

FIRST REGULAR SESSION

# SENATE BILL NO. 189

## 100TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR CRAWFORD.

Pre-filed December 19, 2018, and ordered printed.

0956S.02I

ADRIANE D. CROUSE, Secretary.

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### AN ACT

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

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

Section A. Sections 32.310, 144.605, and 144.757, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 32.310, 144.605,  
3 144.637, and 144.757, to read as follows:

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

- 8 (1) Ambulance districts;
- 9 (2) Community improvement districts;
- 10 (3) Fire protection districts;
- 11 (4) Levee districts;
- 12 (5) Library districts;
- 13 (6) Neighborhood improvement districts;
- 14 (7) Port authority districts;
- 15 (8) Tax increment financing districts;
- 16 (9) Transportation development districts;
- 17 (10) School districts; or
- 18 (11) Any other political subdivision that imposes a sales **or use** tax

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 within its borders and jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

20       c. Delivers, installs, assembles, or performs maintenance services for the

21 vendor's customers within the state;

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

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

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

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

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

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

53           (i) The cumulative gross receipts from the vendor's sales of  
54 tangible personal property to purchasers for the purpose of storage,  
55 use, or consumption in this state are one hundred thousand dollars or  
56 more during any twelve-month period, as determined under

57 **subparagraph b of this paragraph; or**

58       (ii) The vendor enters into two hundred or more separate  
59 transactions for the sale of tangible personal property to purchasers for  
60 the purpose of storage, use, or consumption in this state during any  
61 twelve-month period, as determined under subparagraph b of this  
62 paragraph;

63       b. Following the close of each calendar quarter, a vendor shall  
64 determine whether the vendor met either of the requirements provided  
65 under subparagraph a of this paragraph during the twelve-month  
66 period ending on the last day of the preceding calendar quarter. If the  
67 vendor met either of such requirements for any such twelve-month  
68 period, such vendor shall collect and remit the tax as provided under  
69 section 144.635 for a period of not less than twelve months, beginning  
70 not more than three months following the close of the preceding  
71 calendar quarter, and shall continue to collect and remit the tax for as  
72 long as the vendor is engaged in business activities in this state, as  
73 provided under this paragraph, or otherwise maintains a substantial  
74 nexus with this state;

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

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

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

91       (6) "Purchaser", any person who is the recipient for a valuable  
92 consideration of any sale of tangible personal property acquired for use, storage

93 or consumption in this state;

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

104 (8) "Sales price", the consideration including the charges for services,  
105 except charges incident to the extension of credit, paid or given, or contracted to  
106 be paid or given, by the purchaser to the vendor for the tangible personal  
107 property, including any services that are a part of the sale, valued in money,  
108 whether paid in money or otherwise, and any amount for which credit is given to  
109 the purchaser by the vendor, without any deduction therefrom on account of the  
110 cost of the property sold, the cost of materials used, labor or service cost, losses  
111 or any other expenses whatsoever, except that cash discounts allowed and taken  
112 on sales shall not be included and "sales price" shall not include the amount  
113 charged for property returned by customers upon rescission of the contract of  
114 sales when the entire amount charged therefor is refunded either in cash or credit  
115 or the amount charged for labor or services rendered in installing or applying the  
116 property sold, the use, storage or consumption of which is taxable pursuant to  
117 sections 144.600 to 144.745. The sales price shall not include usual and  
118 customary delivery charges that are separately stated. In determining the  
119 amount of tax due pursuant to sections 144.600 to 144.745, any charge incident  
120 to the extension of credit shall be specifically exempted;

121 (9) "Selling agent", every person acting as a representative of a principal,  
122 when such principal is not registered with the director of revenue of the state of  
123 Missouri for the collection of the taxes imposed pursuant to sections 144.010 to  
124 144.525 or sections 144.600 to 144.745 and who receives compensation by reason  
125 of the sale of tangible personal property of the principal, if such property is to be  
126 stored, used, or consumed in this state;

127 (10) "Storage", any keeping or retention in this state of tangible personal  
128 property purchased from a vendor, except property for sale or property that is

129 temporarily kept or retained in this state for subsequent use outside the state;  
130 (11) "Tangible personal property", all items subject to the Missouri sales  
131 tax as provided in subdivisions (1) and (3) **of subsection 1** of section 144.020;  
132 (12) "Taxpayer", any person remitting the tax or who should remit the tax  
133 levied by sections 144.600 to 144.745;  
134 (13) "Use", the exercise of any right or power over tangible personal  
135 property incident to the ownership or control of that property, except that it does  
136 not include the temporary storage of property in this state for subsequent use  
137 outside the state, or the sale of the property in the regular course of business;  
138 (14) "Vendor", every person engaged in making sales of tangible personal  
139 property by mail order, by advertising, by agent or peddling tangible personal  
140 property, soliciting or taking orders for sales of tangible personal property, for  
141 storage, use or consumption in this state, all salesmen, solicitors, hawkers,  
142 representatives, consignees, peddlers or canvassers, as agents of the dealers,  
143 distributors, consignors, supervisors, principals or employers under whom they  
144 operate or from whom they obtain the tangible personal property sold by them,  
145 and every person who maintains a place of business in this state, maintains a  
146 stock of goods in this state, or engages in business activities within this state and  
147 every person who engages in this state in the business of acting as a selling agent  
148 for persons not otherwise vendors as defined in this subdivision. Irrespective of  
149 whether they are making sales on their own behalf or on behalf of the dealers,  
150 distributors, consignors, supervisors, principals or employers, they must be  
151 regarded as vendors and the dealers, distributors, consignors, supervisors,  
152 principals or employers must be regarded as vendors for the purposes of sections  
153 144.600 to 144.745.

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

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

11 **3. The director shall provide and maintain a database that**

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

25       4. The director may provide address-based boundary database  
26 records for assigning taxing jurisdictions and associated rates which  
27 shall be in addition to the requirements of subsection 3 of this  
28 section. The database records shall be in the same approved format as  
29 the database records required under subsection 3 of this section and  
30 shall meet the requirements developed pursuant to the federal Mobile  
31 Telecommunications Sourcing Act, 4 U.S.C. Section 119(a). If the  
32 director develops address-based assignment database records, vendors  
33 shall be required to use such database. A vendor shall use such  
34 database records in place of the five- and nine-digit zip code database  
35 records provided for in subsection 3 of this section. If a vendor is  
36 unable to determine the applicable rate and jurisdiction using an  
37 address-based database record after exercising due diligence, the  
38 vendor may apply the nine-digit zip code designation applicable to a  
39 purchase. If a nine-digit zip code designation is not available for a  
40 street address or if a vendor is unable to determine the nine-digit zip  
41 code designation applicable to a purchase after exercising due  
42 diligence to determine the designation, the vendor may apply the rate  
43 for the five-digit zip code area. For the purposes of this section, there  
44 shall be a rebuttable presumption that a vendor has exercised due  
45 diligence if the vendor has attempted to determine the tax rate and  
46 jurisdiction by utilizing software approved by the director and makes  
47 the assignment from the address and zip code information applicable  
48 to the purchase. If the director has met the requirements of subsection

49 **3 of this section, the director may also elect to certify address-based**  
50 **databases provided by third parties for assigning tax rates and**  
51 **jurisdictions. The databases shall be in the same approved format as**  
52 **the database records under this section and meet the requirements**  
53 **developed pursuant to the federal Mobile Telecommunications Sourcing**  
54 **Act, 4 U.S.C. Section 119(a). If the director certifies an address-based**  
55 **database provided by a third party, a vendor may use such database in**  
56 **place of the database provided for in this subsection.**

57 **5. The electronic databases provided for in subsections 1, 2, 3,**  
58 **and 4 of this section shall be in downloadable format as determined by**  
59 **the director. The databases may be directly provided by the director**  
60 **or provided by a third party as designated by the director. The**  
61 **databases shall be provided at no cost to the user of the database. The**  
62 **provisions of subsections 3 and 4 of this section shall not apply if the**  
63 **purchased product is received by the purchaser at the business location**  
64 **of the vendor.**

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

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

18 subsection 2 of this section select one of the distribution options permitted in  
19 subsection 4 of section 94.890 for distribution of all municipal use taxes.

20           2. (1) The ballot of submission, except for counties and municipalities  
21 described in subdivisions (2) and (3) of this subsection, shall contain substantially  
22 the following language:

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

33  YES  NO

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

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

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

62                    YES                    NO

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

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

69       Shall the municipality be authorized to impose a local use tax at  
70       the same rate as the local sales tax by a vote of the governing body,  
71       provided that if any local sales tax is repealed, reduced or raised  
72       by voter approval, the respective local use tax shall also be  
73       repealed, reduced or raised by the same action? [A use tax return  
74       shall not be required to be filed by persons whose purchases from  
75       out-of-state vendors do not in total exceed two thousand dollars in  
76       any calendar year.] **Approval of this question will eliminate**  
77       **the disparity in tax rates collected by local and out-of-state**  
78       **sellers by imposing the same rate on all sellers.**

79                    YES                    NO

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

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

85       Shall the \_\_\_\_\_ (city name) impose a local use tax at the same rate  
86       as the local sales tax, [currently at a rate of \_\_\_\_\_ (insert  
87       percent)] which includes the capital improvements sales tax and  
88       the transportation tax, provided that if any local sales tax is  
89       repealed, reduced or raised by voter approval, the respective local

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

97  YES  NO

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

101       (4) If any of such ballots are submitted on August 6, 1996, and if a  
102 majority of the votes cast on the proposal by the qualified voters voting thereon  
103 are in favor of the proposal, then the ordinance or order and any amendments  
104 thereto shall be in effect October 1, 1996, provided the director of revenue  
105 receives notice of adoption of the local use tax on or before August 16, 1996. If  
106 any of such ballots are submitted after December 31, 1996, and if a majority of  
107 the votes cast on the proposal by the qualified voters voting thereon are in favor  
108 of the proposal, then the ordinance or order and any amendments thereto shall  
109 be in effect on the first day of the calendar quarter which begins at least  
110 forty-five days after the director of revenue receives notice of adoption of the local  
111 use tax. If a majority of the votes cast by the qualified voters voting are opposed  
112 to the proposal, then the governing body of the county or municipality shall have  
113 no power to impose the local use tax as herein authorized unless and until the  
114 governing body of the county or municipality shall again have submitted another  
115 proposal to authorize the governing body of the county or municipality to impose  
116 the local use tax and such proposal is approved by a majority of the qualified  
117 voters voting thereon.

118       3. The local use tax may be imposed at the same rate as the local sales  
119 tax then currently in effect in the county or municipality upon all transactions  
120 which are subject to the taxes imposed pursuant to sections 144.600 to 144.745  
121 within the county or municipality adopting such tax; provided, however, that if  
122 any local sales tax is repealed or the rate thereof is reduced or raised by voter  
123 approval, the local use tax rate shall also be deemed to be repealed, reduced or  
124 raised by the same action repealing, reducing or raising the local sales tax.

125 4. For purposes of sections 144.757 to 144.761, the use tax may be

126 referred to or described as the equivalent of a sales tax on purchases made from  
127 out-of-state sellers by in-state buyers and on certain intrabusiness  
128 transactions. Such a description shall not change the classification, form or  
129 subject of the use tax or the manner in which it is collected.

✓

Unofficial

Bill

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