

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0563S.01I
 Bill No.: SB 97
 Subject: Taxation And Revenue - Sales And Use; Political Subdivisions
 Type: Original
 Date: February 10, 2021

Bill Summary: This proposal modifies provisions relating to sales taxes.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue	Less than \$46,653,910 to \$73,127,616	Less than \$54,269,197 to \$83,996,571	Less than \$12,601,899 to \$20,117,519
Total Estimated Net Effect on General Revenue	Less than \$46,653,910 to \$73,127,616	Less than \$54,269,197 to \$83,996,571	Less than \$12,601,899 to \$20,117,519

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Conservation Commission Fund (0609)	Less than \$1,567,522 to \$2,394,826	Less than \$3,220,358 to \$4,919,992	Less than \$3,365,373 to \$5,141,542
Parks and Soils State Sales Tax Fund(s) (0613 & 0614)	Less than \$1,254,018 to \$1,915,861	Less than \$2,576,286 to \$3,935,993	Less \$2,692,298 to \$4,113,233
State Road Bond Fund (0319)	\$0	(\$3,283,148) to (\$5,032,367)	(\$6,566,297) to (\$10,064,734)
State Road Fund (0320)	\$0	(\$2,396,698) to (\$3,673,628)	(\$4,793,397) to (\$7,347,255)
State Transportation Fund (0675)	\$0	(\$65,663) to (\$100,647)	(\$131,326) to (\$201,295)
Total Estimated Net Effect on <u>Other</u> State Funds	Less than \$2,821,540 to \$4,310,687	Less than \$49,343 to \$51,135	Less than (\$8,358,509) to (\$5,433,349)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS
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FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue – DOR	34 FTE	34 FTE	34 FTE
Total Estimated Net Effect on FTE	34 FTE	34 FTE	34 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Political Subdivisions	Less than \$19,469,066 to \$29,744,407	Less than \$39,176,967 to \$59,849,587	Less than \$40,157,304 to \$61,343,213
Local Government	Less than \$19,469,066 to \$29,744,407	Less than \$39,176,967 to \$59,849,587	Less than \$40,157,304 to \$61,343,213

FISCAL ANALYSIS

ASSUMPTION

Section 32.087 – Local Sales Tax Rates

Officials from the **Office of Administration – Budget & Planning Division (B&P)** state this section would require taxing jurisdictions with a local sales tax to reduce their sales tax rate for all tax years beginning January 1, 2022.

The reduction in the tax levy shall produce substantially the same amount of sales tax revenue that the jurisdiction received between July 1, 2019 and June 30, 2020, plus 5%.

B&P notes, typically, a jurisdiction with a sales and use tax will utilize the same rates of tax; however, they are not required to use the same tax rates. In addition, a local sales tax and a local use tax are two (2) distinctly separate voter approved taxes. Therefore, reducing a local sales tax rate would be unrelated to, and would not negate, the income received from online use taxes. It is possible that the reduction in the sales tax levy could reduce collections by a greater amount than any increase received in use taxes.

B&P further notes that many local taxing jurisdictions have a sales tax, but not a use tax. This provision would require such jurisdictions to reduce their sales tax levy, even though they would not receive use tax collections from online sales.

This section will effectively hold local sales tax revenues for Calendar Year 2022 at Fiscal Year 2020 levels (plus 5%). Based on taxable sales data, B&P estimates that during Fiscal Year 2020, total local sales tax collections equaled approximately \$2,019,529,843. Allowing for a 5% increase in collections, B&P estimates that local sales tax collections would only be allowed to grow by approximately \$100,976,492 over one and a half years (7/1/2020 – 12/31/2022).

B&P notes that the second half of Fiscal Year 2020 was impacted by COVID-19. This could have artificially lowered the sales tax collections within some local jurisdictions. This could create an artificially low ceiling for Calendar Year 2022 collections.

B&P also notes that this reduction will not occur until after Fiscal Year 2021 is over. Therefore, some local taxing jurisdictions could see a reduction in revenues if their Fiscal Year 2021 revenues grow by more than 5% over their Fiscal Year 2020 collections. If such a reduction were to occur, then the DOR cost of collections fee would also subsequently be reduced. Therefore, B&P estimates that this section may have a negative impact on Total State Revenue (TSR) and General Revenue (GR).

Officials from the **Missouri Department of Revenue (DOR)** state, for all tax years beginning January 1, 2022, all taxing jurisdictions levying a local sales tax shall reduce the levy to a rate to produce substantially the same amount of revenue collected from July 1, 2019 to June 30, 2020 plus 5%. DOR notes that this will effectively hold local sales tax revenues constant at the amount received during Fiscal Year 2020 (plus 5%) forever, which could potentially reduce the future 1% collection fee DOR receives.

DOR notes that \$2,019,529,843 was collected in local sales tax from July 1, 2019 to June 30, 2020. Allowing for the 5% increase would limit the local sales tax increase to no more than \$100,976,492 collectively.

Oversight notes the provisions of this section would begin January 1, 2022 (Fiscal Year 2022). Therefore, Oversight will report the impact(s) reported above beginning in Fiscal Year 2022.

Oversight notes this section would hold local political subdivision's sales tax rate(s) to the amounts that would produce substantially the same amount of revenue collected from such sales tax during the fiscal year beginning on or after July 1, 2019 and ending on or before June 30, 2020 (Fiscal Year 2020) plus five percent (5%), beginning January 1, 2022.

Oversight notes local political subdivisions may not become aware that the sales tax revenue collected in any given year exceeds the amount of sales tax collected in Fiscal Year 2020, plus five percent (5%), until the end of any given year, or at any point within any given year.

Oversight is unable to determine what a local political subdivision would be required to do if such revenue actually exceed Fiscal Year 2020's base amount plus five percent (5%), other than reduce the sales tax rate for the next calendar year.

Oversight is unable to determine whether or not, should local political subdivisions be required to lower its sales tax rate in attempt to maintain sales tax revenue(s) at a level equal to the amount recognized in Fiscal Year 2020, plus five percent (5%), and subsequently recognizes an amount less than the amount recognized in Fiscal Year 2020, plus five percent (5%), a local political subdivision would be permitted to increase such sales tax rate without proposing the sales tax increase to the vote of the people. Should an increase be required to be put forth to the vote of the people, local revenues could be reduced as a result of the time it takes to put forth such proposal.

Officials from the **City of Ballwin** anticipate a revenue reduction as a result of the potential loss of sales tax revenue(s).

Officials from the **City of Corder** anticipate a revenue reduction as a result of the potential loss of sales tax revenue(s).

Officials from the **City of Kansas City (Kansas City)** assume this section could limit sales tax growth and, therefore, would have a negative impact on Kansas City.

Officials from the **City of O’Fallon (O’Fallon)** state, based upon O’Fallons’s recognized sales tax growth, the cap established could cause a loss of \$2.1 million in the first year followed by additional losses in years thereafter.

Officials from the **City of St. Louis** state the cap proposed would limit potential growth in revenues and lead to actual losses in real dollars as the time progresses.

For purposes of this fiscal note, **Oversight** will report a revenue reduction to GR as a result of a reduction in the Missouri Department of Revenue’s one percent (1%) collection fee equal to \$0 (Fiscal Year 2021’s local revenues did not exceed Fiscal Year 2020’s base amount plus five percent (5%) or future local revenues would not have exceeded Fiscal Year 2020’s base amount plus five percent (5%)) up to a negative “Unknown” (Fiscal Year 2021’s local revenues did exceed Fiscal Year 2020’s base amount plus five percent (5%) or future local revenues would exceed Fiscal Year 2020’s base amount plus five percent (5%) should such political subdivision not be bound by a cap).

For purposes of this fiscal note, **Oversight** will report a revenue reduction to local political subdivisions as a result of reduced sales tax revenues equal to \$0 (Fiscal Year 2021’s local revenues did not exceed Fiscal Year 2020’s base amount plus five percent (5%) or future local revenues would not have exceeded Fiscal Year 2020’s base amount plus five percent (5%)) up to a negative “Unknown” (Fiscal Year 2021’s local revenues did exceed Fiscal Year 2020’s base amount plus five percent (5%) or future local revenues would exceed Fiscal Year 2020’s base amount plus five percent (5%) should such local political subdivisions not be bound to a cap).

Section 32.310 – DOR Sales and Use Tax Map

Oversight notes this section requires that use tax information be added to the Missouri Department of Revenue’s mapping system.

Officials from **B&P** state this section adds use tax information to the Missouri Department of Revenue’s mapping system. This section will not impact TSR or the calculation under Article X, Section 18(e).

Officials from **DOR** state this section adds “use tax” to DOR’s mapping feature which currently states sales tax. DOR assumes this will not have a fiscal impact as use tax is already included in the map where provided by the political subdivision.

Section 144.020 – State Sales Tax Reduction

Officials from **B&P** state this section would require the state sales tax rate to be reduced, beginning January 1, 2023.

B&P notes that the language appears to reduce the sales tax rate (a percentage) by a dollar amount that is substantially equivalent to the amount of online use tax collections authorized in Paragraph 144.605(2)(g).

B&P notes that while the intent of this language appears to be to reduce the Calendar Year 2023 sales tax rate to fully offset online use taxes collected in Calendar Year 2022, the use and placement of the terms “rate” and “amount” are confusing and could be misinterpreted.

For the purpose of this fiscal note, B&P estimated the impact assuming the intent is to reduce the state sales tax rate in a manner that would offset the revenue gain from online sales tax collections, which are authorized in Paragraph 144.605(2)(g). Specifics of how much the sales tax would be reduced are included after discussion of the estimated increased online use tax collections.

In addition, this provision would only require the reduction in the sales tax rate to offset online vendor use taxes collected under Paragraph 144.605(2)(g). This would not include marketplace facilitator collections under Section 144.752. B&P is unable to determine how much of the estimated online use tax collections would come from either online vendor use or marketplace facilitators.

Therefore, for the purpose of this fiscal note, B&P assumed that all estimated online use tax collections come from vendor use tax. However, it is possible that the majority of tax collections will actually come from marketplace facilitators.

B&P notes that the reduction in the sales tax rate could only occur on the 3% levy that is deposited into GR and various motor funds (from the 3% sales tax on vehicles). B&P further notes that the 1% tax deposited into the School District Trust Fund, the 0.125% for the Missouri Department of Conservation, and the 0.1% for the Missouri Department of Natural Resources would **not** be impacted.

Section 144.701 (which is not included in this proposal) creates the 1% sales tax for the School District Trust Fund. That 1% tax rate is not changed within this proposal; therefore, it will not be subject to the reduction under Section 144.020. Both of the sales taxes directed towards the Missouri Department of Conservation and the Missouri Department of Natural Resources are constitutional and will **not** be impacted by the rate reduction under Section 144.020.

B&P also notes that the 3% state sales tax is split between various funds. GR receives a 3% tax on all sales and use taxes except for the sales of motor vehicles. The GR portion cannot be reduced or raised without also reducing or raising the tax on motor vehicles.

The 3% tax on motor vehicles is deposited into the State Road Bond Fund (50%); the State Road Fund (36.5%); the State Transportation Fund (1%); and the Fuel Local Deposit Fund (FLOYD)(12.5%) which is then distributed to local jurisdictions. B&P notes that the 3% state sales tax is the same tax, just distributed between various funds based on the taxable item purchased.

B&P further notes that use taxes on motor vehicles are already collected by law and are not included in the new revenues authorized by Paragraph 144.605(2)(g). Therefore, this provision will negatively affect all funds where motor vehicle sales taxes are deposited.

B&P notes that in Fiscal Year 2020 there was \$2,276,390,127 in sales tax deposited into GR and \$322,932,631 in sales tax collected from the sales of motor vehicles. Therefore, the total 3% state sales tax collections during Fiscal Year 2020 were \$2,599,322,758. B&P estimates that total state online use tax collections under Paragraph 144.605(2)(g) for Calendar Year 2022 may be \$105,964,491 to \$161,890,196.

B&P estimates that the 3% state sales tax rate would need to be reduced by 0.122% if online use taxes collected are low and 0.187% if online use tax collections are high. As noted in the discussion previously, the 3% state sales tax is distributed into GR (for sales excluding motor vehicles) and various motor vehicle funds (for motor vehicle sales).

With a 0.122% reduction, B&P estimates that total sales tax collections will be reduced by \$105,705,792. GR would be reduced by \$92,573,199 and the various motor vehicle funds would be reduced by \$13,132,594.

With a reduction of 0.187%, B&P estimates that total sales tax collections will be reduced by \$162,024,452. GR would be reduced by \$141,894,985 and the various motor vehicle funds would be reduced by \$20,129,467.

Officials from **DOR** state this section would require the state sales tax rate to be reduced, beginning January 1, 2023. DOR notes that the 3% state sales tax is a single tax that is distributed between various funds based on taxable items purchased. The state sales tax (4.225%) on everything but motor vehicles is distributed 3% to general revenue, 1% into the School District Trust Fund, 0.125% into the Conservation Commission Fund and 0.1% is given to the Parks, Soil & Water Funds. The state sales tax on motor vehicles (the same 4.225%) has the 3% deposited into the State Road Bond Fund (50%), 37% into the State Road Fund, 1% into the State Transportation Fund, and 12.5% into the Fuel Local Deposit Fund (FLOYD) which is then distributed to local jurisdictions while the School District Trust Fund, Conservation Fund and the Parks, Soil & Water Fund still receiving their same amounts. These are both the same 3% tax just distributed to different funds based on items purchased. Therefore, the general revenue portion cannot be reduced or increased without also reducing or increasing the tax on motor vehicles.

DOR notes that the language appears to reduce a percentage by a dollar amount that is substantially equivalent to the online use tax collections authorized in Paragraph 144.605(2)(g). However, the language should reduce the tax rate by an amount that would generate substantially the same amount of revenue generated during Calendar Year 2021.

DOR notes that the language is confusing and could be misinterpreted. For fiscal note purposes, DOR will assume the intent was to reduce the state sales tax rate in an amount that would neutralize the revenue gain from online sales tax collections which are authorized in Paragraph 144.605(2)(g).

DOR notes that the reduction in the sales tax rate could only occur on the 3% levy which is deposited into GR and various motor funds (from the 3% sales tax on vehicles). The 1% the School District Trust Fund receives is not changed within this proposal; therefore, it will not be subject to the reduction under Section 144.020 however, it is to be deposited into GR per this proposal. Both of the sales taxes directed towards the Missouri Department of Conservation and the Missouri Department of Natural Resources are constitutional and will also not be impacted by the rate reduction under Section 144.020.

This section would require the state sales tax rate to be reduced, beginning January 1, 2023. This section would require the 3% state sales tax rate reduced by an amount that would offset the gain in revenue authorized under Paragraph 144.605(2)(g) during Calendar Year 2022.

DOR notes that in Fiscal Year 2020 there were \$2,276,390,127 in sales tax deposited into the GR and \$322,932,631 in sales tax collected from the sales of motor vehicles. Therefore the total 3% state sales tax collections during Fiscal Year 2020 was \$2,599,322,758. DOR estimates that total state online use tax collections for calendar year 2022 may be \$105,964,491 to \$161,890,195.

DOR estimates that the 3% state sales tax rate would need to be reduced by 0.122% if online use taxes collected are low (\$105,964,491) and 0.187% if online use tax collections are high (\$161,890,195).

With a 0.122% reduction, DOR estimates that total sales tax collections will be reduced by \$105,705,792. GR would be reduced by \$92,573,199 and the various motor vehicle funds would be reduced by \$13,132,594.

With a reduction of 0.187%, DOR estimates that total sales tax collections will be reduced by \$162,024,452. General revenue would be reduced by \$141,894,985 and the various motor vehicle funds would be reduced by \$20,129,467.

Oversight notes this section states, beginning January 1, 2023, the rates of tax imposed pursuant to Subdivisions (1) to (9) of Subsection 1 of this section shall be reduced by an amount determined under an agreement between the Director of the Missouri Department of Revenue and the State Treasurer such that the amount by which the rates of tax are reduced shall be substantially equivalent to the amount of use tax revenue collected from remittances made under the provisions of Paragraph (g) of Subdivision (2) of Section 144.605 during the 2022 calendar year.

Oversight notes Paragraph (g) of Subdivision (2) of Section 144.605 states, beginning January 1, 2022, a vendor engages in business activities within this state if the cumulative gross receipts from the vendor's sales of tangible personal property to purchasers for the purpose of storage, use, or consumption in this state are one hundred thousand dollars (\$100,000) or more during any twelve-month period, as determined under Subparagraph b. of this paragraph.

Oversight notes Subparagraph b. of Paragraph (g) of Subdivision (2) of Section 144.605 states, following the close of each calendar quarter, a vendor shall determine whether the vendor met the requirements provided under Subparagraph a. of this paragraph during the twelve-month period, such vendor shall collect and remit the tax as provided under Section 144.635 for a period of not less than twelve months.

Oversight assumes, then, that use tax collections during Calendar Year 2022, pursuant to Paragraph (g) of Subdivision (2) of Section 144.605, could be significantly less than future calendar years. This is the result of how and when vendors determine whether they meet the threshold requirements under Paragraph (g) of Subdivision (2) of Section 144.605.

Oversight assumes that vendor's may not know, or may not track, whether they meet the thresholds under Paragraph (g) of Subdivision (2) of Section 144.605 until, at the earliest, the end of the first calendar quarter of Calendar Year 2022.

This suggests that only nine (9) out of twelve (12) months' worth of collections would be recognized during Calendar Year 2022.

Furthermore, the sales tax due date for each calendar quarter are due on or before the last day of the month following the end of the quarter. Thus, Oversight assumes sales tax collections from the month of December (for monthly filers), for the fourth (4th) quarter of Calendar Year 2022 (for quarterly filers), and for entire Calendar Year 2022 (for annual filers) will not be filed until January of Calendar Year 2023; potentially limiting the amount collected in **Calendar Year 2022**, from remittances pursuant to the provisions of Paragraph (g) of Subdivision (2) of Section 144.605, to six months' worth of collections.

Officials from the **Missouri Department of Transportation** defer to the Missouri Department of Revenue to estimate the fiscal impact of this proposed legislation.

For purposes of this fiscal note, Oversight will report the reduction to GR, the State Road Bond Fund, the State Road Fund, the State Transportation Fund, and the Fuel Local Deposit Fund, as estimated by B&P and DOR beginning in Fiscal Year 2023.

Section 144.605 & 144.752 – Online Use Tax Collections

Officials from **B&P** state **Sections 144.605 and 144.752** require retailers and marketplace facilitators that do not have a physical presence within Missouri to collect and remit sales tax on purchases delivered into Missouri beginning January 1, 2022. Only retailers with gross revenue greater than \$100,000 from deliveries into Missouri would be required to collect Missouri sales tax.

Section 144.605(2)(g)c requires that the use tax collected under this section be deposited into GR. For the purpose of this fiscal note, B&P assumes that only the 1% School District Trust Fund tax would be diverted to GR as both the Missouri Department of Conservation's and the Missouri Department of Natural Resources' sales taxes are constitutional. B&P notes that this provision would only divert the use tax revenues from online vendors; it would **not** divert the online use tax from marketplace facilitators.

Section 144.752 defines marketplace facilitators and states that a facilitator counts as one seller. Starting January 1, 2022 marketplace facilitators that reach the sales threshold outlined under Section 144.605(2)(g) must register with the Missouri Department of Revenue and begin remitting sales tax on behalf of individual marketplace sellers. B&P notes that this provision would apply to retailers such as Amazon's marketplace, ETSY, EBAY, etc. This section further clarifies that internet advertisers, travel agencies, and third party payment processors are not considered marketplace facilitators. In addition, marketplace facilitators that collect and remit use tax in a timely manner are eligible for the 2% use tax timely filing discount.

This proposed legislation would require out-of-state vendors with at least \$100,000 in in-state sales to collect and remit state and local use tax, beginning January 1, 2022.

Officials from **DOR** state these section(s) would begin January 1, 2022.

While this proposal states that all money collected from this provision is to be deposited into GR, it should be noted that DOR will continue to show the constitutionally created Conservation Commission and Parks, Soil and Water Funds still receiving their funding.

B&P & DOR – Online Use Tax Collection Summary

OA-Budget and Planning (B&P) and the Department of Revenue (DOR) worked together to estimate the potential revenue gains from the U.S. Supreme Court *Wayfair* decision, which overturned the *Quill* decision and held that states may charge a tax on purchases made from out-of-state sellers, even if the seller doesn't have a physical presence in the taxing state. In November 2017, the U.S. Government and Accountability Office (GAO) released state-by-state estimates for potential revenue gains if the 1992 *Quill* decision were overturned during the *Wayfair* case. In the report, the GAO estimated that Missouri could gain \$180 million to \$275 million in state and local sales taxes during 2017 from e-commerce sales tax revenue. B&P notes that there were three (3) limitations to the study, which B&P and DOR attempted to address by further refining the GAO estimates.

At the time of the study, the GAO did not remove the sales of digital downloads from the state and local estimates due to data limitations and different tax treatments across states. B&P notes that digital downloads are currently exempt from sales tax under Missouri law. B&P and DOR were able to find limited studies on the e-commerce market share for such sales. The studies indicated that digital downloads account for approximately 14.1% of all e-commerce sales. B&P and DOR then reduced the original GAO estimates by that 14.1%.

The GAO provided a point-in-time estimate for potential state and local revenue gains during 2017. This estimate, though, does not account for anticipated growth in e-commerce sales. To address this, B&P and DOR adjusted the GAO estimate to incorporate e-commerce sales growth for tangible personal property from 2018 through 2022. Only growth for e-commerce sales of tangible personal property were used, rather than growth in the full e-commerce market, in order to accurately reflect growth in the online sales tax base. B&P notes that using growth in the full e-commerce market would overestimate the sales tax base as services and digital download products are not currently taxable in Missouri.

At the time of the study, the GAO did not incorporate potential in-state sales or in-state transaction requirements that would limit the companies required to comply with e-commerce sales tax collections. Using data published by the U.S. Census Bureau and industry reports, B&P and DOR were able to estimate the percent of sales that would remain taxable if Missouri instituted an in-state sales threshold of \$100,000. If Missouri were to enact a \$100,000 in-state sales threshold, B&P and DOR estimate that approximately 86.7% of all e-commerce sales would remain taxable. B&P and DOR used this estimate to further adjust the GAO provided revenue estimate.

B&P and DOR estimate that in Calendar Year 2022 Missouri could gain up to \$106.0 million to \$161.9 million in TSR, of which \$100.3 million to \$153.3 million would be GR. By Calendar Year 2024, B&P and DOR estimate that TSR could be increased by \$115.8 million to \$176.9 million, of which \$109.6 million to \$167.4 million would be GR. Table 1 shows the estimated impact by calendar year.

Table 1: Collections by Calendar Year

Revenue Estimates	2022		2023		2024	
	Low	High	Low	High	Low	High
GR (3% tax)	\$75,241,059	\$114,951,618	\$79,336,120	\$121,207,962	\$82,201,766	\$125,586,032
Education (1% tax)*	\$25,080,353	\$38,317,206	\$26,445,373	\$40,402,654	\$27,400,589	\$41,862,011
Total GR	\$100,321,412	\$153,268,824	\$105,781,493	\$161,610,616	\$109,602,355	\$167,448,043
Conservation	\$3,135,044	\$4,789,651	\$3,305,672	\$5,050,332	\$3,425,074	\$5,232,751
Parks, Soil, Water	\$2,508,035	\$3,831,721	\$2,644,537	\$4,040,265	\$2,740,059	\$4,186,201
TSR	\$105,964,491	\$161,890,196	\$111,731,702	\$170,701,213	\$115,767,488	\$176,866,995
Local**	\$38,938,132	\$59,488,813	\$41,057,375	\$62,726,544	\$42,540,380	\$64,992,247

*Section 144.605(2)(g) requires online vendor use tax to be deposited into GR.

**Section 144.637.3 requires that the lowest combined tax rate within a zip code be used to determine local sales tax due. This may lower the actual local tax collections.

B&P and DOR estimate that in fiscal year 2022, Missouri could gain up to \$53.0 million to \$80.9 million in TSR, of which \$50.2 million to \$76.6 million would be GR. By Fiscal Year 2024, B&P and DOR estimate that TSR could be increased by \$113.7 million to \$173.8 million, of which \$107.7 million to \$164.5 million would be GR. Table 2 shows the estimated impact by fiscal year.

Table 2: Collections by Fiscal Year

Revenue Estimates	FY 2022		FY 2023		FY 2024	
	Low	High	Low	High	Low	High
GR (3% tax)	\$37,620,530	\$57,475,809	\$77,288,590	\$118,079,790	\$80,768,943	\$123,396,997
Education (1% tax)*	\$12,540,177	\$19,158,603	\$25,762,863	\$39,359,930	\$26,922,981	\$41,132,333
General Revenue	\$50,160,706	\$76,634,412	\$103,051,453	\$157,439,720	\$107,691,924	\$164,529,330
Conservation	\$1,567,522	\$2,394,826	\$3,220,358	\$4,919,992	\$3,365,373	\$5,141,542
Parks, Soil, Water	\$1,254,018	\$1,915,861	\$2,576,286	\$3,935,993	\$2,692,298	\$4,113,233
TSR	\$52,982,246	\$80,945,098	\$108,848,097	\$166,295,705	\$113,749,595	\$173,784,104
Local**	\$19,469,066	\$29,744,407	\$39,997,753.50	\$61,107,679	\$41,798,878	\$63,859,396

*Section 144.605(2)(g) requires online vendor use tax to be deposited into GR.

**Section 144.637.3 requires that the lowest combined tax rate within a zip code be used to determine local sales tax due. This may lower the actual local tax collections.

B&P notes that these estimates reflect the full potential revenue and do not include adjustments for implementation timing or business compliance. Therefore, the actual revenue collected in earlier years may be significantly lower than the estimated amount.

B&P further notes that the COVID-19 pandemic has changed current consumer behavior. It is unknown yet if and how much of these consumer behavior changes will remain permanent. While these estimates account for some of the behavior changes seen to date, a more permanent shift could alter actual revenues.

DOR would notify an estimated 200,000 sellers of their potential reporting requirements, estimated postage and printing costs for notifications to online sellers may be up to an estimated \$100,000.

DOR's Sales/Use Tax Division anticipates the need for three (3) Associate Customer Service Representatives (\$24,360 annual salary/FTE) to process additional sales/use tax returns, one (1) Associate Customer Service Representative to respond to additional correspondence, two (2) Associate Customer Service Representatives to process additional registration applications and

perform location maintenance and one (1) Associate Customer Service Representative to process additional refund requests under Section 144.190.

DOR states DOR will need to increase the number of auditors; especially those in out-of-state offices, in order to address the potential of a greater non-compliant tax base. DOR will need to add twenty-five (25) Associate Auditors. DOR believes the need for twenty-five total Associate Auditors could increase over a period of time, as DOR generally performs three-year audits and there will be limited records to audit in the first several years following implementation of this proposed bill.

DOR also anticipates it will need two (2) additional auditors in training (44,784 annual salary/FTE) to perform discovery work needed to identify potential audit leads from non-registered businesses.

Oversight conducted independent analysis in relation to the impact(s) to state revenues should legislation be passed that would require out-of-state/online retailers and marketplace facilitators to collect and remit Missouri use tax. Oversight's analysis supports B&P's and DOR's estimated impact(s).

Oversight notes, the overall impact of requiring out-of-state/online retailers and marketplace facilitators to remit use tax is **largely dependent** on the percentage of collections from out-of-state/online retailers and marketplace facilitators that Missouri is currently receiving versus the percentage that is not currently collected from such entities. Currently, the **actual** participation in sales/use tax remittance by out-of-state/online retailers and/or marketplace facilitators cannot be identified. If Missouri is currently collecting sales/use tax(es) from out-of-state/online retailers and marketplace facilitators at a rate higher than estimated, the impact(s) reported above could prove to be lower.

Oversight notes many sources suggest Missouri and Florida are the only two (2) states that impose a sales tax that haven't begun requiring remote sellers to collect and remit applicable tax(es) after the U.S. Supreme Court's 2018 *Wayfair* decision. Oversight notes that, should many of these remote sellers have begun remitting the applicable taxes to Missouri on their own accord, anticipating the requirement will occur at some point, the impact(s) reported above could prove to be lower.

Oversight notes, at some point, revenues generated through online retail sales could simply **replace** (net \$0) revenues currently generated from Missouri's brick and mortar operations. For example, if there is a continuous increase in the percent of total retail sales that are online retail sales, eventually, it would suggest that one hundred percent (100%) of all retail sales are that of online retail sales. This does not indicate that state revenues would increase significantly. Rather, the source of the tax would simply change from brick and mortar operations to online retailers.

Oversight is unable to determine at what point an increase in the percent of total retail sales that are online retail sales becomes a transition of tax revenues from brick and mortar sales to online retail sales.

Oversight further notes, though, that if legislation is not passed that requires out-of-state/online retailers and/or marketplace facilitators to remit applicable Missouri tax(es), that state revenues could decrease should a continuous transition of retail sales from brick and mortar sales to online retail sales occur; a loss of revenues currently collected.

Officials from the **Missouri Department of Conservation (MDC)** state this proposed legislation will have an unknown fiscal impact, but greater than \$100,000.

MDC further states the Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax pursuant to Article IV, Section 43(a) of the Missouri Constitution. Any increase in sales and use tax would increase revenue to the Conservation Sales Tax Fun(s). However, MDC states the initiative is very complex and may require adjustments to Missouri sales tax law which could cause some downside risk to the Conservation Sales Tax.

MDC assumes the Missouri Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposed legislation.

Oversight notes MDC's Conservation Commission Fund (0609) receives one-eighth of one percent of the revenues generated from state sales and use tax. For purposes of this fiscal note, Oversight will report the impact to the Conservation Commission Fund, as reported by B&P and DOR.

Officials from the **Missouri Department of Natural Resources (DNR)** state DNR's Parks and Soils Sales Tax Fund(s) are derived from one-tenth of one percent of sales and use tax pursuant to Article IV, Section 47(a) of the Missouri Constitution. Any increase in sales [and use] tax collected could increase the revenue to the Parks and Soils Sales Tax Fund(s). DNR assumes any increase in revenue to the Parks and Soils Sales Tax Fund(s) would be used for the purposes established under Article IV, Section 47(a) of the Missouri Constitution.

DNR assumes the Missouri Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposed legislation.

Oversight notes DNR's Parks and Soils State Sales Tax Fund(s) (0613 & 0614) receive one-tenth of one percent of the revenues generated from state sales and use tax. For purposes of this fiscal note, Oversight will report the impact to the Parks and Soils State Sales Tax Fund(s), as reported by B&P and DOR.

Officials from **Kansas City** anticipate this section could result in a positive fiscal impact.

For purposes of this fiscal note, **Oversight** will report the fiscal impact(s) of Section(s) 144.605 and 144.752 as reported by B&P and DOR, including DOR's administrative impact(s).

Section 144.637 – DOR Tax Database

Oversight notes this section requires the Missouri Department of Revenue to create and maintain a database that describes boundary changes for all taxing jurisdictions with the effective date of such changes.

Officials from **DOR** state this section requires that the Director of Revenue to provide and maintain a database that describes boundary changes for all taxing jurisdictions and the effective dates of such changes for the use of vendors collecting the tax imposed under Section(s) 144.600 and to 144.745.

This section states that for the identification of counties and cities, codes corresponding to the rates shall be provided according to Federal Information Processing Standards. For the identification of all other jurisdictions, codes corresponding to the rates shall be in a format determined by the director.

This proposed section states that the electronic databases provided for in subsections 1, 2, 3, and 4 of this section shall be in downloadable format as determined by the director. The databases shall be provided at no cost to the user of the database, and no vendor shall be liable for reliance upon erroneous data provided by the director on tax rates, boundaries, or taxing jurisdiction assignments.

DOR anticipates that this section would require a totally new program that would require DOR to contract with a certified service provider. DOR believes the fiscal impact for this would be significantly greater than \$1 million. DOR has reached out to multiple CSP providers, though we have yet to get any definitive fiscal response. DOR will continue to research and update when needed.

Officials from **B&P** state this section requires the Missouri Department of Revenue to create, maintain, and provide a database that assigns each nine-digit and five-digit zip code with the lowest combined local tax rate for that zip code.

Vendors are required to use the database in determining the amount of use tax to collect and remit. The Missouri Department of Revenue may provide an address level database with the corresponding tax rate for each address. If such a database is created, vendors must use the address level database in lieu of the zip code database when determining the amount of use tax to collect and remit. Any and all databases created, maintained, or certified by the Missouri Department of Revenue must be provided at no cost to vendors for their use in collecting and remitting use taxes.

B&P notes this section requires that the lowest combined tax rate within a zip code area must be applied if there are multiple tax rates within the zip code. B&P notes that using the lowest combined local tax rate may reduce the local sales tax collections estimated for online sales.

For purposes of this fiscal note, **Oversight** will include DOR's anticipated administrative costs as it relates to this section. Oversight notes the cost will be included in DOR's equipment and expense cost(s) for Fiscal Year 2022

Section 144.757 – Local Use Tax

Officials from **B&P** state this section would alter the ballot language for certain local sales and use taxes which must be voter approved. The language removes the \$2,000 minimum threshold required before a purchaser must file a use tax return. B&P notes that currently Missouri residents are not required to file a use tax return until total purchases within a calendar year reaches \$2,000. However, once that minimum threshold has been reached, taxpayers are already required to pay use tax on the full amount of purchases, not just the amount over \$2,000. While use tax is legally due on all out-of-state purchases, B&P notes that it is not cost effective to audit taxpayers whose online purchases are lower than \$2,000. Therefore, B&P estimates that this section will not impact TSR or the calculation under Article X, Section 18(e).

Officials from **DOR** state this section modifies the ballot language for sales and use tax issues. DOR assumes no fiscal impact from changing the ballot language.

Legislation as a Whole –

Officials from the **City of Hale** anticipate this proposed legislation will result in a fiscal impact.

Officials from the **City of Houstonia** anticipate this proposed legislation will result in a fiscal impact.

Officials from the **Kansas City Board of Election Commissioners** assume this proposed legislation could have a fiscal impact.

Officials from the **Missouri State Auditor's Office**, the **Missouri State Treasurer's Office**, the **City of Claycomo**, the **City of Hughesville**, the **City of Springfield**, the **Jackson County Election Authority**, the **Platte County Election Authority**, the **St. Louis County Election Authority**, and the **High Point R-III School District** do not anticipate this proposed legislation will have a fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will not report a fiscal impact for these organizations.

<u>FISCAL IMPACT –</u> <u>State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<u>Revenue Reduction –</u> Section 32.087 – Reduction To DOR 1% Collection Fee – p. 3-5	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Revenue Reduction –</u> Section 144.020 - State Sales Tax Rate Reduction – p. 5-10	\$0	(\$46,286,599) to (\$70,947,492)	(\$92,573,199) to (\$141,894,985)
<u>Revenue Gain –</u> Section(s) 144.605 & 144.752 – Online Use Tax Collection – p. 10-15	Less than \$50,160,706 to \$76,634,412	Less than \$103,051,453 to \$157,439,720	Less than \$107,691,924 to \$164,529,330
<u>Cost – DOR –</u> Section(s) 144.605 & 144.752 - Online Use Tax Collection p. 10-15 & 16-17			
Personnel Services	(\$1,277,894)	(\$1,548,808)	(\$1,564,296)
Fringe Benefits	(\$769,589)	(\$928,683)	(\$933,910)
Equipment & Expense	(\$1,459,313)	(\$18,166)	(\$18,620)
Total Cost	(\$3,506,796)	(\$2,495,657)	(\$2,516,826)
FTE Change – DOR	34 FTE	34 FTE	34 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>Less than</u> <u>\$46,653,910 to</u> <u>\$73,127,616</u>	<u>Less than</u> <u>\$54,269,197 to</u> <u>\$83,996,571</u>	<u>Less than</u> <u>\$12,601,899 to</u> <u>\$20,117,519</u>

CONSERVATION COMMISSION FUND (0609)			
<u>Revenue Gain</u> – Section(s) 144.605 & 144.752 – Online Use Tax Collection – p. 10-15	<u>Less than \$1,567,522 to \$2,394,826</u>	<u>Less than \$3,220,358 to \$4,919,992</u>	<u>Less than \$3,365,373 to \$5,141,542</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	<u>Less than \$1,567,522 to \$2,394,826</u>	<u>Less than \$3,220,358 to \$4,919,992</u>	<u>Less than \$3,365,373 to \$5,141,542</u>
PARKS AND SOILS STATE SALES TAX FUND(S) (0613 & 0614)			
<u>Revenue Gain</u> – Section(s) 144.605 & 144.752 – Online Use Tax Collection - p. 10-15	<u>Less than \$1,254,018 to \$1,915,861</u>	<u>Less than \$2,576,286 to \$3,935,993</u>	<u>Less \$2,692,298 to \$4,113,233</u>
ESTIMATED NET EFFECT ON PARKS AND SOILS STATE SALES TAX FUND(S)	<u>Less than \$1,254,018 to \$1,915,861</u>	<u>Less than \$2,576,286 to \$3,935,993</u>	<u>Less \$2,692,298 to \$4,113,233</u>
STATE ROAD BOND FUND (0319)			
<u>Revenue Reduction</u> – Section 144.020 - Section State Sales Tax Reduction – p. 5-10	<u>\$0</u>	<u>(\$3,283,148) to (\$5,032,367)</u>	<u>(\$6,566,297) to (\$10,064,734)</u>

ESTIMATED NET EFFECT ON STATE ROAD BOND FUND	\$0	<u>(\$3,283,148) to (\$5,032,367)</u>	<u>(\$6,566,297) to (\$10,064,734)</u>
STATE ROAD FUND (0320)			
<u>Revenue Reduction – Section 144.020 - Section State Sales Tax Reduction – p. 5-10</u>	<u>\$0</u>	<u>(\$2,396,698) to (\$3,673,628)</u>	<u>(\$4,793,397) to (\$7,347,255)</u>
ESTIMATED NET EFFECT ON STATE ROAD FUND	\$0	<u>(\$2,396,698) to (\$3,673,628)</u>	<u>(\$4,793,397) to (\$7,347,255)</u>
STATE TRANSPORTATION FUND (0675)			
<u>Revenue Reduction – Section 144.020 - Section State Sales Tax Reduction – p. 5-10</u>	<u>\$0</u>	<u>(\$65,663) to (\$100,647)</u>	<u>(\$131,326) to (\$201,295)</u>
ESTIMATED NET EFFECT ON STATE TRANSPORTATION FUND	\$0	<u>(\$65,663) to (\$100,647)</u>	<u>(\$131,326) to (\$201,295)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenue Reduction – Section 32.087 – Local Sales Tax Rate Reduction – p. 3-5</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Revenue Gain – Section(s) 144.605 & 144.752 – Online Use Tax Collection – p. 10-15</u>	Less than \$19,469,066 to \$29,744,407	Less than \$39,997,754 to \$61,107,679	Less than \$41,798,878 to \$63,859,396
FUEL LOCAL DEPOSIT FUND			
<u>Revenue Reduction – Section 144.020 – State Sales Tax Rate Reduction – p. 5-10</u>	\$0	(\$820,787) to (\$1,258,092)	(\$1,641,574) to (\$2,516,183)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>Less than \$19,469,066 to \$29,744,407</u>	<u>Less than \$39,176,967 to \$59,849,587</u>	<u>Less than \$40,157,304 to \$61,343,213</u>

FISCAL IMPACT – Small Business

The collection of use tax from out-of-state/online retailers and marketplace facilitators could even the playing field for local in-state small businesses; therefore, in-state small businesses could experience revenue growth. Out-of-state/online businesses and marketplace facilitators would be required to collect and remit the applicable tax(es) to the Missouri Department of Revenue; increasing their administrative costs and decreasing their net revenues (Section(s) 144.605 & 144.752).

FISCAL DESCRIPTION

SALES AND USE TAX MAPPING

Current law requires the Department of Revenue to create and maintain a mapping feature on its website that displays various sales tax information. This act requires such mapping feature to include use tax information. (Section 32.310)

SALES TAX RATES

For all tax years beginning on or after January 1, 2022, all taxing jurisdictions levying a local sales tax shall reduce such levy to a rate that will produce substantially the same amount of revenue collected from such sales tax during fiscal year 2020, plus five percent of such amount. Such taxing jurisdictions shall provide data to the State Auditor substantiating that such tax rate complies with such rollback, as described in the act. (Section 32.087)

Current law imposes a statutory state sales tax at a rate of 4%. Beginning January 1, 2023, this act reduces such rate by an amount to be determined under an agreement between the Director of Revenue and the State Treasurer and shall be an amount that is substantially equivalent to the use tax collections made under the provisions of this act during the 2022 calendar year. (Section 144.020)

ECONOMIC NEXUS

Beginning January 1, 2022, this act provides that a vendor shall be considered to be engaging in business activities in this state if such vendor had cumulative gross receipts of at least \$100,000 from the sale of tangible personal property for the purpose of storage, use, or consumption in this state in the previous twelve-month period, as described in the act. Vendors meeting such criteria shall be required to collect and remit the use tax as provided under current law. (Section 144.605)

TAXING JURISDICTION DATABASE

This act requires the Director of Revenue to provide and maintain a downloadable electronic database at no cost to the user of the database for taxing jurisdiction boundary changes and tax rates. Such databases may be directly provided by the Director, or may be provided by a third party as designated by the Director.

Vendors shall not be liable for reliance upon erroneous data provided by the Director on tax rates, boundaries, or taxing jurisdiction assignments. (Section 144.637)

LOCAL USE TAX BALLOT LANGUAGE

This act modifies ballot language required for the submission of a local use tax to voters by including language stating that the approval of the local use tax will eliminate the disparity in tax rates collected by local and out-of-state sellers by imposing the same rate on all sellers. (Section 144.757)

MARKETPLACE FACILITATORS

By January 1, 2022, marketplace facilitators, as defined in the act, that meet the use tax economic nexus threshold established in the act shall register with the Department to collect and remit sales and use tax on sales made into the state through the marketplace facilitator's marketplace by or on behalf of a marketplace seller, as defined in the act. Such retail sales shall include those made directly by the marketplace facilitator as well as those made by marketplace sellers through the marketplace facilitator's marketplace.

Marketplace facilitators shall report and remit sales and use tax collected under this act on a separate form developed by the Department. Marketplace facilitators properly collecting and remitting sales and use tax in a timely manner shall be eligible for any discount provided for under current law.

Marketplace facilitators shall provide purchasers with a statement or invoice showing that the sales and use tax was collected and shall be remitted on the purchaser's behalf.

No class action shall be brought against a marketplace facilitator in any court in this state on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected on retail sales facilitated by a marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.

If the Department audits a marketplace facilitator, it shall only audit such facilitator and not the marketplace sellers on behalf of whom the marketplace facilitator facilitates sales.

Marketplace facilitators may apply to the Department for relief from liability for the failure to collect and remit the correct amount of sales or use tax on retail sales facilitated for marketplace sellers under certain circumstances, as described in the act. Relief from liability shall be a percentage of the sales and use tax collected by the marketplace facilitator, with such percentage being four percent for sales made during the 2022 calendar year, two percent for sales made during the 2023 calendar year, one percent for sales made during the 2024 calendar year, and zero percent thereafter.

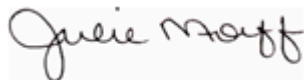
The Department may grant a waiver from the requirements of the act if a marketplace facilitator demonstrates to the satisfaction of the Department that all of its marketplace sellers are already

registered to collect and remit sales and use tax. If such waiver is granted, the sales or use tax due shall be collected and remitted by the marketplace seller. (Section 144.752)

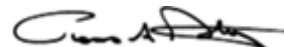
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration – Budget & Planning Division
Missouri Department of Natural Resources
Missouri Department of Revenue
Missouri Department of Conservation
Missouri Department of Transportation
Missouri State Auditor’s Office
Missouri State Treasurer’s Office
City of Ballwin
City of Claycomo
City of Corder
City of Hale
City of Houstonia
City of Hughesville
City of Kansas City
City of O’Fallon
City of Springfield
City of St. Louis
Jackson County Election Authority
Kansas City Board of Election Commissioners
Platte County Election Authority
St. Louis County Election Authority
High Point R-III School District



Julie Morff
Director
February 10, 2021



Ross Strobe
Assistant Director
February 10, 2021