteries solely for the purpose of providing an initial charge in such batteries during the manufacturing process but not for the purpose of recharging any previously manufactured batteries. The sale at retail of such separately measured electrical current described in this section shall not be exempted from any local sales tax imposed under a local sales tax law, as defined in section 32.085, RSMo.
129	Manufacturing Full Rate	1996	HB 1466	<u>144.030.2(2)</u>	Adds to meaning of materials as including without limitation, gases and manufactured goods, including without limitation slagging materials and firebrick which are ultimately consumed in the manufacturing process of steel products intended to be sold ultimately for final use or consumption.
130	Manufacturing Full Rate	1998	SB 936	<u>144.030.2(13)</u>	Exempts electricity purchased for use in a material recovery processing plant if the raw materials used in such processing contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo.
131	Manufacturing Full Rate	1998	SB 936	<u>144.030.2(32)</u>	Electrical energy, gas, whether natural, artificial or propane, water, and other utilities which is ultimately consumed in connection with the manufacturing of cellular glass products.
132	Manufacturing Full Rate	1998	SB 936	<u>144.030.2(32)</u>	Electrical energy, gas, whether natural, artificial or propane, water, and other utilities which is ultimately consumed in any material recovery processing plant.

133	Manufacturing Full Rate	1998	SB 936	<u>144.030.2(34)</u>	Tangible personal property and utilities purchased for use or consumption directly or exclusively in the research and development of prescription pharmaceuticals consumed by humans or animals.
134	Manufacturing Full Rate	1998	SB 936	<u>144.030.2(5)</u>	Adds parts to the manufacturing exemption and clarifies replacement machinery and equipment.
135	Manufacturing Full Rate	1998	SB 936	<u>144.030.2(6)</u>	Adds parts to the manufacturing exemption.
136	Manufacturing Full Rate	1998	SB 936	<u>144.030.2(9)</u>	Exempts ink, computers, photosensitive paper and film, toner, printing plates and other machinery, equipment, replacement parts and supplies used in producing newspapers published for dissemination of news to the general public.
137	Manufacturing Full Rate	2003	SB 11	<u>144.030.2(23)</u>	Natural gas used in the primary manufacture or processing of fuel ethanol.
138	Manufacturing Full Rate	2004	HB 1182	<u>144.030.2(38)</u>	All sales or other transfers of tangible personal property to a lessor who leases the property under a lease of one year or longer executed or in effect at the time of the sale or other transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441, RSMo, or sections 238.010 to 238.100, RSMo.
139	Manufacturing Full Rate	2005	SB 355	<u>144.030.2(23)</u>	Natural gas, propane, and electricity used by an eligible new generation cooperative as defined in section 348.432, RSMo.
140	Manufacturing Full Rate	2005	SB 355	<u>144.030.2(23)</u>	Natural gas, propane, and electricity used by an eligible new generation processing entity as defined in section 348.432, RSMo.
141	Manufacturing Full Rate	2007	SB 30	<u>144.030.2(34)</u>	Utilities purchased for research and development of prescription pharmaceuticals.

142	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax electrical energy, gas, whether natural, artificial, or propane, water, coal, and other energy sources used or consumed in the manufacturing, processing, compounding, mining, or producing of any product.
143	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax chemicals and materials used or consumed in the manufacturing, processing, compounding, mining, or producing of any product.
144	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax machinery and equipment used or consumed in the manufacturing, processing, compounding, mining, or producing of any product.
145	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax electrical energy, gas, whether natural, artificial or propane, water, coal, and other energy sources used or consumed in the processing of recovered materials.
146	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax chemicals and materials used or consumed in the processing of recovered materials.
147	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax machinery and equipment used or consumed in the processing of recovered materials.
148	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax electrical energy, gas, whether natural, artificial, or propane, water, coal, and other emery sources used or consumed in research and development related to manufacturing, processing, compounding, mining, or producing any product.
149	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax chemicals and materials used or consumed in research and development related to manufacturing, processing, compounding, mining, or producing any product.



150	Manufacturing Partial Rate	2007	SB 30	<u>144.054.2</u>	Exempts from state tax and local use tax machinery and equipment used or consumed in research and development related to manufacturing, processing, compounding, mining, or producing any product.
151	Manufacturing Partial Rate	2007	SB 30	<u>144.054.3</u>	All utilities used or consumed directly in television or radio broadcasting.
152	Manufacturing Partial Rate	2007	SB 30	<u>144.054.3</u>	All machinery, and equipment used or consumed directly in television or radio broadcasting.
153	Manufacturing Partial Rate	2007	SB 30	<u>144.054.3</u>	All tangible personal property used for railroad infrastructure brought into this state for processing, fabrication, or other modification for use outside the state in the regular course of business.
154	Manufacturing Partial Rate	2008	SB 1181	<u>144.054.4</u>	All sales and purchases of tangible personal property, utilities, services, or any other transaction that would otherwise be subject to the state or local sales or use tax when such sales are made to or purchases are made by a private partner for use in completing a project under sections 227.600 to 227.669, RSMo.
155	Manufacturing Partial Rate	2015	SB 231	<u>144.054.5</u>	In addition to all other exemptions granted under this chapter, there is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to 144.761, and section 238.235, and the local sales tax law as defined in section 32.085, and from the computation of the tax levied, assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section 238.235, and the local sales tax law as defined in section 32.085, all materials, manufactured goods, machinery and parts, electrical energy and gas, whether natural, artificial or propane, water, coal and other energy sources, chemicals, soaps, detergents, cleaning and sanitizing agents, and other ingredients and materials inserted by commercial or industrial laundries to treat, clean, and sanitize textiles

					in facilities which process at least five hundred pounds of textiles per hour and at least sixty thousand pounds per week.
156	Medical	1978	HB 893	<u>144.030.2(19)</u>	Exempts all sales of insulin.
157	Medical	1978	HB 893	<u>144.030.2(19)</u>	Exempts all sales of prosthetic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act.
158	Medical	1978	HB 893	<u>144.030.2(19)</u>	Exempts all sales of orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act.
159	Medical	1978	HB 893	<u>144.030.2(19)</u>	Exempts all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items.
160	Medical	1979	SB 218,	<u>144.030.2(19)</u>	All sales of hearing aids and hearing aid supplies.
161			HB 726		

162	Medical	1997	HB 491	<u>144.030.2(19)</u>	Medical oxygen added to exemption.
163	Medical	1998	SB 936	<u>144.030.2(19)</u>	Home respiratory equipment and accessories added to exemption.
164	Medical	1998	SB 936	<u>144.030.2(19)</u>	Hospital beds and accessories added to exemption.
165	Medical	1998	SB 936	<u>144.030.2(19)</u>	Ambulatory aids, manual and powered wheelchairs, stairway lifts added to exemption.
166	Medical	1998	SB 936	<u>144.030.2(19)</u>	Braille writers, electronic Braille equipment added to exemption.
167	Medical	1998	SB 936	<u>144.030.2(19)</u>	All sales of scooters if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently.
168	Medical	1998	SB 936	<u>144.030.2(19)</u>	All sales of reading machines, electronic print enlargers and magnifiers if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently.
169	Medical	1998	SB 936	<u>144.030.2(19)</u>	Electronic alternative and augmentative communication devices.
170	Medical	1998	SB 936	<u>144.030.2(19)</u>	Over-the-counter or nonprescription drugs to individuals with disabilities.
171	Motor Fuel	2015	SB 231	<u>144.030.2(43)</u>	Motor fuel delivered to any marina within this state that sells such fuel solely for use in any watercraft, as such term is defined in section 306.010, and not accessible to other motor vehicles, is exempt from the fuel tax imposed by this chapter.
172	Motor Vehicles, Boats, Trailers	1963	SB 4	<u>144.025.1</u>	Trade-in allowance if the difference between the trade-in allowance and the purchase price of an article exceeds \$500, then tax is only imposed on the portion of the purchase price of the article in excess of the actual allowance made for the article traded in or



					exchanged. [1977 SB 367 reduced to \$250; 1979 SB 218 reduced to \$0.]
173	Motor Vehicles, Boats, Trailers	1975	SB 92	<u>144.07</u>	Motor vehicle leasing company eligible to purchase motor vehicles and trailers without payment of sales or highway use tax providing tax is paid on the amounts charged for each rental or lease agreement while the motor vehicle or trailer is domiciled in Missouri.
174	Motor Vehicles, Boats, Trailers	1977	SB 367	<u>144.025.1</u>	Added motor vehicles to the trade-in exemption and added the 30 day trade-in provision that if a motor vehicle is sold within 30 days of the purchase of a replacement motor vehicle, no tax is imposed on the purchase of the motor vehicle to the extent of the value of the motor vehicle that was sold. [1986 HB 957 increased to 90 days; 1998 SB 936 increased to 180 days.]
175	Motor Vehicles, Boats, Trailers	1977	SB 367	<u>144.071</u>	Refunds the sales tax on the purchase of a motor vehicle when the sale is rescinded within 60 days of the date of sale.
176	Motor Vehicles, Boats, Trailers	1983	HB 10	<u>144.027</u>	The amount of the insurance proceeds for theft or casualty of a vehicle, as certified by the insurance company, which is a credit against the purchase price of another vehicle which is purchased within 30 days of the date of payment by the insurance company for the replacement vehicle. [1986 HB 957 increased to 90 days; 1998 SB 936 increased to 180 days.] [1990 SB 494 extended theft and casualty loss replacement credit for losses that are not insured.]

177	Motor Vehicles, Boats, Trailers	1985	HB 280	<u>144.020.1(8)</u>	Added exclusion: In no event shall the rental or lease of boats and outboard motors be considered a sale, charge, or fee to, for or in places of amusement, entertainment or recreation nor shall any such rental or lease be subject to any tax imposed to, for, or in such places of amusement, entertainment or recreation. Rental and leased boats or outboard motors shall be taxed under the provisions of the sales tax laws as provided under such laws for motor vehicles and trailers.
178	Motor Vehicles, Boats, Trailers	1985	HB 280	<u>144.025</u>	Expands trade-in exemption for motor vehicles to include trailer, boats, and outboard motors purchased within 30 days. [1986 HB 957 increased to 90 days; 1998 SB 936 increased to 180 days.]
179	Motor Vehicles, Boats, Trailers	1985	HB 280	<u>144.070.7</u>	Expands motor vehicle leasing companies for motor vehicles and trailers to include boats and outboard motors.
180	Motor Vehicles, Boats, Trailers	1987	HB 605	<u>301.684</u>	Transfers of motor vehicles and trailers authorized by sections 301.675 to 301.682 and sections 306.455 to 306.465, RSMo.
181	Motor Vehicles, Boats, Trailers	1990	SB 494	<u>144.027.1</u>	Adds trailer, boats, and outboard motors to the theft and casualty credit for motor vehicles and increase replacement period from within 30 days to 90 days. [1998 SB 936 increased to 180 days.]
182	Motor Vehicles, Boats, Trailers	1990	SB 494	<u>144.071</u>	Refunds of the sales tax on purchases that are rescinded within 60 days of the date of sale for motor vehicles is expanded to include trailers, boats and outboard motors.

183	Motor Vehicles, Boats, Trailers	1990	HB 960	<u>306.016</u>	Boats or vessels documented by the United States Coast Guard or other agency of the federal government and operated on the waters of this state that pay the in lieu watercraft tax in place of all state and local sales taxes. The "in lieu" tax imposed is based upon the price of the boat or vessel, as follows: \$50,000 or less -- \$300; \$50,001 to \$100,000 -- \$600; \$100,001 to \$150,000 -- \$900; \$150,001 to \$200,000 -- \$1,200; \$200,001 and above -- \$1,500. [1994 SB 477 and 2003 HB 600 raised in lieu rates, which remain less than sales tax rates.]
184	Motor Vehicles, Boats, Trailers	1994	SB 477	<u>144.025.1</u>	Exempts from tax seller or manufacturer rebates on purchases motor vehicles, trailers, boats and outboard motors.
185	Motor Vehicles, Boats, Trailers	1998	SB 936	<u>144.025</u>	Adds trailers, boats, and outboard motors to trade-in exemption for motor vehicles and increased eligible purchase from within 90 days to within 180 days.
186	Motor Vehicles, Boats, Trailers	1998	SB 936	<u>144.030.2(18)</u>	Items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities.
187	Motor Vehicles, Boats, Trailers	2003	HB 600	<u>144.025.5</u>	Any purchaser of a motor vehicle or trailer used for agricultural use by the purchaser shall be allowed to use as an allowance to offset the sales and use tax liability towards the purchase of the motor vehicle or trailer any grain or livestock produced or raised by the purchaser. The director of revenue may prescribe forms for compliance with this subsection.
188	Motor Vehicles, Boats, Trailers	2012	HB 1402	<u>144.030.2(4)</u>	Motor vehicles registered in excess of fifty-four thousand pounds, and the trailers pulled by such motor vehicles, that are actually used in the normal course of business to haul property on the public highways of the state, and that are capable of hauling loads commensurate with the motor vehicle's registered weight; and the materials, replacement parts, and



					equipment purchased for use directly upon, and for the repair and maintenance or manufacture of such vehicles.
189	Not for Profit	1939	HB 91	<u>144.030.2(20)</u>	All sales made by or to religious and charitable institutions or by religious organizations, in the conduct of the regular religious, charitable or educational functions and activities. [1974 HB 1593 updated to current language.]
190	Not for Profit	1939	HB 91	<u>144.030.2(21)</u>	All sales made by or to eleemosynary institutions and penal institutions and industries operated by the department of penal institutions, in the conduct of the regular penal functions and activities. All sales made by or to educational institutions supported by public funds, in the conduct of regular educational functions and activities. All sales made by or to a state relief agency in the exercise of relief functions and activities. [1974 HB 1593 updated to current language.]
191	Not for Profit	1974	HB 1593	<u>144.030.2(21)</u>	All sales made to any private not-for-profit institution of higher education not otherwise excluded pursuant to subdivision (19) of this subsection.
192	Not for Profit	1974	SB 607	<u>144.030.2(22)</u>	All ticket sales made by benevolent, scientific, and educational associations which are formed to foster, encourage, and promote progress and improvement in the science of agriculture and in the raising and breeding of animals.
193	Not for Profit	1974	SB 607	<u>144.030.2(22)</u>	All ticket sales made by nonprofit summer theater organizations if such organizations are exempt from federal tax pursuant to the provisions of the Internal Revenue Code.

194	Not for Profit	1975	SB 3	<u>144.030.2(21)</u>	All sales made by or to not-for-profit civic, social, service, or fraternal organizations solely in their civic or charitable functions and activities. [1989 SB 709 added fraternal organizations which have been declared tax exempt organizations under section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended.]
195	Not for Profit	1979	SB 218,	<u>144.030.2(23)</u>	All sales made to any private not for profit elementary and secondary school.
196			HB 726		
197	Not for Profit	1988	HB 1400	<u>144.012</u>	All vending machine sales of tangible personal property by all vendors from vending machines located on the premises of any organization, institution or school whose sales are exempt under section 144.030.2(19).
198	Not for Profit	1992	HB 1155	<u>144.011.1(13)</u>	Charges for initiation fees or dues to fraternal beneficiaries societies, or domestic fraternal societies, orders or associations operating under the lodge system a substantial part of the activities of which are devoted to religious, charitable, scientific, literary, educational or fraternal purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
199	Not for Profit	1992	HB 1155	<u>144.011.1(13)</u>	Charges for initiation fees or dues to posts or organizations of past or present members of the armed forces of the United States or an auxiliary unit or society of, or a trust or foundation for, any such post or organization substantially all of the members of which are past or present members of the armed forces of the United States or who are cadets, spouses, widows, or widowers of past or present members of the armed forces of the United States, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

200	Not for Profit	1998	SB 936	<u>144.030.2(37)</u>	Materials purchased by a contractor for the purpose of fabricating tangible personal property which is used in fulfilling a contract for the purpose of constructing, repairing or remodeling facilities for an exempt entity located outside the state if the exempt entity is authorized to issue an exemption certificate to contractors in accordance with the provisions of that state's law and the applicable provisions of this section.
201	Resale	1963	SB 4	<u>144.020.1(8)</u>	Sales of tangible personal property if a sales tax is imposed on the amount paid or charged for the rental or lease of tangible personal property.
202	Resale	1996	HB 1237	<u>144.011.1(11)</u>	The purchase by persons operating hotels, motels or other transient accommodation establishments, of items of a nonreusable nature which are furnished to the guests in the guests' rooms of such establishments and such items are included in the charge made for such accommodations. Such items shall include, but not be limited to, soap, shampoo, tissue and other toiletries and food or confectionery items offered to the guests without charge.
203	Resale	1998	SB 936	<u>144.010.1(14)</u>	Added definition of the term "Product which is intended to be sold ultimately for final use or consumption" as meaning tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state ("or any other state" expanded the meaning of the term which expands the associated exemptions).



204	Resale	2010	SB 928	<u>144.018.1</u>	When a purchase of tangible personal property or service subject to tax is made for the purpose of resale, such purchase shall be either exempt or excluded under this chapter if the subsequent sale is: (1) Subject to a tax in this or any other state; (2) For resale; (3) Excluded from tax under this chapter; (4) Subject to tax but exempt under this chapter; or (5) Exempt from the sales tax laws of another state, if the subsequent sale is in such other state. The purchase of tangible personal property by a taxpayer is not for resale if it is used or consumed by the taxpayer in providing a service on which tax is not imposed by section 144.020.1, except purchases made in fulfillment of any obligation under a defense contract with the United States government.
205	Specialty	1996	SB 640	<u>144.809</u>	Any new or increase in any state or local sales or use tax rate, which tax or increase was not in effect on December 30, 1987, on the sale, storage, use or consumption of aviation jet fuel at or upon airports within the state of Missouri, which airports are recipients of federal grant funds, have submitted applications for or have been approved for federal grant funds, or which are otherwise eligible to apply for federal grant funds.
206	Specialty	1997	HB 491	<u>144.014</u>	Separate sales tax imposed on food at the rate of one percent (plus constitutional taxes of .225%). (Regular tax rate of four percent was previously imposed.) [Modified by 1999 HB 548.]

207	Specialty	1998	SB 936	<u>144.517</u>	Textbooks, as defined by section 170.051, RSMo, when such textbook is purchased by a student who possesses proof of current enrollment at any public or private university, college or other postsecondary institution of higher learning offering a course of study leading to a degree in the liberal arts, humanities or sciences or in a professional, vocational or technical field. This exemption shall not apply to any locally imposed sales or use tax. [1999 SB 33 narrowed exemption to apply only to Missouri schools and only books required or recommended for a class.]
208	Specialty	2003	SB 11	<u>144.049</u>	Clothing, school supplies, computer software and personal computers or computer peripheral devices during a three day period beginning at 12:01 a.m. on the first Friday in August. Certain dollar limits apply. (Back to School Holiday)
209	Specialty	2005	HB 186	<u>144.044</u>	Exempts 40 percent of the purchase price of a new modular unit as defined in section 700.010.
210	Specialty	2008	SB 1181	<u>144.526</u>	Energy star certified new appliances with a retail value of up to \$1,500 per appliance. (April 19 to April 25 each year) (Show Me Green Holiday)
211	Water Pollution	1967	SB 19	<u>144.030.2(16)</u>	Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution.

*Source: Prepared by Missouri Department of Revenue. List current as of 1/1/16.*

**Appendix B**  
**Missouri Department of Revenue Letter Rulings**

Number of Letter Rulings Issued Since 7/1/2006

FY 2006:	115	FY 2012:	127
FY 2007:	102	FY 2013:	122
FY 2008:	191	FY 2014:	91
FY 2009:	188	FY 2015:	109
FY 2010:	181	FY 2016:	77
FY 2011:	143		

Number of Regulations Filed by the Department Since 7/1/2006

FY 2006:	21	FY 2012:	1
FY 2007:	5	FY 2013:	2
FY 2008:	21	FY 2014:	2
FY 2009:	1	FY 2015:	2
FY 2010:	3	FY 2016:	1
FY 2011:	4		

Note: Each year the Department files an amendment to 12 CSR 10-41.010 to update the Annual Adjusted Rate of Interest. These totals include all proposed amendments and new regulations.



