

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0309-03
Bill No.: Truly Agreed To and Finally Passed HCS for SB 87
Subject: Taxation and Revenue - Income
Type: #Updated
Date: June 25, 2019
#Updated to reflect additional information from the Department of Revenue (pages 24-30)

Bill Summary: This proposal modifies provisions relating to taxation.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
#General Revenue	(Could exceed \$37,600,281)	(Could exceed \$26,997,265)	(Could exceed \$26,997,265)
#Total Estimated Net Effect on General Revenue	(Could exceed \$37,600,281)	(Could exceed \$26,997,265)	(Could exceed \$26,997,265)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 46 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Blind Pension (0621)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Pediatric Cancer Research Trust (0959)	\$0	\$0	\$0
KC Regional Law Enforcement Memorial Foundation	\$0	\$0	\$0
Soldiers Memorial Military Museum in St. Louis	\$0	\$0	\$0
#School District Trust (0688)	(Could exceed \$1,823,938)	(Could exceed \$1,823,938)	(Could exceed \$1,823,938)
#Conservation Commission (0609)	(Could exceed \$227,992)	(Could exceed \$227,992)	(Could exceed \$227,992)
#Parks, Soil & Water (0613 & 0614)	(Could exceed \$182,394)	(Could exceed \$182,394)	(Could exceed \$182,394)
Gaming Commission (0286)	(Less than \$25,000)	(Less than \$25,000)	(Less than \$25,000)
Gaming Proceeds for Education (0285)	(Could exceed \$294,903)	(Could exceed \$294,903)	(Could exceed \$294,903)
#Total Estimated Net Effect on <u>Other</u> State Funds	(Could exceed \$2,554,227)	(Could exceed \$2,554,227)	(Could exceed \$2,554,227)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
#Local Government	(Could exceed \$7,806,137)	(Could exceed \$7,778,254)	(Could exceed \$7,778,254)

FISCAL ANALYSIS

ASSUMPTION

§67.1360 Lexington, Higginsville and Odessa Public Safety Sales Tax

Officials at the **Office of Administration Division of Budget and Planning (B&P)** assume this proposal would allow the cities of Lexington, Higginsville, and Odessa in Lafayette County to implement a voter approved transient guest tax.

Because the proposal does not enact a DOR collection cost fee, and the transient tax must be voter-approved, there should be no Total State Revenue or 18e impact.

B&P defers to DOR for collection cost estimates for the transient taxes.

Officials at the **Department of Revenue (DOR)** assume there was no fiscal impact from this proposal. The Department does not collect this tax, the locals who assess it do.

Officials at the **City of Higginsville** assume the city has three hotels/motels and they estimate the annual revenue for the city would be based on the tax rate of:

2% of room rate = \$13,671

3% of room rate = \$20,506

4% of room rate = \$27,342

5% of room rate = \$34,177

In response to similar legislation filed this year, HB 674, officials at the **City of Lexington** assumed this would raise \$3,000 in tax.

In response to similar legislation filed this year, HB 674, officials at the **City of Odessa** did not respond to Oversight's request for fiscal impact.

Oversight assumes the proposal allows the Cities of Higginsville, Lexington and Odessa to put before their voters a transient guest tax. The tax can be no less than 2% and no more than 5%. This proposal requires a vote of the people before collection of the tax. Oversight will show the increase in the Cities revenue of \$0 (not approved by the cities voters) to Could exceed the estimates provided by the Cities.

Oversight notes this proposal would give these Cities the option to vote to have a transient guest tax. Oversight notes the effective date of this proposal would be August 28, 2019. Oversight assumes the question would be put before the voters at the general municipal election in April 2020 (FY 2020). Therefore, the earliest the sales tax could become effective would be the first

ASSUMPTION (continued)

day of the second calendar quarter after the Department of Revenue is notified of voter approval.

In this case, the earliest effective date assuming voter approval at the April 2020 general municipal election would be October 1, 2020 (FY 2021). Therefore, only nine months of taxes would be collected in FY 2021.

§135.090 Surviving Spouse Tax Credit

Officials at the **B&P** assumed this section would extend the sunset date for the Surviving Spouse Tax Credit from 2019 to 2027. Since the tax credit has not yet sunset, the sunset extension will not impact Total State Revenue or the calculation under Article X, Section 18(e).

Officials at the **DOR** assume this section extends the Peace Officer Surviving Spouse Tax Credit from December 31, 2019 to December 31, 2027. When it comes to extension of tax credits, the Department always assumes there is no impact due to the continuing of a current program. The Department had the following redemptions from this credit:

Fiscal Year	Number of Claimants	Amount of Redemptions
2013	34	\$61,132
2014	37	\$76,533
2015	22	\$70,941
2016	34	\$117,554
2017	33	\$89,502

Oversight notes this section extends the sunset date from December 31, 2019 to December 31, 2027 for the Peace Office Surviving Spouse Tax Credit. The tax credit program allows the surviving spouse of a public safety officer killed in the line of duty to claim a refundable tax credit against individual income taxes imposed by Chapter 143, in an amount equal to the property taxes paid on the surviving spouse's homestead. The surviving spouse may claim the credit each year until such time as the surviving spouse remarries. The tax credit is refundable; therefore, if the tax credit amount exceeds the amount of tax due from the surviving spouse, the excess will be refunded to the taxpayer. There is no cap on this program.

ASSUMPTION (continued)

Oversight notes according to the Tax Credit Analysis submitted by the Department of Revenue regarding this program, the Peace Officer Surviving Spouse tax credit program had the following activity;

	FY 2016	FY 2017	FY 2018	FY 2019 (projected)	FY 2020 (projected)
Amount Redeemed	\$117,554	\$89,502	\$66,086	\$0	\$0

Oversight prepared a sunset report on this program in 2018, which showed the following information:

YEAR	CLAIMS FILED	CREDITS REDEEMED	AVERAGE CREDIT PER CLAIM
FY 2009	fewer than 7	\$9,583	N.A.
FY 2010	12	\$22,363	\$1,864
FY 2011	11	\$16,861	\$1,533
FY 2012	14	\$32,793	\$2,342
FY 2013	34	\$61,132	\$1,798
FY 2014	37	\$76,533	\$2,068
FY 2015	22	\$70,941	\$3,225
FY 2016	34	\$117,554	\$3,457
FY 2017	33	\$89,502	\$2,712
FY 2018	NA	\$66,086	NA

Source: Department of Revenue

Oversight will show the extension of the sunset as a loss of \$84,123 (average of the past five years) annually.

ASSUMPTION (continued)

§135.562 Residential Dwelling Tax Credit

Officials at the **B&P** assume this section would extend the sunset date for the Residential Dwelling Access Tax Credit from 2019 to 2025. Since the tax credit has not yet sunset, the sunset extension will not impact Total State Revenue or the calculation under Article X, Section 18(e).

Officials at the **DOR** assume this section extends the sunset of the Residential Dwelling Tax Credit from December 31, 2019 to December 31, 2025. When it comes to extension of tax credits, the Department always assumes there is no impact due to the continuing of a current program. The Department had the following redemptions from this tax credit:

Residential Renovations for Disability Tax Credit Redemptions - Per Fiscal Year	
FY13	\$10,258
FY14	\$6,759
FY15	\$18,190
FY16	\$10,233
FY17	\$7,053
FY18	\$11,044

Oversight notes according to the Tax Credit Analysis submitted by the Department of Revenue regarding this program, the Residential Dwelling (Disabled Access for Homeowners) tax credit program had the following activity;

	FY 2016	FY 2017	FY 2018	FY 2019 (projected)	FY 2020 (projected)
Amount Redeemed	\$10,233	\$7,053	\$11,044	\$15,000	\$0

Oversight notes this tax credit is to sunset on December 31, 2019 and this proposal would extend the tax credit until December 31, 2025. Oversight will show the revenue reduction continuing in future years starting in FY 2021.

ASSUMPTION (continued)

§139.031 Refund of Protested Taxes

Officials at the **B&P** assumed this proposal will not impact Total State Revenue or the calculation under Article X, Section 18(e).

This proposal may have an unknown negative impact to the Blind Pension Trust Fund, if the fund receives payments paid under protest that are subsequently required to be refunded and if such interest payment required under §32.068 is higher than the interest that would have otherwise been paid under current law.

This proposal may have a significant negative impact to local taxing jurisdictions if the interest payment under §32.068 is higher than the interest payments required under current law.

Officials at the **DOR** assume this section will allow a taxpayer to receive interest on property taxes paid under protest and that have been distributed by the collector to the appropriate taxing authorities at the rate that is prescribed under §32.068.

#Currently, in §32.068 interest is determined each quarter by the state treasurer. It is based on a formula using the previous twelve month average rate of return of all funds invested by the state treasurer. The current rate is 4%.

This will not have an impact to the Department.

Officials at the **State Tax Commission (STC)** notes that current law allows taxpayers to receive interest on property taxes paid under protest when adjudicated affirmatively in their favor at a rate equivalent to the rate of interest such taxes would have earned if held by the collector. Section 139.031 entitles a taxpayer to receive interest at the same rate as provided in current law for various Department of Revenue purposes. The agency does not have the data to determine if the interest rate proposed in the act is higher than the interest rate provided for in current law to local collection authorities.

In response to similar legislation filed this year, SB 300, officials at the **St. Louis County Treasurer** report that currently, the State of Missouri can earn approximately 2% interest on monies in its accounts, whereas St. Louis County is limited to 0.35%. If the State of Missouri calculates the interest on refunded taxes at the state rate, then St. Louis County could lose \$165,000 per year based on the most recent tax refund data. St. Louis County would owe more to taxpayers than it has received and could earn, which would make this proposal an unfunded

ASSUMPTION (continued)

mandate. Counties cannot be compelled to return more money than they receive. Also, the St. Louis County Collector is simply a pass-through agent for school, fire, library and other property tax district revenues. This bill directs enforcement actions against the collector for monies that may no longer be in the County's possession, as they would be distributed to other taxing districts.

In response to similar legislation filed this year, SB 300, officials at **Monroe County** and the **St. Francois County Assessor's Office** assumed there was no fiscal impact from this proposal.

DOR for informational purposes provided Oversight with the history of the interest rate calculated under §32.068.

Interest Rates – Refunds 32.068/32.069				
Year	Q1	Q2	Q3	Q4
2018	0.9%	1.0%	1.2%	1.3%
2019	1.5%	1.7%		

Interest Rates – Delinquencies 32.065	
Year	
2018	4%
2019	5%

DOR states that §32.068 is determined quarterly by the state treasurer and §32.065 is adjusted annually by the Director of Revenue. House Bill 1858 (2018) modified §32.069 by changing the rate in which interest on refunds is determined from Section 32.068 to Section 32.065 (effective July 1, 2019).

Oversight notes that this proposal would require the County Collectors to pay interest on refunded tax rates under the interest rate calculation in §32.068. Oversight was unable to determine if the amount of interest currently paid by the County Collectors is higher or lower than the rate currently calculated under §32.068. Oversight will assume that the rate earned by counties would be lower than that earned by the state.

Oversight will show a \$0 to Unknown negative impact to the Blind Pension Fund and \$0 to Unknown over \$100,000 to the local County Collectors' funds.

ASSUMPTION (continued)

§143.121 Business Interest Expenses

Officials at the **B&P** noted that the federal Tax Cut and Jobs Act (TCJA) placed a cap on the amount of business interest that could be claimed on the federal tax return in any given year. The TCJA allows any unclaimed interest expenses to be carried forward indefinitely until the full amount has been deducted. This limit and carry forward provision began for tax year 2018.

This section would allow Missouri businesses to claim the full amount of business interest in the first year it occurred by allowing businesses to subtract any remaining amount of interest not already included in the Missouri Adjusted Gross Income (MAGI). In future years, businesses would then be required to add back into their MAGI the business interest that was carried forward on their federal return. **B&P** notes that this would accelerate the amount of business interest claimed into the first tax year available, but would not reduce the total amount of interest claimed over time. Therefore, this proposal will not impact Total State Revenue or the calculation under Article X, Section 18(e).

B&P estimates that this section may have a significant impact on cash flow from year to year, depending on the amount of interest accelerated through this proposal. **B&P** is unable to estimate the potential cash flow impact as the required information is only available on federal returns and **B&P** does not have access to such returns. **B&P** further notes that because tax year 2018 has ended and this section would not be enacted until after the start of FY 2020, any businesses impacted would have to file an amended tax year 2018 return in FY 2020. Therefore, this may have a larger cash flow impact in FY 2020 than would otherwise be typical in future fiscal years.

Oversight notes this proposal would become effective on August 28, 2019. Since this proposal is for tax years beginning January 1, 2018, **Oversight** notes that any filer who reported disallowed investment interest expense would need to amend their tax return starting August 29, 2019. **Oversight** assumes this would cause a loss of revenue in FY 2020 and a gain in FY 2021 and FY 2022. As stated by **B&P**, this proposal does not change the amount of tax a company would owe just when the tax is required to be paid.

§143.732 - 2019 Tax Returns

Officials at the **B&P** assume this proposal would prohibit penalties for tax year 2018 remittance payments until after December 31, 2019 for taxpayers who timely file their individual income tax return and make a good faith effort to participate in a repayment plan authorized by DOR.

ASSUMPTION (continued)

This section would also prohibit the assessment of interest on late payments until May 15, 2019. B&P notes that the current tax due date is April 15th. Therefore, this proposal would reduce interest collections by one month.

This proposal also requires DOR to refund any relevant penalty and interest payments made prior to May 15, 2019 by December 31, 2019. B&P notes that this provision may push some of the impact from this proposal into FY 2020. However, B&P does not have any information on the amount of such impacted that would be shifted between FY 2019 and FY 2020. Therefore, B&P will show the full impact from this proposal as occurring in FY 2019, due to the emergency clause located in Section B.

In 2015, DOR assessed \$7.2 million in failure to pay and miscellaneous penalties for individual income taxes. In 2016, DOR assessed \$6.6 million in such penalties for individual income taxes. Therefore, B&P estimates that this proposal will reduce individual income tax penalties by \$6.9 million (the average of 2015 and 2016).

In 2015, DOR assessed \$4.0 million in interest for the period after an individual remittance return was filed with the state, but before a payment demand letter was sent to the taxpayer. For the purpose of this fiscal note, B&P will assume that payment letters are mailed within four months of the final tax due date. In 2016, DOR assessed \$3.6 million in interest for the period after an individual remittance return was filed with the state, but before a payment demand letter was sent to the taxpayer. Therefore, B&P estimates that interest collections for the 30 days after the April tax due date in 2015 was \$1.0 million ($\$4.0\text{M} / 4$) and in 2016 was \$0.9 million ($\$3.6\text{M} / 4$). Therefore, B&P estimates that this proposal will reduce interest assessments for individual income taxes by \$1.0 million (the average of 2015 and 2016).

Therefore, B&P estimates that this provision will reduce Total State Revenue and General Revenue by \$7.9 million in FY 2019.

Oversight will show the \$6.9 million estimated by B&P for the penalties and the \$1 million estimated for the one month of interest for the individual income tax, for a total of **\$7.9 million**.

Officials from the **DOR** assume this proposal would prevent penalties for delayed payments on outstanding income tax liabilities for the 2018 tax year, as long as a taxpayer timely files their return. There may be interest assessed on outstanding income tax liabilities, provided that no interest will be assessed before May 15, 2019. This section also allows for a refund to be issued to taxpayers that paid the penalties and interest prior to May 15, 2019.

ASSUMPTION (continued)

This proposal would only apply to taxpayers who established a payment plan with the Department of Revenue and participate in the plan in good faith. There is a sunset on December 31, 2019.

For individual taxpayers, the Department for TY 2015 collected \$7.2 million in penalties that would be exempt under this bill, and in TY 2016 it collected \$6.7 million. The average amount of this collection was \$6.9 million. The amount of interest that was collected in TY 2015 for one month was \$1.0 million, and in TY 2016 was \$.9 million. With the average being \$1.0 million in interest paid.

Tax Year	Returns Filed	Failure to Pay Penalty Paid	Misc Penalty Paid	Interest Paid
2015	261,772	\$7,247,727	\$279	\$4,032,495
2016	232,513	\$6,639,977	\$0.00	\$3,598,076

DOR notes that under Chapter 143 (not including the criminal penalties under §143.911 - §143.951) they can assess interest and additions to tax for the following:

- a. Interest is mandated by §143.731 and cannot be abated.
- b. An addition to tax for failure to timely file (§143.751)
- c. An addition to tax for failure to timely pay (§143.741)
- d. An addition to tax for failure to pay estimated income tax (§143.761)
- e. A penalty for filing incomplete or misleading return (§143.773)

DOR also notes that both b and c have a mental intent component. For failure to file, if the failure is due to reasonable cause not willful neglect, the director may abate. For failure to pay, the addition is assessed only when the deficiency is due to negligence or intentional disregard of the rules and regulations. If the director finds no negligence or intentional disregard, the penalty may be abated.

Oversight notes the penalties and interest rates are:

- a) Interest - is established under §32.068 & §32.069 (see below for more information)
- b) Failure to timely file - 5% penalty each month up to a cap of 25% (for five months).
- c) Failure to timely pay - 5% of delinquency
- d) Failure to pay estimated income tax - calculated in DOR Form 2210
- e) Filing incomplete or misleading return - DOR says they could not find an instance where they have assessed this penalty

ASSUMPTION (continued)

The **DOR** states that §32.068 is determined quarterly by the state treasurer and §32.065 is adjusted annually by the Director of Revenue. House Bill 1858(2018) modifies §32.069 by changing the rate in which interest on refunds is determined from Section 32.068 to Section 32.065 (effective July 1, 2019).

DOR, for informational purposes, provided Oversight with the history of the interest rate calculated under §32.068.

Interest Rates – Refunds 32.068/32.069				
Year	Q1	Q2	Q3	Q4
2018	0.9%	1.0%	1.2%	1.3%
2019	1.5%	1.7%		

Interest Rates – Delinquencies 32.065	
Year	
2018	4%
2019	5%

Oversight notes this proposal would not allow DOR to assess any penalty or interest on any taxpayer that files timely (b above) for, all underpayment of taxes (d above), or for not paying taxes by April 15th (c above) and would not allow interest on any payment to accrue until after May 15th (a above). This proposal would expire on December 31, 2019 making this in effect for the remainder of the calendar year.

Oversight notes that DOR on their website has stated it will not collect any penalties for the underpayment of taxes as long as at least 85% of the tax is paid by April 15th, the previous limit was 90%. Oversight inquired which provisions of law allow DOR to not collect underpayment penalties (d above) and if they could waive the entire fee. DOR responded that they are following the Internal Revenue Service’s lead, which is waiving that fee as of January 16, 2019. DOR has stated they already intend to waive this penalty; however, they are not currently required to do so. Oversight inquired again of DOR of what statutory authority they have to waive this penalty and DOR responded that §143.961 requires them to follow as nearly as practicable the rules and regulations of the Treasury of the United States. Oversight notes DOR has stated they intend to waive the penalty for those who filed at least 85%; however, this proposal would mandate the penalty for underpayment be waived for all who file by April 15th.

ASSUMPTION (continued)

Oversight is unclear whether the department's interpretation of §143.961 would still require DOR to follow the federal penalty rule and still assess penalties for underpayment of estimated tax less than 85% (d above), rather than 0% in this proposal. Oversight notes the average amount collected over the last two years from the under-withholding penalty is **\$1,370,649**. Oversight will reflect in the fiscal note \$0 (DOR discretion in waiving the penalty) to the estimate of the penalty.

Oversight is unclear how this proposal will impact filers who have already filed and were assessed and/or already paid any penalties. Oversight inquired of DOR if there have been any taxpayers who have filed for the 2018 tax year that have already been assessed or paid penalties. DOR stated that their records show that roughly 30,000 taxpayers self-reported a penalty, and of those 5,900 have paid the penalty. DOR states they will refund the penalty following the department's normal procedures.

Oversight has inquired about DOR's ability to waive penalties and interest. DOR stated that the director had no ability to resolve this problem in a blanket manner, except when granting an extension under §143.551 or if an individual/corporate taxpayer follows the formal dispute procedure in §32.378.

Oversight notes that §143.551 grants the Director of Revenue the ability to grant extensions up to six months of time for payment of tax or estimated tax or any installment thereof. It appears that DOR may already have the discretion to compensate taxpayers for required penalties and interest charged as a result of under withholding.

Oversight notes that DOR stated that §32.378 allows them to compromise on taxes; any penalties or interest and that the provision requires each taxpayer to file a formal dispute in order to initiate a compromise.

Oversight notes that Article 4, §22 Missouri Constitution empowers the Department of Revenue to collect all taxes and fees payable to the state as provided by law. §32.378 empowers the director of revenue to compromise any penalties or additions to tax assessed to promote effective tax administration which means that compromise of the liability will not undermine compliance by taxpayers with the tax laws, and that regardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance by taxpayers. Such exceptional circumstances include, but are not limited to, instances where the taxpayer's failure to pay the taxes assessed is the result of circumstances beyond the reasonable control of the taxpayer and is not the result of negligence on the part of the taxpayer, or instances where a reasonable person would not have expected the assessment based

ASSUMPTION (continued)

on previous policy of the department of revenue or information provided to the taxpayer by the department of revenue.

Oversight assumes that as a result of uncertainty beyond the reasonable control of the taxpayer, and not the result of their negligence due to errors in the tax withholding tables, that the department of revenue may compromise its collection practices under §32.378 without this legislation; however, DOR has stated each taxpayer would be required to file a formal dispute in order for them to be able to compromise.

Oversight currently does not have the data or resources available to produce independent revenue projections, therefore Oversight uses the same assumptions for revenue growth as the FY 2020 Consensus Revenue Estimate (CRE) for revenue growth in all future years. The CRE assumes an increase in net general revenue collections of \$192.6 million for FY 2020.

Oversight notes pursuant to §143.011 - §143.022 (SBs 509 & 496 2014) if the previous fiscal year's net general revenue collections exceed the highest net general revenue collections of the three previous fiscal years by at least \$150 million, then there will be a reduction in the individual income tax rate by one-tenth of a percent and a reduction for individual income tax filers of 5% of "business income." These reductions will reduce net General Revenue collections by an estimated \$160.0 million annually. Oversight notes the proposed legislation may impact future net revenue collections and could impact future triggering of the rate reductions required under §143.011 - §143.022.

With the emergency clause for this part of the proposal, Oversight had shown a potential impact in FY 2019 in previous fiscal notes. Currently (June 12, 2019), this proposal has not been signed by the Governor and a relatively short window exists for these provisions to impact FY 2019. Therefore, Oversight will shift this potential impact to FY 2020 collections (and tax refund remittances).

ASSUMPTION (continued)

§143.980 Taxpayer Protection Act

Officials at the **DOR** assume this proposal states that, for all tax years beginning on or after January 1, 2020, that any income tax return or claim for a refund prepared by a paid tax return preparer shall be signed by the paid tax return preparer and shall bear the paid tax return preparer's Internal Revenue Service preparer tax identification number (PTIN). Any paid tax return preparer who fails to sign the return or claim for refund or who fails to provide his or her preparer tax identification number, shall pay a penalty of fifty dollars for each such failure. Such penalty may not be assessed if the failure was due to reasonable cause.

The aggregate penalty that may be imposed by the Department on any paid tax return preparer shall not exceed twenty-five thousand dollars per preparer per calendar year.

The Director of Revenue may commence suit to enjoin any paid tax return preparer from further engaging in any conduct described in subdivision (2) of this subsection (143.980.4), or from further action as a paid tax return preparer.

This proposed legislation states that, for every tax year beginning on or after January 1, 2020, for every Missouri tax return prepared by a paid tax return preparer and submitted to the Missouri Department of Revenue without said preparer's signature or without said preparer's Internal Revenue Service preparer tax identification number shall pay a penalty of fifty dollars, for each such failure.

The fund or account that shall receive the revenues generated from the penalty on paid tax return preparers could increase by an unknown to minimal amount.

Currently, the Department does not capture data on how many returns are filed without a PTIN or signature of a paid tax return preparer if completed by a paid tax return preparer. The Department believes, though, that a penalty up to \$100 can accrue on a single tax return; \$50 for failure of preparer's signature and \$50 for not providing PTIN.

In 2016, Missouri had 2,781,440 returns filed. Based on information published by the IRS, 1,431,490 federal returns from Missouri were completed by a paid preparer.

The Department believes that the maximum increase to the fund or account that shall receive the revenues generated from the penalty or paid tax return preparers could increase by an unknown amount up to \$143,149,000 (1,431,490 preparers x \$100 penalty) each year.

ASSUMPTION (continued)

DOR notes this proposed legislation may increase Total State Revenue by an unknown amount up to \$143,149,000 each year if each fine is levied on every tax form done by a preparer. While we realize the maximum impact is not likely, we know of no methodology to support a percentage less than 100 percent. In such cases, we choose to show the General Assembly the highest possible impact, even though it is likely it will be considerably less.

The Department of Revenue has no way to know how many preparers would be fined and has no data on the number of tax preparers in the state.

Officials at the **B&P** assume this section would create the "Taxpayer Protection Act" which requires all paid tax return preparers to sign any income tax return and provide the preparer's IRS preparer identification number. A tax return preparer who fails to sign the return or provide their IRS identification number will be subject to a penalty of \$50 for each failure. The aggregate amount of penalties may not exceed \$25,000 per paid tax return preparer.

Article IX, Section 7 of the Missouri Constitution requires that penalties, forfeitures, and fines collected for violations of state law be distributed to the schools. To the extent any additional such revenues are deposited into the state treasury, this section may increase Total State Revenue.

Oversight was unable to determine how many paid preparers there are in the state or determine an appropriate percentage of returns that fail to have a signature. Oversight notes that in §143.980.2(2) that certified public accountants are not included in the definition of paid tax return preparer (therefore not subject to this proposal), therefore, the 1,431,490 returns is likely overstated. Additionally an amendment added to this proposal would exempt from the penalty "any enrolled agent enrolled to practice before the IRS pursuant to 31 C.F.R Section 10.4". Oversight notes that in order to become an enrolled agent a person must have the PTIN required by this legislation. Oversight is unable to determine how many tax preparers currently have the enrolled agent status.

Oversight will show in the fiscal note a range of potential of income to the state from \$100,000 to 1% of the returns missing the required name and number for the \$100 penalty. Therefore, this proposal could exceed \$1,431,490 (1,431,490 x 1% x \$100).

Oversight checked with DOR about the need for administrative costs to track these tax preparers. They stated their new tax system that began January 1, 2019 has the capability to capture the data and they would not need additional administrative costs. Based on this information, Oversight assumes DOR will not need additional resources to implement this

ASSUMPTION (continued)

proposal.

Oversight notes this proposal begins with tax year January 1, 2020 and therefore, the penalties will not be assessed until the first tax returns are filed in January 2021.

§143.1026 Pediatric Cancer Research Checkoff

Officials at the **B&P** assume this proposal in §143.1026.3 would move the Pediatric Cancer Research Trust Fund into the state treasury. B&P notes that monies received from check-off funds are already counted as Total State Revenue, therefore moving the funds into the state treasury will not further impact the Total State Revenue calculation. B&P also notes that because monies received from check-off funds are considered donations, moving the funds into the state treasury will not impact the calculation under Article X, Section 18(e).

This proposal would extend the pediatric cancer refund check-off from December 31, 2019 to December 31, 2024. The following table lists the total check-off refund amounts that have been designated to the Pediatric Cancer Research Trust Fund over the past five fiscal years.

Table 1: Pediatric Cancer Research Trust Fund Checkoff

Fiscal Year	Total Donations from Checkoff
2014	\$1,792
2015	\$2,711
2016	\$4,206
2017	\$2,929
2018	\$3,221
Total	\$14,859

Source: SAM II

Officials at the **DOR** assume this section extends the sunset of what is known as "Sahara's Law. It is set to sunset in 2019 and this provision extends it to December 31, 2024. Due to this being an extension of a sunset the Department assumes no impact for this section.

Fiscal Year	Returns Filed	Contributions
FY 2014	88	\$1,705.97
FY 2015	112	\$3,012.00
FY 2016	120	\$3,273.00
FY 2017	122	\$2,363.69
FY 2018	134	\$3,226.00

Officials at the **Office of the State Treasurer** assume there is no fiscal impact.

Oversight notes that the Department of Revenue and the Office of the State Treasurer have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will not reflect an impact to these agencies.

Oversight assumes that all money received from taxpayers through the checkoff program is deposited into the Pediatric Cancer Research Trust Fund and is not considered state money. Annually, the taxpayer's money is then forwarded to the CureSearch for Children's Cancer program as required by statute. Continuation of the program would allow \$2,000 to \$4,000 annually to be transferred to the CureSearch organization. Oversight will use the average of \$3,300 per year in donations.

§143.1028 Kansas City Law Enforcement Memorial Checkoff

Officials at the **B&P** assume this may increase Total State Revenue by an unknown amount but will not impact the calculation under Article X, Section 18(e).

Section 143.1028.1 would allow taxpayers to dedicate a portion of their tax refund (checkoff) to the Kansas City Regional Law Enforcement Memorial Foundation Fund. Each individual or corporation may designate \$1 or more of their refund to the newly created fund for single returns and \$2 or more for combined returns. Individuals and corporations may also make a separate payment and clearly designate the fund as the recipient.

Section 143.1028.2 creates the Kansas City Regional Law Enforcement Memorial Foundation Fund within the state treasury. The fund shall be a dedicated fund and the treasurer shall distribute collections at least monthly to the Kansas City Regional Law Enforcement Foundation.

ASSUMPTION (continued)

Section 143.1028.3 requires DOR to deposit all collections at least monthly into the newly created fund, less an amount sufficient to cover the costs of collection.

Officials at the **DOR** assume this proposal creates within the state treasury the "Kansas City Regional Law Enforcement Foundation Fund". For all tax years beginning on or after January 1, 2019, and ending before January 1, 2024, Section 143.1028 provides that a taxpayer that is entitled to a tax refund may donate a portion of their refund, in excess of one dollar on a single return and two dollars on a combined return, to the Kansas City Regional Law Enforcement Foundation Fund. This is a dedicated fund and, upon appropriation, money in the fund shall be used solely for the administration of Section 143.1028. The State Treasurer is the custodian of the fund, and the director of revenue is to make, at least, monthly deposits of the contributions designated by taxpayers to the state treasurer for deposit into the fund.

The money generated from the tax refund donations shall be considered state funds, but are not to be included in the calculation of total state revenue.

Officials at the **STO** assume there is no fiscal impact from this proposal.

Oversight notes that the Department of Revenue and the Office of the State Treasurer have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will not reflect an impact to these agencies.

Oversight notes this proposal creates the Kansas City Regional Law Enforcement Memorial Foundation Fund to allow taxpayers to designate a portion of their Missouri tax refund to the Memorial. Individuals and corporations are allowed to designate any amount over \$1 and for combined returns individuals could designate any amount over \$2. The money is collected by the Department of Revenue and deposited at least monthly into the Fund created by the State Treasurer.

According to the Kansas City Star, the Kansas City Regional Law Enforcement Memorial is an effort to raise funds to create a memorial garden to pay tribute to all local, state and federal officers in Kansas City killed in the line of duty. The Memorial is estimated to cost \$4 million. The Kansas City Council contributed \$600,000 toward the creation of the Memorial in 2018.

ASSUMPTION (continued)

Oversight for informational purposes is showing the other current tax checkoff programs the state administers and the total amounts they have collected over the previous six years.

Checkoff Program - Fund	Amount Collected FY 2013 - FY 2018 (over 6 years)
Childhood Lead Testing - 0899	\$87,442
Children's Trust Fund - 0694	\$495,469
Military Relief Fund - 0719	\$237,886
Elderly Home Delivered Meals - 0296	\$321,449
National Guard Trust Fund - 0900	\$110,271
Veterans Trust Fund - 0579	\$319,461
Workers Memorial Trust Fund - 0895	\$45,646
Organ Donor Program Fund - 0824	\$107,097
After School Retreat Fund - 0732	\$20,196
American Cancer Society Heartland Div. - 0700	\$41,730
Gateway Area Diabetes Assn - 0713	\$17,418
American Heart Association - 0714	\$17,746
American Lung Association - 0704	\$1,595
ALS Lou Gehrig's Disease - 0703	\$15,174
Muscular Dystrophy Association - 0707	\$7,391
March of Dimes - 0716	\$15,545
National Multiple Sclerosis Society Fund - 0709	\$13,409
Breast Cancer Awareness - 0915	\$16,879
Foster Care/Adoptive Parents - 0979	\$19,268

Checkoff Program - Fund	Amount Collected FY 2013 - FY 2018 (over 6 years)
American Red Cross - 0987	\$23,921
Developmental Disabilities Waiting List - 0986	\$8,153
Puppy Protection Fund - 0985	\$34,294
Pediatric Cancer Research - 0959	\$14,859
MO National Guard Foundation - 0494	\$7,807
General Revenue Fund - 0101	\$55,785
TOTAL COLLECTED (FY 2013 - FY 2018)	\$2,061,809

The Workers Memorial Trust Fund and the MO National Guard Foundation are programs that would be similar to the Kansas City Regional Law Enforcement Memorial Foundation. **Oversight** will show in the fiscal note Less than \$10,000 raised annually through the checkoff program based on the history of these similar programs.

§143.1029 Soldiers Memorial Military Museum Checkoff

Officials at the **B&P** assume this proposal would allow taxpayers to dedicate a portion of their tax refund to the Soldiers Memorial Military Museum in St. Louis Fund. Each individual or corporation may designate \$1 or more of their refund to the newly created fund for single returns and \$2 or more for combined returns. Individuals and corporations may also make a separate payment and clearly designate the fund as the recipient.

Section 143.1029.2 creates the Soldiers Memorial Military Museum in St. Louis Fund within the state treasury. The fund shall be a dedicated fund, the treasurer may approve disbursements, and the Department of Revenue shall distribute collections at least monthly to the Missouri Historical Society for the purposes of funding operations at the Soldiers Memorial Military Museum.

Section 143.1029.3 requires DOR to deposit all collections at least monthly into the newly created fund, less an amount sufficient to cover the costs of collection.

Officials at the **DOR** assume this proposal creates within the state treasury the "Soldiers Memorial Military Museum in St. Louis Fund". For all tax years beginning on or after January 1, 2019, and ending before January 1, 2024, Section 143.1029 provides that a taxpayer that is entitled to a tax refund may donate a portion of their refund, in excess of one dollar on a single

ASSUMPTION (continued)

return and two dollars on a combined return, to the Soldiers Memorial Military Museum in St. Louis Fund. This is a dedicated fund and, upon appropriation, money in the fund shall be used solely for the administration of Section 143.1029. The State Treasurer is the custodian of the fund, and the director of revenue is to make, at least, monthly deposits of the contributions designated by taxpayers to the state treasurer for deposit into the fund.

The money generated from the tax refund donations shall be considered state funds, but are not to be included in the calculation of total state revenue.

Officials at the **STO** assume there is no fiscal impact from this proposal.

Oversight notes that the Department of Revenue and the Office of the State Treasurer have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will not reflect an impact to these agencies.

Oversight notes this proposal creates the Soldiers Memorial Military Museum in St. Louis Fund to allow taxpayers to designate a portion of their Missouri tax refund to the Museum. Individuals and corporations are allowed to designate any amount over \$1 and for combined returns individuals could designate any amount over \$2. The money is collected by the Department of Revenue and deposited at least monthly into the Fund created by the State Treasurer.

The Workers Memorial Trust Fund and the MO National Guard Foundation are programs that would be similar to the Soldiers Memorial Military Museum in St. Louis Fund. **Oversight** will show in the fiscal note Less than \$10,000 raised annually through the checkoff program based on the history of these similar programs.

\$144.088 Sales Tax Receipt Tax Rate

Officials at the **B&P** assume this section requires that any seller with sales greater than \$500,000 annually and provides purchasers with a sales receipt or sales invoice must show the total rate of all sales tax imposed on the sale. The provision has no impact on total state revenue or the calculation for Title X, Section 18(e).

Officials at the **Department of Conservation, Department of Natural Resources, Department of Revenue** and the **Office of Administration** each assume there is no fiscal impact from this proposal.

ASSUMPTION (continued)

Oversight notes this proposal requires the posting of sales tax rates on receipts. Oversight assumes this will not have a fiscal impact.

§144.190 Tax Refunds

#Officials from **B&P** assume this proposal would allow taxpayers to file for a sales or use tax refund within ten years. Current law allows taxpayers to amend returns up to three years. B&P defers to DOR for an estimated impact on the number of businesses that would choose to amend their returns for the additional seven years.

#In addition to amended returns, B&P notes that this provision would allow taxpayers involved in sales and use tax exemption litigation with DOR to sue for ten years' worth of refunds rather than three years' worth of refunds. For example, during the 2016 IBM Corporation vs Director of Revenue court case, IBM had claimed \$15 million in sales tax refunds under the manufacturing sales tax exemption. Had DOR lost the case in 2016, the state would have had to pay out \$15 million in refunds. However, under this proposal, assuming that the \$15 million total equated to \$5 million in sales tax refunds per year, IBM could have received \$50 million in refund claims. In this instance, this provision would have reduced Total State Revenue by an additional \$35 million. B&P notes that it is impossible to determine the number of cases that this provision would impact. Therefore, B&P estimates that this provision could have a significant negative impact to General Revenue, state sales tax funds, and local funds.

Officials from **DOR** assume this proposal will allow a taxpayer to receive a refund for any sales tax, penalty, or interest that has been paid more than once, or has been erroneously or illegally collected or computed, provided such claim for the refund is filed within ten years from the overpayment.

The Department sees this adversely impacting the local jurisdictions. While there would be an impact to the state, a majority of sales tax collection comes from the locals and is distributed back to them. Refunds would be taken out of the taxing jurisdiction's monthly distributions. Depending on the size of the refund, it could potentially zero out their distribution. Unlike other provision in the law, the Department will have to take the whole amount and not a percentage of the distribution.

ASSUMPTION (continued)

#**Oversight** requested additional information from the DOR about the number and amount of sales tax refunds issued and denied annually. **DOR** provided the following information:

		#Fiscal Year				
		FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
F C B A U D I T S	Count of Claim Number Approved Refund	22	8	34	5	6
	Amount of \$ Approved	\$7,145,975	\$271,631	\$1,116,201	\$2,711,783	\$308,544
	Count of Claim Number Denied Refund	23	28	37	54	3
	Amount of \$ Denied	\$2,979,427	\$1,538,924	\$2,282,939	\$2,607,170	\$293,350
	Count of Claim Number Partially Approved	102	125	148	127	20
	Sum of Amount Partially Approved	\$6,432,058	\$12,021,594	\$11,408,587	\$18,837,519	\$429,431

ASSUMPTION (continued)

		#Fiscal Year				
S A L E S R E P E		FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
	Total Refund Issued	1,998	2,491	2,579	1,685	2,972
	Total \$ Issued	\$18,629,182	\$39,848,300	\$35,527,952	\$23,748,183	\$36,916,124
	Total Denied	-	-	-	-	-
	Total \$ Denied	\$24,990,672	\$12,234,830	\$7,042,370	\$1,423,838	\$21,667,851
	Total Denied for OOS	-	-	-	-	-
	Total \$ Denied for OOS	-	-	-	-	-

#DOR assumes:

1. Regarding sales tax refunds requested and denied through the taxation division, based on data already provided to Fiscal Oversight, the Department issued or denied refunds in this amount:

Average issued (approved by FCB + Issued by Sales) per year, FY 15 - FY 18 = \$32,249,801

There is no data which supports the number of tax years covered by these refunds. If the amounts paid are only for a single tax year, there would be little or no impact to this provision. To the extent some are for three years, there could be an impact, assuming the taxpayer had paid sales tax for that period.

If we look for the biggest possible (but unlikely) impact, we could assume the following;

The average refunds paid per year is \$32,249,801

If we assume a three year lookback, that means each tax year was \$10,749,934

If taxpayers can now go back ten years, that supports an estimate of \$107,499,340

Minus the current impact the difference is \$75,249,536

Average denied per year, FY 15 - FY 18 = \$13,775,042

There is no data as to why the refunds denied were denied. To the extent some have been denied for being out of statute, this provision may have an impact. To the extent they were denied for cause, there would be no impact. The direct impact here is likely minimal, and any other impact

ASSUMPTION (continued)

would be supported in section 2.

2. Regarding sales tax refunds reached in settlements or mandated by court decisions, the Department has paid out the following amounts per calendar year for the last six available years.

2013	\$5,044,415
2014	\$654,953
2015	\$471,443
2016	\$108,332
2017	\$79,008
2018	\$440,755

Based on the individual taxpayer data, there is no specific pattern of how many tax years are included in any given refund. It ranges from one month to several years (because of amended returns or audits opened, three year limit does not always apply.) The average seems to be about two years.

Based on the individual taxpayer data. The range of refunds by taxpayer varies from a few thousand dollars to, in one case only, over one million dollars. The vast majority of individual refunds are under \$100,000.

The range of refunds paid per year is from \$100,000 - \$5,000,000
If we assume a two year lookback, that means each tax year was from \$50,000 - \$2,500,000
If taxpayers can now go back ten years, that supports a range from \$500,000 - \$25,000,000
Minus the current impact the difference is from \$450,000 - \$22,500,000

The Department would note that the impact on the largest single refund in this category could have been as much as \$6 million, assuming that taxpayer had paid taxes for the full ten years in question.

3. Total Impact

\$450,000 to (\$22,500,000 or \$97,749,536) or Unknown.

(Because large refund requests can happen at any time, the Department still supports an Unknown for the top range.)

ASSUMPTION (continued)

(\$450,000)	
GR	\$ 159,763
Education	\$ 53,254
Conservation	\$ 6,657
Parks, soil, water	\$ 5,325
TSR	\$ 225,000
<i>Local tax</i>	\$ 225,000

(\$22,500,000)	
GR	\$ 7,988,166
Education	\$ 2,662,722
Conservation	\$ 332,840
Parks, soil, water	\$ 266,272
TSR	\$ 11,250,000
<i>Local tax</i>	\$ 11,250,000

(\$97,749,536)	
GR	\$ 34,703,977
Education	\$ 11,567,992
Conservation	\$ 1,445,999
Parks, soil, water	\$ 1,156,799
TSR	\$ 48,874,768
<i>Local tax</i>	\$ 48,874,768

Oversight notes that currently, a company that files for a sales tax refund is limited to only three years of refund and this proposal would expand that time period to ten years. The company is also entitled to interest on the refunded amount. On July 1, 2019 the way interest is calculated will change per HB 1858 (2018). The new interest rate for FY 2020 will be 5%. Oversight, for fiscal note purposes, will use the 5% rate in calculations for this fiscal note for each year of interest calculated. Additionally, DOR mentioned that most refunds were issued using a 2 year average. Therefore when calculating interest, Oversight assumed a low of 2 years of interest owed up to the full amount owed.

ASSUMPTION (continued)

Oversight notes that DOR states they do not maintain easily identifiable records as to why claims were approved or denied (cause, timeliness etc), and they do not maintain easily identifiable records as to how many years the approved/denied claims covered. Oversight notes that claims are often approved and costs and interest cover several fiscal periods. Oversight is unable to predict how many companies may file a claim in the future. Due to all these uncertainties, Oversight will use the \$15,412,274 (annual average amount of denied refunds over the past five years per DOR). Oversight will then reflect this amount distributed to the state sales tax funds and to cities/counties.

General Revenue (3%)	\$5,471,813
School District Trust (1%)	\$1,823,938
Conservation (0.125%)	\$ 227,992
Parks, Soil & Water (0.10%)	\$ 182,394
Total State Revenue (4.225%)	\$7,706,137
Locals (assumed average of 3.86%)	\$7,706,137
TOTAL STATE & LOCAL	\$15,412,274

Oversight also used data provided by DOR to calculate the following:

Average amount of sales tax refunds that DOR approved/refunded (including the court ordered/settlement amount) over the five years: \$43,290,520

Two years of interest (assumed at 5%) $(\$43,290,520 \times 5\% \times 2) = \$4,329,052$
 Seven years (three already paid) of interest $(\$43,290,520 \times 5\% \times 7) = \$15,151,682$

Average amount denied over the five years: \$15,412,274

Two years of interest $(\$15,412,274 \times .05 \times 2) = \$1,541,227$
 Ten years of interest $(\$15,412,274 \times .05 \times 10) = \$7,706,137$

DOR states they do not have the data to provide the reasons why the refund claims were denied. Oversight notes refunds could be denied for cause, for timeliness, or for other reasons. For those refund claims denied because of cause, extending the statute of limitations from 3 years to 10 years would have no additional impact. However, under this proposal companies that may have been denied a refund because of (lack of) timeliness of their claim, or perhaps didn't file for refund within the 3 year time limit because it had already passed, could ask for and receive refunds that wouldn't

ASSUMPTION (continued)

have been paid out by DOR. DOR notes that all interest paid out by the department for these refunds is paid from the General Revenue Fund.

Therefore, Oversight would assume:

Total Impact Low	\$21,282,553 (\$15,412,274 + \$1,541,227 + \$4,329,052).
Total Impact High	\$38,270,093 (\$15,412,274 + \$7,706,137 + \$15,151,682)

Oversight notes that DOR stated all interest is paid out of General Revenue. Therefore, Oversight will show the total potential interest expense as Could exceed \$22,857,819 (\$7,706,137 + \$15,151,682) annually.

§313.905-313.955 and 621.047 Fantasy Sports Operations

Officials at the **B&P** assume this proposal will decrease fantasy sports operator application and annual operational fees. B&P defers to the Gaming Commission for an estimate of reduced revenues.

Officials from the **Department of Revenue (DOR)** assume the following:

Section 313.905

This section modifies the definitions of "Fantasy Sports Contest" and "Fantasy Sports Contest Operator", adds the definitions of "Location" and "Location Percentage" and removes the definition of "Resident Percentage."

Section 313.915

This section allows for a special purpose entity which is created to properly segregate player funds from operational funds and the powers of these entities are specifically stated.

Section 313.917

This section allows for licensed operators to delay payments if they have a good faith belief that a registered play has engaged in fraud or other conduct that would violate requirements for the licensed operator. Payment may be withheld while an investigation is conducted, but appeals to the commission to investigate the matter will be allowed within 30 days. An appeal process to the administrative hearing commission is also allowed and specified in the bill. If a final determination results in an award being disallowed, the other awards are adjusted accordingly.

Section 313.920

This section states that a person listed in subsection 1 of this section shall not play in any fantasy sports contest offered by any fantasy sports contest operator that is open to the public.

ASSUMPTION (continued)

Section 313.935

This section states that the applicant shall be responsible for the cost of the investigation up to ten thousand dollars. If the cost of the investigation exceeds the application fee, the applicant shall remit such cost to the commission prior to any license being issued. An applicant may apply for, and the commission may grant, based on a showing of undue burden, a waiver of all or portion of the cost of investigation. The investigation set forth in this paragraph does not apply to a renewal of a license.

A fantasy sports contest operator with net revenues of two million dollars or more from the previous calendar year shall be required to submit an annual license renewal fee of five thousand dollars by November first of each subsequent calendar year.

A fantasy sports contest operator with net revenues of less than two million dollars but greater than one million dollars from the previous calendar year shall be required to submit an annual license renewal fee of two thousand five hundred dollars by November first of each subsequent calendar year. A fantasy sports contest operator with net revenues equal to or less than one million dollars but greater than two hundred fifty thousand dollars shall submit an annual license renewal fee of one thousand dollars by November first of each subsequent calendar year. A fantasy sports contest operator with net revenues of two hundred fifty thousand dollars or less from the previous calendar year shall not be required to submit an annual license renewal fee. On the anniversary date of the payment made under subsection 1, a licensed operator shall submit to the commission a notice of license renewal describing any material changes to the operator's compliance with the consumer protections set forth in Sections 313.915, 313.920, and 313.925 together with the license renewal fee required under this subsection. A license is renewed upon submission of the notice and payment of the appropriate renewal fee.

Officials from the **DOR** state per this legislation, any fantasy sports contest operator with net revenues of two million dollars or more from the previous calendar year shall be required to submit an annual license renewal fee of five thousand dollars by November first of each subsequent year. Any fantasy sports contest operator with net revenues of less than two million dollars but greater than one million dollars from the previous calendar year shall be required to submit an annual license renewal fee of two thousand five hundred dollars by November first of each subsequent year. Any fantasy sports contest operator with net revenues equal to or less than one million dollars but greater than two hundred fifty thousand dollars shall submit an annual license renewal fee of one thousand dollars by November first of each subsequent calendar year. Any fantasy sports contests operators with net revenues of two hundred fifty thousand dollars or less from the previous calendar year shall not be required to submit an annual license renewal fee.

ASSUMPTION (continued)

Officials from the **Missouri Gaming Commission (MGC)** assume section 313.935.1 allows a one-time application of fee of "\$10,000 or 10% of net revenue from the previous year, whichever is less." Because all companies already doing business in Missouri were grand-fathered in by the law in 2017, only new companies will be applying. According to the definition of "net revenue" in section 313.905(11), this determination would be made from the applicant's net revenue from the company's business in Missouri, which, if it is a new company, would always be zero. As a result, the Commission would never collect any application fee from any new company applying for a fantasy sports operator license in Missouri.

MGC assumes section 313.935.3(1) reduces the annual license renewal fee based on the licensed fantasy sports operator's net revenues that previous year. Currently, only two operators licensed in Missouri generate net revenues substantial enough to cause them to be liable for any renewal fee under this graduated renewal fee structure.

The table below list the Estimated Net Revenue per each Fantasy Sports Contest Operator for 2016, 2017 and 2018.

Fantasy Sports Contest Operator	Estimated Net Revenue 2016	Estimated Net Revenue 2017	Estimated Net Revenue 2018
FanDuel	\$ 898,043	\$ 1,823,974	\$ 2,730,009
DraftKings, Inc.	\$ 1,088,296	\$ 1,913,513	\$ 2,572,348
RealTime Sports, Inc.	\$ 0	\$ 22,887	\$ 33,000
Fantasy Draft, LLC	\$ 400	\$ 1,774	\$ 7,183
SportsHub Technologies, LLC	\$ 2,983	\$ 57,104	\$ 19,348
Total	\$ 1,989,722	\$ 3,819,252	\$ 5,361,887

* Source: MGC

The table below shows the revenue generated to the Gaming Commission Fund based on the Fantasy Sports Contest Operators Initial Application Fee and Investigation Fee paid in 2016, the Renewal fee paid in 2017 (some have not yet renewed) and the estimated annual license renewal fee based on this proposal.

MGC assumes, based on this legislation, that there will be no investigation for any renewal license so there will be no investigation fee going forward per Section 313.935.2.

ASSUMPTION (continued)

	Initial Application Fee - 2016	Investigation Fee - 2016	Renewal Fee- 2017	Proposed Estimated Annual License Renewal Fee
Fantasy Sports Contest Operator				
FanDuel	\$10,000	\$2,987	\$10,000	\$5,000
Draft Kings	\$10,000	\$3,998	\$10,000	\$5,000
RealTime Fantasy Sports, Inc.	\$823	\$4,508	N/A	\$0
Fantasy Draft	\$0	\$3,421	N/A	\$0
SportsHub Technologies, LLC dba CDM Sports	\$2,622	\$3,009	\$5,699	\$0
Total	\$23,445	\$17,923	\$25,699	\$10,000

* Source: MGC

Oversight assumes, currently, Fantasy Sports Contest Operators pay a one time initial application fee plus an investigation fee and thereafter pay an annual renewal fee. Oversight assumes, based on the requirements of this proposal and MGC’s response, Fantasy Sports Contest Operators would now only be required to pay a license renewal fee. Based on 2018 Estimated Net Revenues, revenue generated to the Gaming Commission Fund will be \$10,000. Since the number of new fantasy sports contest operator applicants is unknown, Oversight will reflect a loss of less than \$25,000 to the Gaming Commission Fund.

Officials from **DOR** note in addition to the license renewal fee, a licensed operator shall also pay an annual operation fee in the sum equal to six percent of the licensed operator's net revenue from the previous calendar year. If a licensed operator fails to apply for a license renewal or pay the annual operation fee, the commission may suspend the license of such licensed operator until such payment is made.

If a licensed fantasy sports contest operator fails to pay its annual operation fee by November 1, 2019, the commission may suspend the license or deny the pending license application of such fantasy sports contest operator.

If a licensed fantasy sports contest operator ceases to offer fantasy sports contests in Missouri, the operator shall pay an operation fee equal to six percent of its net revenue for the period of the calendar year in which it offered fantasy sports contests in Missouri by November first of the subsequent calendar year.

ASSUMPTION (continued)

Officials from the **DOR** and the **Missouri Gaming Commission (MGC)** assume the following:

Currently, the annual operation fee is imposed on the licensed operator's net revenue from the previous calendar year at a rate of 11.5 %. It is assumed this legislation would require an annual operation fee at a rate of 6%.

Fantasy Sports Contest Estimated Net Revenues, Annual Operation Fees at 11.5% and the proposed Annual Operation Fees at 6% for 2016, 2017 and 2018 are listed in the table below.

Fantasy Sports Contest Operator	Estimated Net Revenue 2016	Annual Operation Fee 2016 (11.5%)	Proposed Annual Operation Fee 2016 (6%)
FanDuel	\$898,043.48	\$103,275	\$53,883
DraftKings, Inc.	\$1,088,295.65	\$125,154	\$65,298
RealTime Sports, Inc.	\$0	\$0	\$0
Fantasy Draft, LLC	\$400.00	\$46	\$24
SportsHub Technologies, LLC	\$2,982.61	\$343	\$179
Total	\$1,989,721.74	\$228,818	\$119,384

Fantasy Sports Contest Operator	Estimated Net Revenue 2017	Annual Operation Fee 2017 (11.5%)	Proposed Annual Operation Fee 2017 (6%)
FanDuel	\$1,823,973.91	\$209,757	\$109,438
DraftKings, Inc.	\$1,913,513.04	\$220,054	\$114,811
RealTime Sports, Inc.	\$22,886.96	\$2,632	\$1,373
Fantasy Draft, LLC	\$1,773.91	\$204	\$106
SportsHub Technologies, LLC	\$57,104.35	\$6,567	\$3,426
Total	\$3,819,252.17	\$439,214	\$229,154

Officials from the **Missouri Gaming Commission** assumes under section 313.935, revenue will decrease to the Gaming Proceeds for Education Fund based on the reduction of the operation fee from 11.5% to 6% of the operator's net revenue and changes the payment period to the Commission by November first of the subsequent calendar year.

ASSUMPTION (continued)

Based on the 2108 Annual Operation Fee, **Oversight** estimates the following loss(s) to the Gaming Proceeds for Education Fund per Fantasy Sports Contest Operator due to the decrease in the percentage rate from 11.5 % to 6 %, at which the fee is charged.

Fantasy Sports Contest Operator	Decrease to Gaming Proceeds for Education Fund
FanDuel	(\$150,150)
Draft Kings	(\$141,479)
RealTime Fantasy Sports, Inc.	(\$1,815)
Fantasy Draft, LLC	(\$395)
SportsHub Technologies, LLC dba CDM Sports	(\$1,064)
Total	(\$294,903)

For fiscal note purposes, Oversight estimates that the Gaming Proceeds for Education Fund would decrease by \$294,903 each fiscal year. Oversight notes the annual operating fee revenue increased by 40% (from \$439,214 in 2017 to \$616,617 in 2018). Therefore, Oversight will assume the actual loss of revenue from changing the fee percentage from 11.5% to 6% could exceed the \$294,903 estimate. Therefore, Oversight will reflect the impact as “Could exceed” the estimates provided.

Officials from the **DOR** assume the following:

Section 313.945

Notwithstanding any applicable statutory provision to the contrary, all investigatory, proprietary, or application records, information, and summaries in the possession of the commission or its agents shall be treated by the commission as closed records not to be disclosed to the public; except that the commission shall, on written request from any person, provide such person with specified information furnished by an applicant or licensee.

Section 313.950

The commission shall have the following powers to implement Sections 313.900 to 313.955:

To assess an appropriate administrative penalty of not more than one thousand dollars per violation, not to exceed ten thousand dollars for violations arising out of the same transaction of occurrence, and take action including, but not limited to, the suspension or revocation of a license for violation of Sections 313.900 to 313.955 or the commission's rules, orders, or final decisions;

ASSUMPTION (continued)

Section 313.955

This section has been updated to remove the power of the commission to regulate and license the management, operation, and conduct of fantasy sports contests and participants therein;

Section 621.047

This section states, except as otherwise provided by law, any person or entity shall have the right to appeal to the administrative hearing commission from any finding, decision, or determination made by the Missouri gaming commission under Section 313.917. Any person or entity who is a party to such a dispute shall be entitled to a hearing before the administrative hearing commission by the filing of a petition with the administrative hearing commission within thirty days after the decision of the Missouri gaming commission is placed in the United States mail or within thirty days after the decision is delivered, whichever is earlier. The decision of the Missouri gaming commission shall contain a notice of the right of appeal in substantially the following language:

The procedures applicable to the processing of such hearings and determinations shall be those established by Chapter 536. Decisions of the administrative hearing commission under this section shall be binding, subject to appeal by either party.

Officials at the **Administrative Hearing Commission** do not anticipate this legislation would have a significant impact on their caseload. If similar bills pass, resulting in more cases, there would be an impact.

Bill as a Whole

Oversight currently does not have the data or resources available to produce independent revenue projections, therefore Oversight uses the same assumptions for revenue growth as the FY 2020 Consensus Revenue Estimate (CRE) for revenue growth in all future years. The CRE assumes an increase in net general revenue collections of \$192.6 million for FY 2020.

Oversight notes pursuant to §143.011 - §143.022 (SBs 509 & 496 2014) if the previous fiscal year's net general revenue collections exceed the highest net general revenue collections of the three previous fiscal years by at least \$150 million, then there will be a reduction in the individual income tax rate by one-tenth of a percent and a reduction for individual income tax filers of 5% of "business income." These reductions will reduce net General Revenue collections by an estimated \$160.0 million annually. Oversight notes the proposed legislation may impact future net revenue collections and could impact future triggering of the rate reductions required under §143.011 - §143.022.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE			
<u>Revenue Reduction</u> - DOR §135.090 extension of the sunset date on surviving spouse tax credit from 2019 to 2027 p. 6	\$0	(\$84,123)	(\$84,123)
<u>Revenue Reduction</u> - DOR §135.562 extension of the Residential Dwelling sunset date p. 7	\$0	(Less than \$15,000)	(Less than \$15,000)
<u>Revenue</u> - DOR §143.121 change in when interest income is paid p.10	(Unknown)	Unknown	Unknown
<u>Revenue Reduction</u> - DOR §143.732 not collecting penalties (\$6.9 m) and one month interest (\$1 m) on individual income tax returns p. 11	\$0 or (Could exceed \$7,900,000)	\$0	\$0
<u>Revenue Reduction</u> - DOR §143.732 not collecting the under withholding penalty p. 11	\$0 or (Could exceed \$1,370,649)	\$0	\$0
<u>Revenue Reduction</u> - DOR §143.732 DOR refunding penalties back to taxpayers p. 11	(Unknown)	\$0	\$0
<u>Revenue</u> - DOR §143.980.2 - \$50 penalty collected from paid tax preparers not signing or putting their PTIN on a tax return (\$100 penalty if both violations) p.16	\$0	\$100,000 to Could exceed \$1,431,490	\$100,000 to Could exceed \$1,431,490
<u>#Cost</u> - DOR - additional interest for overpayment p. 24- 30	(Could exceed \$22,857,819)	(Could exceed \$22,857,819)	(Could exceed \$22,857,819)
<u>#Cost</u> - DOR - §144.190 additional refunds for overpayment p. 24 - 30	(Could exceed \$5,471,813)	(Could exceed \$5,471,813)	(Could exceed \$5,471,813)
#ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(Could exceed \$37,600,281)</u>	<u>(Could exceed \$26,997,265)</u>	<u>(Could exceed \$26,997,265)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2020 (10 Mo.)	FY 2021	FY 2022
 KANSAS CITY REGIONAL LAW ENFORCEMENT MEMORIAL FOUNDATION FUND			
<u>Revenue</u> - DOR §143.1028 taxpayer's refund donation p.22	Less than \$10,000	Less than \$10,000	Less than \$10,000
	(Less than <u>\$10,000</u>)	(Less than <u>\$10,000</u>)	(Less than <u>\$10,000</u>)
<u>Distribution</u> - to Memorial p. 22			
ESTIMATED NET EFFECT ON THE KANSAS CITY REGIONAL LAW ENFORCEMENT MEMORIAL FOUNDATION FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
 SOLDIERS MEMORIAL MILITARY MUSEUM IN ST. LOUIS FUND			
<u>Revenue</u> - DOR §143.1029 taxpayer's refund donation p. 23	Less than \$10,000	Less than \$10,000	Less than \$10,000
	(Less than <u>\$10,000</u>)	(Less than <u>\$10,000</u>)	(Less than <u>\$10,000</u>)
<u>Distribution</u> - to Memorial p. 23			
ESTIMATED NET EFFECT ON SOLDIERS MEMORIAL MILITARY MUSEUM IN ST. LOUIS FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2020 (10 Mo.)	FY 2021	FY 2022
GAMING COMMISSION FUND			
<u>Loss - MCG</u>			
Decrease in fantasy sports contest operators renewal fee p. 33	<u>(Less than \$25,000)</u>	<u>(Less than \$25,000)</u>	<u>(Less than \$25,000)</u>
ESTIMATED NET EFFECT TO THE GAMING COMMISSION FUND	(Less than \$25,000)	(Less than \$25,000)	(Less than \$25,000)
 GAMING PROCEEDS FOR EDUCATION FUND			
<u>Loss - MGC - Decrease in Annual Operation Fee from 11.5% to 6.0% p. 34</u>			
	<u>(Could exceed \$294,903)</u>	<u>(Could exceed \$294,903)</u>	<u>(Could exceed \$294,903)</u>
ESTIMATED NET EFFECT TO THE GAMING PROCEEDS FOR EDUCATION FUND	(Could exceed \$294,903)	(Could exceed \$294,903)	(Could exceed \$294,903)

<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
LOCAL POLITICAL SUBDIVISION FUNDS			
<u>Revenue</u> - City of Higginsville - §67.1360 transient guest tax p. 4	\$0	\$0 to \$25,633	\$0 to \$34,177
<u>Revenue</u> - City of Lexington - §67.1360 transient guest tax p. 4	\$0	\$0 to \$2,250	\$0 to \$3,000
<u>Revenue</u> - City of Odessa - §67.1360 transient guest tax p.4	\$0	\$0 or Unknown	\$0 or Unknown
<u>Revenue Reduction</u> - County Collectors - §139.031 interest paid p. 9	\$0 to (Unknown over \$100,000)	\$0 to (Unknown over \$100,000)	\$0 to (Unknown over \$100,000)
<u>#Cost</u> - DOR - §144.190 additional refunds for overpayment p. 24 - 30	<u>(Could exceed \$7,706,137)</u>	<u>(Could exceed \$7,706,137)</u>	<u>(Could exceed \$7,706,137)</u>
#ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>(Could exceed \$7,806,137)</u>	<u>(Could exceed \$7,778,254)</u>	<u>(Could exceed \$7,778,254)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to taxation.

TRANSIENT GUEST TAXES - This act adds the cities of Higginsville, Lexington, and Odessa to the list of cities and counties authorized to impose a transient guest tax for the purpose of funding the promotion of tourism. (§67.1360)

PUBLIC SAFETY OFFICER SURVIVING SPOUSE TAX CREDIT - This act reauthorizes the Public Safety Officer Surviving Spouse tax credit until December 31, 2027. (§135.090)

FISCAL DESCRIPTION (continued)

RESIDENTIAL RENOVATIONS FOR DISABILITY TAX CREDIT - This act reauthorizes the Residential Renovations for Disability tax credit until December 31, 2025. (§135.562)

PROTESTED TAXES - Current law allows taxpayers to receive interest on property taxes paid under protest and that have been distributed by the collector to appropriate taxing authorities at a rate equivalent to the rate of interest such taxes would have earned if held by the collector. This act entitles such a taxpayer to receive interest at the same rate as provided under current law for various Department of Revenue purposes, including interest earned on income tax refunds.

Taxpayers may seek an order enforcing the provisions of this act against a collector and any taxing jurisdictions which received the protested funds. (§139.031)

MISSOURI ADJUSTED GROSS INCOME - This act provides that, for all tax years beginning on or after January 1, 2018, interest expenses paid or accrued in a previous taxable year, but allowed as a deduction in the current taxable year for federal tax purposes by reason of the carryforward of disallowed business interest provisions of federal law, shall be added to a taxpayer's federal adjusted gross income for the purposes of the calculation of Missouri adjusted gross income.

This act also provides that, for all tax years beginning on or after January 1, 2018, interest expenses paid or accrued in the current taxable year, but not allowed as a deduction for federal tax purposes, shall be subtracted from a taxpayer's federal adjusted gross income for the purposes of the calculation of Missouri adjusted gross income. (§143.121)

LATE INCOME TAX PAYMENTS - This act provides that no taxpayer who timely files his or her individual income tax return for the 2018 tax year shall be assessed any penalty for a delayed payment or underpayment on such tax liability prior to December 31, 2019, provided that such taxpayer participates in good faith in a payment plan authorized by the Department of Revenue. However, such taxpayer may be assessed interest on such liability provided that no interest shall be assessed prior to May 15, 2019. (§143.732)

This provision shall sunset on December 31, 2019. This provision contains an emergency clause.

TAXPAYER PROTECTION ACT - This act establishes the "Taxpayer Protection Act".

For all tax years beginning on or after January 1, 2020, this act requires paid tax return preparers, as defined in the act, to sign any income tax return or claim for refund prepared by such paid tax return preparer and to provide such preparer's Internal Revenue Service preparer tax

FISCAL DESCRIPTION (continued)

identification number.

Each failure to sign any income tax return or claim for refund, or to provide a preparer tax identification number, shall result in a fine of fifty dollars, not to exceed \$25,000 per calendar year.

The Director of Revenue may file suit to enjoin a paid tax return preparer from engaging in certain actions, as described in the act. (§143.980)

SAHARA'S LAW - Current law provides for an option for taxpayers to donate a portion of his or her income tax refund to the Pediatric Cancer Research Trust Fund. Such tax income donation option shall sunset on December 31, 2019. This act re-authorizes the program until December 31, 2024.

Moneys generated by the tax refund donations in this act shall be considered state funds, but shall not be included in the calculation of total state revenue. (§143.1026)

KANSAS CITY REGIONAL LAW ENFORCEMENT MEMORIAL - For all tax years beginning on or after January 1, 2019, and ending on or before January 1, 2024, this act allows taxpayers to donate a portion of his or her income tax refund to the Kansas City Regional Law Enforcement Memorial Foundation Fund. (§143.1028)

SOLDIERS MEMORIAL MILITARY MUSEUM - For all tax years beginning on or after January 1, 2019, and ending on or before January 1, 2024, this act allows taxpayers to donate a portion of his or her income tax refund to the Soldiers Memorial Military Museum in St. Louis Fund. (§143.1029)

SALES TAX RECEIPTS - This act requires any seller who provides a sales receipt or sales invoice to a purchaser to include on such sales receipt or sales invoice the total rate of all sales tax imposed on the sale. Such total rate shall include all applicable state and local sales taxes. (Section 144.088)

REFUND FOR ERRONEOUSLY PAID TAXES - Current law allows a taxpayer to receive a refund for any tax, penalty, or interest that has been paid more than once, or has been erroneously or illegally collected or computed, provided such claim for refund is filed within three years from the date of overpayment. This act modifies such deadline to ten years. (§144.190)

FISCAL DESCRIPTION (continued)

FANTASY SPORTS CONTESTS - Several definitions related to fantasy sports are modified.
(§313.905)

This act also requires that a licensed operator maintain a reserve in the form of cash, cash equivalents, payment processor reserves, payment processor receivables, an irrevocable letter of credit, a bond, an escrow account, or a combination thereof, in an amount that shall equal or exceed the total balances of the fantasy contest players' accounts.

This act also modifies the requirement that any prize won by a registered player from a contest be deposited into the player's account within 48 hours of winning to also allow a prize to be mailed within five business days. A licensed operator may delay such deposit for up to fifteen days if the licensed operator believes in good faith that the registered player engaged in either fraudulent conduct or other conduct that would put the licensed operator in violation of the law so long as the operator provides notice of the nature of the investigation to the player. The Gaming Commission shall establish its own investigation process and issue determinations on a case-by-case basis as to whether the licensed operator is required to deposit the prize in the winner's account. This act provides the right for any person or entity to appeal any such finding, decision, or determination of the Gaming Commission to the Administrative Hearing Commission. (§313.915, §313.917, and §621.047)

This act limits a license applicant's liability for the cost of the Gaming Commission's investigation into the applicant's employees, officers, directors, trustees, and principal salaried executive staff officers to \$10,000 rather than \$50,000. The Commission may grant a waiver of all or a portion of the cost of an investigation.

This act also establishes a graduated annual license renewal fee structure. An operator that made \$2 million or more in the previous calendar year shall pay a fee of \$5,000. An operator that made less than \$2 million but more than \$1 million shall pay a fee of \$2,500. An operator that made less than \$1 million but more than \$250,000 shall pay a fee of \$1,000. An operator that made \$250,000 or less shall not be required to pay an annual license renewal fee.

This act also reduces the annual operation fee from 11.5% of the operator's net revenue from the previous calendar year to 6%. The Commission may suspend an operator's license if such operator fails to apply for an annual license renewal or remit the operation fee. (§313.935)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Administrative Hearing Commission
Department of Revenue
Office of Administration
 Division of Budget and Planning
Office of the State Treasurer
Department of Conservation
Department of Economic Development
Department of Natural Resources
Missouri Gaming Commission
State Tax Commission
St. Louis County Treasurer
Monroe County
St. Francois County Assessor's Office
City of Higginsville
City of Lexington
City of Odessa



Kyle Rieman
Director
June 25, 2019

Ross Strobe
Assistant Director
June 25, 2019