# COMMITTEE ON LEGISLATIVE RESEARCH OVERSIGHT DIVISION

#### **FISCAL NOTE**

<u>L.R. No.:</u> 4252-01 <u>Bill No.:</u> HB 1721

Subject: Taxation and Revenue - Sales and Use; Revenue, Department of

Type: Original Date: April 7, 2014

Bill Summary: This proposal would direct the Department of Revenue to enter into the

Streamlined Sales and Use Tax Agreement, and would change the laws

regarding taxation.

## **FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2015	FY 2016	FY 2017	
General Revenue	Unknown to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	
Total Estimated Net Effect on General Revenue Fund	Unknown to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 19 pages.

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ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2015	FY 2016	FY 2017	
Conservation Commission	Unknown to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	
Parks, and Soil and Water	Unknown to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	
School District Trust	Unknown to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2015	FY 2016	FY 2017	
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2015	FY 2016	FY 2017	
Total Estimated Net Effect on FTE	0	0	0	

- □ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- ☑ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS					
FUND AFFECTED FY 2015 FY 2016 FY 2017					
<b>Local Government</b>	Unknown to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)		

#### **FISCAL ANALYSIS**

#### ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials from the **Joint Committee on Administrative Rules** assume that this proposal would not have a fiscal impact to their organization in excess of existing resources.

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## ASSUMPTION (continued)

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this proposal would have a statewide impact, and would impact the calculation under Article X, Section 18(e) of the Missouri Constitution.

BAP officials noted this proposal would direct the Department of Revenue (DOR) to enter into the streamlined sales and use tax agreement, effective 7/1/15.

BAP officials also noted remote sellers would be able to remit sales tax under this agreement, and estimated the proposal would generate \$10 million in Total State Revenues annually, of which \$7 million would be due to the General Revenue Fund. However, revenues may be less than this amount during the first year, depending on the administrative issues involved in becoming a full member state of the Streamlined Sales Tax Agreement.

Additionally, BAP officials noted a recent study provided by the National Conference of State Legislators, which estimated that Missouri could gain \$430.2 million in state and local sales tax revenue, if Missouri adopts the agreement and Congress enacts the Federal Marketplace Fairness Act or similar legislation. Of this estimated total amount, \$235.3 million would be state revenues, and \$167.1 million would be due to the General Revenue Fund.

BAP officials noted this proposal would also make numerous changes to state taxation, and stated they would provide additional estimates of the impacts of these changes as more information becomes available.

Finally, BAP officials noted that Section 32.086 would create a standard 1% collection fee for local sales taxes collected which would be deposited in the General Revenue Fund to offset DOR collection costs. To the extent this is a new fee and not just replacing existing fee language, it would increase Total State Revenues by an unknown amount.

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## ASSUMPTION (continued)

In response to similar language in HB 422 LR 0511-01 (2013) BAP officials cited two studies of the state and local revenues that Missouri might gain from collecting sales tax on e-commerce provide an estimated range of \$108 million (Eisanach & Litan, Feb. 2010) and \$210 million (Bruce, Fox, & Luna, April 2009). Both studies are limited to the gains from e-commerce, and do not attempt to estimate other remote sales. BAP officials note that remote sellers would be able to remit sales tax under this agreement, and assume this proposal would generate \$10 million in total state revenues annually, of which \$7 million would be due to the General Revenue Fund.

**Oversight** has reviewed the studies cited by BAP and we noted that there are significant differences between the two studies in the methodology used to estimate the level of internet and other remote sales, the proportion of remote sales which would be taxable, and the current level of compliance with existing tax provisions.

The Bruce, Fox, and Luna report suggests that approximately 25% of sales taxes due on e-commerce are uncollected, and that sales tax collections on e-commerce were \$26.1 billion for the year 2010. This rough estimate of the uncollected sales tax would indicate that \$8.7 billion was uncollected for the United States. If 1.8% of the \$8.7 billion was due the state of Missouri, the additional revenue would amount to \$156.6 million. The Eisenach and Litan report suggests only \$3.8 billion in uncollected sales tax on e-commerce; 1.8% of that amount attributable to Missouri would be \$70.2 million.

Information reported by the United States Census Bureau indicates that online retail sales grew at an average rate of 20% per year for the years 2000 to 2007, with lower growth rates for 2007 to 2009. A report by marketing and information technology consultants Forrester Research projected a 10% annual growth rate for the years 2009 through 2015, with online sales accounting for 11% of total retail sales (excluding groceries) by 2015.

**Oversight** has recently been provided an estimate of Streamlined Sales Tax Program revenue by officials from the Streamlined Sales Tax Governing Board. That estimate was based on comparing population and per capita income information for Missouri with the same information for states currently participating in the Streamlined Sales Tax program. Based on those calculations, Streamlined Sales Tax Governing Board officials estimated that those Missouri state funds which receive sales tax revenues would collect an additional \$13.7 million in the first full year of operation.

## ASSUMPTION (continued)

Streamlined Sales Tax Governing Board officials stated that the program is currently voluntary; and the member states have agreed to simplify their sales tax programs and contract with third-party transaction processors who collect and remit sales taxes to the member states. Participating multistate retailers agree to collect and remit sales taxes to member states, typically in exchange for an amnesty on prior uncollected sales and use taxes.

**Oversight** assumes the Governing Board estimate is the most reasonable estimate of potential additional revenue under the current voluntary program. Additional revenue could become available in the future if the United States government approves law changes to make state sales tax laws enforceable on interstate sales.

The \$13.7 million in additional collected would be due to the following state funds, and **Oversight** has also calculated an estimate of additional revenues to local governments.

Entity	Tax Rate	
General Revenue Fund	3.000%	\$9,738,000
School District Trust Fund	1.000%	\$3,246,000
Conservation Commission Fund	0.125%	\$405,800
Parks, and Soils Fund	0.100%	\$324,600
Local Governments *	Average 3.700%	\$12,010,297
Total	NA	\$25,724,697

<sup>\*</sup> The average local sales and use tax rate was based on tax revenues reported by the Department of Revenue for the year ended June 30, 2013.

Officials from the **Department of Conservation (MDC)** assume this proposal would direct the Department of Revenue to enter into the Streamlined Sales and Use Tax Agreement, and would change the laws regarding taxation.

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## ASSUMPTION (continued)

MDC officials assume this proposal would have an unknown fiscal impact but greater than \$100,000. MDC officials noted Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax pursuant to the Missouri Constitution, and any increase in sales and use tax collected would increase revenue to the Conservation Sales Tax funds.

MDC officials also noted the proposal is very complex and may require adjustments to Missouri sales tax law which could cause some downside risk to the Conservation Sales Tax. The Department assumes the Department of Revenue would be better able to estimate the anticipated fiscal impact from this proposal.

Officials from the **Department of Natural Resources (DNR)** assume this proposal would require the Department of Revenue to joint the Streamlined Sales and Use Tax Agreement (SSUTA) which focuses on improving sales and use tax administration systems for all sellers and for all types of commerce. The SSUTA applies primarily to the retail transactions by sellers who do not have a physical location in the state. Retailers who do not have physical location in the state would be required to report taxable sales and remit sales tax on Missouri sales.

DNR officials noted that according to a 2009 University of Tennessee study - State and Local Sales Tax Revenue Losses from Electronic Commerce, total state revenues that Missouri could gain from collecting sales tax on e-commerce in FY 2012 is an estimated \$210 million.

DNR officials also noted the Parks and Soils Sales Tax Funds are derived from one-tenth of one percent sales and use tax pursuant to the Missouri Constitution and assume any increase in sales tax collected would increase revenue to the Parks and Soils Sales Tax Funds.

Finally, DNR officials assumed the Department of Revenue would be better able to estimate the anticipated fiscal impact from this proposal.

## ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume this proposal would require the Department to implement the streamlined Sales Tax Program in Missouri.

#### Fiscal impact

DOR officials assume that once fully implemented, the Streamlined Sales and Use Tax Agreement should increase sales tax collections and Total State Revenue by an estimated \$5 million in the first year of implementation and \$10 million each year thereafter.

#### Administrative impact

DOR officials assume Collections and Tax Assistance (CATA) would require two additional Revenue Processing Technicians I for contacts to the registrations section and tax assistance offices; each technician would require CARES equipment and license.

#### IT impact

DOR officials assume changes would need to be made to their processing systems, requiring programming assistance from OA - ITSD (DOR):

Withholding	504	hours
Sales	4,032	hours
Individual	504	hours
Total Hours Impact:	5,040	hours

DOR officials provided an estimate of the IT cost to implement this proposal of \$137,592 based on the 5,040 estimated hours of programming to make changes to DOR systems.

**Oversight** assumes implementing the Streamlined Sales Tax program would be accomplished as part of an ongoing DOR update process and for fiscal note purposes only, will indicate a cost to the General Revenue Fund in excess of \$100,000 for FY 2015 and FY 2016. That fiscal impact is intended to include the DOR cost for updating procedures, any additional staffing that would be needed, and the programming that would be required for changes to various DOR systems. Oversight assumes that additional revenues would exceed additional costs by more than \$100,000 per year for the General Revenue Fund.

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## ASSUMPTION (continued)

Officials from **St. Louis County** assume this proposal would have a significant impact on their organization but were not able to provide an estimate of the impact.

Officials from the **City of Kansas City** assume the enactment of the Streamlined Sales Tax could increase Kansas City's sales tax revenues by facilitating merchants' collection of sales tax on online and mail order purchases made by Kansas City residents, but noted the City is unable to estimate the amount of additional revenue at this time.

Officials from the City of Jefferson City, the Platte County Board of Elections, and the St. Louis County Directors of Elections assume this proposal would have no fiscal impact on their organizations.

## Oversight fiscal impact assumptions

**Oversight** will, for fiscal note purposes only, indicate additional revenue in excess of \$100,000 per year beginning in FY 2016 for those state funds that receive sales tax revenues, and for local governments for the Streamlined Sales Tax Program.

**Oversight** notes this proposal would allow the Department of Revenue to withhold 1% of local government revenues for collection costs and will indicate additional unknown revenue in the General Revenue Fund, and an unknown revenue reduction for local governments for this charge.

**Oversight** notes this proposal would make several changes to existing sales tax exemptions, but does not have specific information as to the impact of the changes either individually or collectively. Oversight will, for fiscal note purposes only, indicate a revenue impact of Unknown to (Unknown) for those state funds that receive sales tax revenues and for local governments.

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## ASSUMPTION (continued)

#### Not responding

Officials from the following counties: Andrew, Audrain, Barry, Bates, Boone, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cole, Cooper, DeKalb, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Marion, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, St. Charles, St. Francois, Taney, Warren, Wayne and Worth did not respond to our request for information.

Officials from the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lebanon, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O'Fallon, Pacific, Peculiar, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to our request for information.

Officials from the following school districts: Blue Springs, Branson, Charleston R-I, Cole R-I, Columbia, Fair Grove, Francis Howell, Fulton, Harrison R-IX, Independence, Jefferson City, Johnson County R-7, Kansas City, Kirksville, Kirbyville R-V, Lee's Summit, Malden R-I, Malta Bend, Mexico, Monroe City R-I, Nixa, Parkway, Pattonville, Raymore-Peculiar R-III, Raytown, Riverview Gardens, Sedalia, Sikeston, Silex, Special School District of St. Louis County, Spickard, St Joseph, St Louis, St. Charles, Sullivan, Warren County R-III, and Waynesville did not respond to our request for information.

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ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	Unknown to ( <u>Unknown)</u>	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)
Cost - DOR Streamlined Sales Tax Program Section 32.070, etc.	<u>\$0</u>	(More than \$100,000)	(More than \$100,000)
Additional revenue - DOR Streamlined Sales Tax Program Section 32.070, etc	\$0	More than \$100,000	More than \$100,000
Revenue increase or reduction - DOR Changes to sales tax exemption provisions	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Additional revenue - DOR 1% collection charge	\$0	Unknown	Unknown
GENERAL REVENUE FUND	(10 Mo.)		
FISCAL IMPACT - State Government	FY 2015	FY 2016	FY 2017

ESTIMATED NET EFFECT ON PARKS, AND SOIL AND WATER FUND	Unknown to ( <u>Unknown)</u>	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)
Revenue increase or reduction - DOR Changes to sales tax exemption provisions	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Additional revenue - Streamlined Sales Tax Section 32.070, etc	\$0	More than \$100,000	More than \$100,000
PARKS, AND SOIL AND WATER FUND			
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	Unknown to ( <u>(Unknown)</u>	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)
Revenue increase or reduction - DOR Changes to sales tax exemption provisions	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Additional revenue - Streamlined Sales Tax Section 32.070, etc	\$0	More than \$100,000	More than \$100,000
CONSERVATION COMMISSION FUND			
FISCAL IMPACT - State Government (Continued)	FY 2015 (10 Mo.)	FY 2016	FY 2017

FISCAL IMPACT - State Government (Continued)	FY 2015 (10 Mo.)	FY 2016	FY 2017
SCHOOL DISTRICT TRUST FUND			
Additional revenue - Streamlined Sales Tax Section 32.070, etc.	\$0	More than \$100,000	More than \$100,000
Revenue increase or reduction - DOR Changes to sales tax exemption provisions	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	Unknown to ( <u>Unknown)</u>	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)
FISCAL IMPACT - Local Government	FY 2015 (10 Mo.)	FY 2016	FY 2017
LOCAL GOVERNMENTS			
Additional revenue - Streamlined Sales Tax Program Section 32.070, etc.	\$0	More than \$100,000	More than \$100,000
Revenue increase or reduction - DOR Changes to sales tax exemption provisions	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Revenue reduction - DOR 1% collection charge	<u>\$0</u>	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	Unknown to ( <u>(Unknown)</u>	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)

## FISCAL IMPACT - Small Business

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

#### FISCAL DESCRIPTION

This proposal would require the Department of Revenue to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and types of commerce.

#### Streamlined Sales Tax Program

## The bill would require:

- \* When a city annexes or detaches property, the city clerk would be required to forward a certified copy of the ordinance to the department director within 10 days of adoption of the ordinance. The tax rate in the added or abolished territory would be required to become effective on the first day of the calendar quarter 120 days after the sellers receive notice of the change (Section 32.087.18, RSMo);
- \* (2) When a political subdivision changes the tax rate or the local sales tax boundary, the change would be required to become effective on the first day of the calendar quarter 120 days after the sellers receive notice of the change (Section 32.087.19);
- \* When specified political subdivisions repeal an existing tax, the repeal would be required to become effective on the first day of the calendar quarter 120 days after notice to sellers (Sections 66.620 67.1545, 67.1775, 67.2000, and 67.2530).

#### The proposal would also:

\* Require the department to establish the necessary rules to implement the compliance provisions of the agreement.

## <u>ASSUMPTION</u> (continued)

- \* The state would be required to be represented as a member of the agreement for amending the agreement by three delegates including a person appointed by the Governor, a member of the General Assembly appointed by mutual consent of the President Pro Tem of the Senate and the Speaker of the House of Representatives, and the department director or his or her designee. The delegates would be required to make an annual report by January 15 on the status of the agreement (Section 32.070);
- \* Authorizes the department to retain 1% of the amount of any local sales or use taxes collected by the department for the cost of collection (Sections 32.086 and 67.395 67.576);
- \* Require the department to perform all functions regarding the administration, collection, enforcement, and operation of all sales taxes. All state and local sales taxes would be required to have the same base which means that exemptions at the state and local level would be required to be identical (Sections 67.1545, 67.2030, and 67.2530);
- \* Define "delivery charges," "food and food ingredients," "bottled water," "candy," "ancillary services," "lease or rental," and "purchase price" as they apply in the streamlined agreement.
- \* Define "engages in business activities within this state" and "maintains a place of business in this state" as they relate to the collection of taxes and define "tangible personal property" to exclude specified digital products, digital audio-visual works, digital audio works, and digital books (Section 144.010);
- \* Create rules to determine the taxability of bundled transactions involving both taxable and nontaxable goods or services (Section 144.022);
- \* Require uniform sourcing rules to determine what tax rates apply to certain transactions (Sections 144.040 144.043);

## FISCAL DESCRIPTION (continued)

- \* Require the department to participate in an on-line registration system that would allow sellers to register in this state and other member states. Registration with the central registration system and the collection of sales and use taxes in this state could not be used as a factor in determining whether the seller has nexus with this state for any tax at any time (Section 144.082);
- \* Require the department to establish rules and regulations for the remittance of sales and use taxes that allow for payments by all remitters and requires a seller to submit its sales and use tax returns electronically in a simplified format approved and prescribed by the department director (Section 144.084);
- \* Require a seller to be allowed a deduction from taxable sales for bad debts attributable to taxable sales that have become uncollectable (Section 144.105);
- \* Require the department to provide and maintain an electronic database that describes boundary changes for all taxing jurisdictions and the effective dates of the changes for sales and use tax purposes, a database of all sales and use tax rates for all taxing jurisdictions, and a database that assigns each five- and nine-digit zip code to the proper rates and taxing jurisdictions.
- \* The department would be required to complete a taxability matrix and provide reasonable notice of changes in the taxability of products or services listed in the matrix. A seller or certified service provider can be liable for reliance upon erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments (Sections 144.123 144.124);
- \* Authorize an amnesty to certain out-of-state sellers with uncollected or unpaid sales or use tax if the seller was not registered in Missouri in the prior 12-month period before the effective date of this state's participation in the streamlined agreement (Section 144.125); and

#### FISCAL DESCRIPTION (continued)

\* Require the department to provide a monetary allowance under the automated collection system of up to 2% of the amount of remittance that sellers and certified service providers are allowed for collecting and remitting the state and local sales taxes. Currently, sellers are allowed to keep 2% for collecting and timely remitting the tax. A seller cannot simultaneously receive this monetary allowance and the 2% timely filing deduction (Sections 144.140 and 144.710).

#### Sales and Use Tax

## The proposal would:

- \* Repeal the prohibition of a local tourism community enhancement district's board of directors from imposing a sales tax on food, utilities, telephone, and wireless services for sales made on or after January 1, 2015 (Section 67.1959);
- \* Authorize a state and local sales and use tax exemption for sales of the following as prescribed by a licensed health care practitioner for over-the-counter drugs to individuals with disabilities, durable medical equipment, prosthetic devices, mobility enhancing equipment, and drugs (Section 144.030.2(19));
- \* Revise the list of items exempted from state and local sales and use tax to add all sales of piped natural or artificial gas or other fuels delivered by the seller for domestic use and to remove all sales of electrical current, natural, artificial or propane gas, wood, coal, or home heating oil. It also repeals the exemption for all sales of water service for domestic use in the City of St. Louis (Sections 144.030.2(24) and 144.032);
- \* Authorize a sales tax exemption for all sales of new light aircraft, light aircraft kits, or light aircraft parts or components manufactured or substantially completed within this state when sold by the manufacturer to a qualified purchaser (Section 144.030.2(43)); and

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## FISCAL DESCRIPTION (continued)

\* Require any out-of-state seller who voluntarily collects and remits use tax to file and remit the tax annually unless the amount is equal to \$1,000 or more. The seller would be required to file and remit the use tax for the month when \$1,000 or more is due (Section 144.655.7).

The provisions of the bill regarding the Streamlined Sales and Use Tax Agreement would become effective July 1, 2015

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

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## **SOURCES OF INFORMATION**

Office of the Secretary of State
Joint Committee on Administrative Rules
Office of Administration
Division of Budget and Planning
Department of Conservation
Department of Natural Resources
Department of Revenue
St. Louis County
City of Kansas City
St. Louis County Directors of Elections

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April 7, 2014

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