



Administration
715 W. Mt. Vernon
P.O. Box 395
Nixa, Missouri 65714
Phone (417) 725-3785
Fax (417) 725-6394

To: Mayor and City Council
From: Cindy Robbins
Date: December 23, 2015
RE: Local Use Tax Ballot Issues

Before 2012, cities without a use tax were able to collect local sales tax on vehicles purchased out of state. In 2012, the Missouri Supreme Court ruled that Missouri local sales tax cannot be applied to vehicles (trailers, boats, and outboard motors included) purchased from out-of-state vendors, causing a tax advantage for dealers in bordering states. In 2013, the General Assembly passed legislation in an effort to reduce that tax advantage. This legislation redefined sales tax on motor vehicles to be a sales tax on the titling of those vehicles. However, this legislation also requires local jurisdiction to place an issue on the ballot prior to November 2016 that discontinues the local tax on vehicle titling. Basically voters would need to vote no in order for the city to continue collecting sales tax on vehicles purchased out of state. If Council chooses to proceed with this initiative an ordinance would need to be written and the item placed on the ballot. The April, August and November elections are the only opportunities for this issue to be put before the voters. If Council chooses not to proceed there is potential to lose revenue; however, calculation of that revenue is nearly impossible.

Another issue for consideration is the imposition of a local use tax in order to collect a tax on internet purchases. Once again, local stores are at a disadvantage to the out-of-state vendor because they have to charge sales tax while the out-of-state vendor does not. A use tax is similar to a sales tax except that it is imposed on purchases made by Missouri residents from out-of-state vendors. The use tax is only paid by an individual if they have more than \$2000.00 worth of purchases. If Nixa were to elect to impose a local use tax, the rate would be 1.5% which is equal to our sales tax rate. Keep in mind that a customer would pay either a sales tax for retail purchases made in Missouri or the use tax on purchases made from out-of-state vendors **never both**. This local use tax would level the playing field for our local stores. If any of Nixa's sales tax was repealed, increased or decreased by voter approval the use tax is also repealed, increased or decreased. If Council chooses to proceed with this initiative an ordinance would need to be written and a second issue would need to be placed on the ballot for voter consideration. A simple majority is required for it to pass. If passed the use tax would become effective on the

first day of the calendar quarter that begins at least forty-five (45) days after the Department of Revenue receives notification. The Marketplace Fairness Act is federal legislation that requires vendors to collect a use tax for their sales; however, only the cities that have a use tax in place would benefit from that legislation, if and when it takes place.

While the information regarding the use tax issue is confusing, the ordinances and ballot language are equally confusing and if Council should choose to move forward on these issue, education and communication to the voters is crucial. Certification dates for the election are January 26 for the April election, May 24 for the August election and August 30 for the November election. Staff is asking for Council direction on this matter.

FREQUENTLY ASKED QUESTIONS: THE USE TAX AND VEHICLE SALES TAX

by League Staff

Each day your Missouri Municipal League staff answers dozens of questions on municipal issues. This edition focuses on se tax and more specifically on the sales of motor vehicles. Some of the information in the column comes from the information available on the Missouri Department of Revenue's website. As with all legal matters, municipal officials are urged to consult their city attorney for guidance in the specific problems faced by their municipality. Answers provided in this column should serve only as a general reference.



the purchase is from a Missouri retailer. Typically in such a situation the sales tax based on the vendor's location would apply to the purchase.

WILL THE USE TAX APPLY TO EVERY PURCHASE MADE FROM OUT-OF-STATE VENDORS?

Out-of-state vendors that have contracts with the state of Missouri or vendors with a physical nexus in Missouri are required to collect the use tax. Consumers who make purchases from vendors who do not collect the use tax are required to report those purchases on income tax when their annual purchases from non-collecting vendors exceed \$2,000. Purchases made from vendors who do not collect the use tax of less than \$2,000 are still subject to the use tax; however, there is no mechanism that guarantees collection.

WHAT IS USE TAX?

In the simplest terms, a use tax is a sales tax imposed on the purchase of goods by Missouri residents from out-of-state vendors. The use tax is applied to the same type of products subject to sales tax. Products exempt from the sales tax would be exempt from the use tax. The state use tax rate is 4.225 percent, the same as the sales tax rate. Cities and counties may impose an additional local use tax. The amount of use tax due on a transaction depends on the combined (local and state) use tax rate in effect at the Missouri location where the tangible personal property is delivered. In general terms, while the sales tax rate is based on the point of sale, the use tax rate is determined based on the point of delivery. Local

use taxes are distributed in the same manner as sales taxes.

WHAT IS THE RATE OF USE TAX?

The state of Missouri imposes a use tax at 4.225 percent, the same as the retail sales tax. Local jurisdictions that have the power to impose a sales tax also may impose a use tax. The local use tax rate is imposed at the same rate as the total of the jurisdictions local option sales taxes. Further, if a local sales tax sunsets or is repealed, the use tax would decrease in an amount equal to the sales tax that repealed. Likewise, if the voters of a city approve a new sales tax the use tax would go up by the same amount.

WHAT IF I BUY SOMETHING FROM A MISSOURI RETAILER USING THE INTERNET, WILL THE USE TAX APPLY?

No. The use tax does not apply if

WOULD PASSAGE OF THE FEDERAL MARKETPLACE FAIRNESS, AKA INTERNET TAX, MAKE PASSAGE OF A LOCAL USE TAX A MOOT POINT?

The Marketplace Fairness Act is a federal legislation that would require vendors across the nation to collect the use tax on behalf of their consumer's state of residence. Only cities that have passed the use tax would benefit from such Federal legislation. Further, state-level action may still be needed to enter into any national level compact on tax collection. Issues such as product exemption and sales tax holidays

Did You Know?

Municipalities must vote on a vehicle sales tax by November 2016!

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will likely need to be sorted out. For instance, some states exempt clothing from sales tax but consider mittens as sports gear, subject to taxation, while other states may exempt food but do not consider candy bars a food item.

WHAT ABOUT VEHICLE PURCHASES? ARE THEY TREATED DIFFERENTLY THAN OTHER PURCHASES?

Yes, the purchase of vehicles, trailers, boats, and outboard motors are treated differently than other retail purchases. Currently, the local sales tax is not paid at the time of purchase for these products. For instance, when Missouri residents purchase a car at an auto dealership, no sales tax is paid on the purchase. Instead, when those products are registered with the Missouri Department of Revenue, the local sales tax will be imposed based on the address of the registrant (which may be a different jurisdiction from the location of the auto dealer who sold the car).

WHAT WAS THE STREET DECISION?

On Jan. 31, 2012, the Missouri Supreme Court ruled in *Street vs. Director of Revenue*, 361 S.W.3d 355, that only cities with a use tax could collect local sales tax on purchases from out of state (as well as person-to-person sales). Purchases from Missouri auto dealers were still subject to the tax. The Missouri Department of Revenue estimated that approximately 20 percent of vehicle (and trailers, boats and outboard motors) sales occur from out-of-state vendors or person-to-person sales and this would result of a loss in revenue to local jurisdictions of approximately \$20.5 million.

WHAT WAS THE RESPONSE TO THE STREET DECISION?

In response to this momentous court decision, the Missouri Municipal League (MML) sought relief from the Missouri Legislature. In 2013, the Legislature passed SB 182. This legislation re-imposed the local sales tax on vehicle sales (and person-to-person sales) in the form of an administrative fee. The legislation requires that cities that did not have a use tax in place prior to August of 2013 must receive voter approval to continue this administrative fee by November of 2016. Cities that don't gain voter approval to continue the tax by November of 2016 will lose the revenue stream after that date.



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Further, the law does not provide a means to bring this issue back to the voters after November 2016. The MML is supporting a legislative measure in the 2016 legislative session that will allow the tax issue to be brought back to the voters after 2016.

DO WE NEED TO PASS A USE TAX TO ENSURE THAT THE CITY CONTINUES TO RECEIVE SALES TAX ON OUT-OF-STATE VEHICLE PURCHASES?

No. Cities that had a use tax in place prior to the enactment of SB 182 (August 2013) will continue to receive revenue from out-of-state vehicle purchases. However, passage of a new use tax may not prevent the loss of revenue after November of 2016. Language in SB 182 found in Section 32.087 refers to municipalities "in which voters have previously approved a local use tax." This language calls into question whether a new use tax passed after Aug. 28, 2013, will capture the administrative fee on vehicle sales. Therefore, the prudent course for cities that did not have the use tax in place prior to August of 2013 is to seek voter approval for the continuance of the sales tax on out-of-state vehicle purchases, NOT a use tax.

WHAT HAS THE MISSOURI MUNICIPAL LEAGUE DONE TO ADDRESS THE STREET DECISION LOOPHOLE?

League staff, together with the auto dealers association and municipal officials across the state worked tirelessly to see SB 182 passed. This legislation has prevented the loss of approximately \$40 million in much-needed revenue to Missouri cities.

WHERE CAN WE GET BALLOT LANGUAGE OR SAMPLE ORDINANCES FOR THE ADMINISTRATIVE FEE OR USE TAX?

The Missouri Municipal League has prepared model ordinances for both the use tax and the administrative fee on vehicles sales. These ordinances are available on the League's website at www.mocities.com; click on the "One-Stop Shop" tab and scroll to "taxes," or you may contact League headquarters at (573) 635-9134 and request a copy. □

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