

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3518H.011
 Bill No.: HB 1817
 Subject: Taxation and Revenue - Sales and Use; Department of Revenue; Health Care
 Type: Original
 Date: January 9, 2024

Bill Summary: This proposal provides a sales tax exemption for sales of certain medical devices.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue	Could exceed (\$71,699)*	Could exceed (\$95,599)	Could exceed (\$95,599)
Total Estimated Net Effect on General Revenue	Could exceed (\$71,699)*	Could exceed (\$95,599)	Could exceed (\$95,599)

*The fiscal impact for FY2025 is lesser because FY2025 is a partial year (9 months)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
School District Trust Fund (0688)	Could exceed (\$23,899)*	Could exceed (\$31,865)	Could exceed (\$31,865)
Conservation Commission Fund (0609)	Could exceed (\$2,988)*	Could exceed (\$3,983)	Could exceed (\$3,983)
Park, Soil, and Water Fund (0614)	Could exceed (\$2,390)*	Could exceed (\$3,187)	Could exceed (\$3,187)
Total Estimated Net Effect on <u>Other</u> State Funds	Could exceed (\$29,277)*	Could exceed (\$39,035)	Could exceed (\$39,035)

*The fiscal impact for FY2025 is lesser because FY2025 is a partial year (9 months)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on FTE	0	0	0

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Local Government	Could exceed (\$151,046)*	Could exceed (\$201,396)	Could exceed (\$201,396)

*The fiscal impact for FY2025 is lesser because FY2025 is a partial year (9 months)

FISCAL ANALYSIS

ASSUMPTION

Section 140.030 - Medical Device Sales Tax Exemption

Officials from the **Office of Administration - Budget and Planning (B&P)** note the following:

Rolling Conformity with Social Security Act

This proposal would create a rolling sales tax exemption conformity for all medical equipment covered by Medicare. Currently, the Missouri sales tax exemption is limited to those items that were covered as of January 1, 1980. This proposal would expand the sales tax exemption to all devices covered by Medicare now and in the future. Therefore, this provision could result in forgone revenue in the future. B&P is unable to determine when or how much revenue may be forgone by creating the rolling conformity.

As of December 2022, B&P is aware of two potential devices that would become tax exempt as a result of this provision. One device is used to treat glioblastoma and mesothelioma, while the other device is used for brain aneurysm embolization. B&P will include cost estimates for the lost sales tax revenue from these devices.

Cancer Devices

This proposal would exempt class III medical devices that use electric fields in the treatment of cancer from state and local sales and use taxes. This would also exempt the components, repair, and disposable patient supplies used with such devices. This exemption would begin August 28, 2024.

B&P notes that there are currently two such FDA devices approved. The first device is used to treat glioblastoma, and the second device is used to treat mesothelioma. Based on data published by the manufacturer, B&P estimates that approximately 7.2% of glioblastoma patients use the qualifying device. B&P was unable to estimate the usage rate for mesothelioma. For the purpose of this fiscal note, B&P will assume that the usage rate is the same 7.2% found for glioblastoma patients.

Based on information published by the National Cancer Institute, there were 467 individuals with brain and other nervous system cancers in Missouri during 2020, the most recent year available. Based on further research, B&P determined that glioblastoma cancer accounts for 17% of all brain and nervous system cancers. Therefore, B&P estimates that approximately 79 individuals in Missouri (467 brain and nervous system cancers x 17%) may have glioblastoma.

Based on further information published by the National Cancer Institute, there were 34,586 cases of cancer in Missouri during 2020, the most recent year available. Based on information

published by the CDC, mesothelioma accounts for 0.16% of all cancers. Therefore, B&P estimates that approximately 55 individual in Missouri (34,568 cancer cases x 0.16%) may have mesothelioma.

Assuming that Missouri cancer patients use the qualifying class III medical devices at the same rate as patients outside of Missouri, B&P estimates that approximately 6 individuals with glioblastoma (79 Missouri glioblastoma patients x 7.2% device usage) and 4 individuals with mesothelioma (55 Missouri mesothelioma patients x 7.2% device usage) per year may qualify for this sales tax exemption.

Based on additional research, B&P determined that the average cost of using the qualifying class III medical device is approximately \$21,000 per month, or \$252,000 per year (\$21,000 per month x 12). Therefore, B&P estimates that this proposal may exempt \$2,520,000 [(6 glioblastoma patients x \$252,000 per year costs) + (4 mesothelioma patients x \$252,000 per year costs)] in sales from state and local sales taxes.

Based on the above information, B&P estimates that this provision may reduce TSR by \$106,470 and GR by \$75,600 per year. Using the location* weighted average local sales tax rate of 6.32% for 2023, B&P further estimates this proposal may reduce local sales tax collections by \$159,264 per year.

*In an effort to more accurately reflect the estimated local impact, B&P and DOR have moved from a population-weighted average local sales tax rate to a location-weighted average local sales tax rate. This change was made to reflect where sales actually occur, rather than exclusively where people live.

Embolization Devices

Approximately 300,000 people in the U.S. have a ruptured brain aneurysm each year. B&P notes that there is a newly FDA approved device used to treat brain aneurysms. Assuming that the incidence of ruptured brain aneurysms is similar throughout the U.S., B&P assumes that 556 Missouri residents suffer from a ruptured brain aneurysm each year.

Based on data published by the manufacture, this new embolization device costs \$1,199. Therefore, B&P estimates that this proposal could exempt \$666,664 (556 patients x \$1,199 treatment) in sales from state and local taxation.

Based on the above information, B&P estimates that this provision may reduce TSR by \$28,166 and GR by \$19,999 per year. Using the location* weighted average local sales tax rate of 6.32% for 2023, B&P further estimates this proposal may reduce local sales tax collections by \$42,132 per year.

*In an effort to more accurately reflect the estimated local impact, B&P and DOR have moved from a population weighted average local sales tax rate to a location weighted average local sales

tax rate. This change was made to reflect where sales actually occur, rather than exclusively where people live.

Wheelchair accessories

This proposal would also exempt wheelchair accessories. B&P notes that some accessories may already be exempt if they are attached to the wheelchair when purchases. However, such accessory may be subject to tax if purchased separately from a wheelchair. Due the complex taxability and limited sales data, B&P is unable to determine a potential impact from this provision. However, B&P anticipates that state and local revenue loss would be minimal.

Summary

B&P estimates that this proposal may reduce TSR by an amount that could exceed \$134,631 and GR by an amount that could exceed \$95,596 per year. Using the 2022 population weighted local sales tax rate of 4.07%, B&P further estimates this proposal may reduce local sales tax collections by an amount that could exceed \$201,389 per year.

Table 1: Estimated Impact by Fund

	FY 2025 (partial)	FY 2026+
<u>State Funds</u>		
General Revenue	Could exceed (\$71,699)	Could exceed (\$95,599)
Education (SDTF)	Could exceed (\$23,899)	Could exceed (\$31,865)
Conservation	Could exceed (\$2,988)	Could exceed (\$3,983)
DNR	Could exceed (\$2,390)	Could exceed (\$3,187)
Total State Revenues	Could exceed (\$100,976)	Could exceed (\$134,634)
<u>Local Impact</u>		
Local Sales Tax	Could exceed (\$151,047)	Could exceed (\$201,396)

Officials from the **Department of Revenue (DOR)** note Section 144.030 outlines all the products that are exempt from sales tax. In Section 144.030.2(18) the sales of all durable medical equipment as defined on January 1, 1980 by the Medicare program is exempt. This current wording allows the state to have rolling compliance with the Medicare program however, it is limited to only as the Medicare program existed in 1980. Due to medical advances, new products have been brought on the market that are considered durable medical goods at the federal level but not at the state level. As of December 2022, the Department is aware of two such devices; one device used to treat glioblastoma and mesothelioma and a second device is an embolization device used to prevent brain aneurysms.

This proposal would remove the limitation that the device have been covered as of January 1, 1980. This proposal may expand the sales tax exemption to new devices in the future and result in forgone revenue in the future. The Department is not able to estimate the impact from future

devices being sales tax exempt. The Department will estimate the impact from the two devices the department knows about.

Brain Cancer Devices

This proposal would allow the sales of all class III medical devices that use electric fields for the purposes of the treatment of cancer to be exempt from all state and local sales and use taxes. This exemption would begin August 28, 2024. Class III medical devices are those devices that have a high risk to the patient and/or user. These devices usually sustain or support life, are implanted, or present potential unreasonable risk of illness or injury. They represent 10% of medical devices regulated by the FDA. These devices are used for treating glioblastoma and mesothelioma.

The Department is aware that one company makes two devices, one for glioblastoma and one that treats mesothelioma. These devices cost approximately \$21,000 a month each or \$252,000 annually. The manufacturer estimates that approximately 7.2% of all patients with these conditions use their product. According to the CDC approximately 467 individuals have brain and other nervous system cancers, and 55 individuals have mesothelioma in Missouri.

Since glioblastoma accounts for about 17% of all brain cancers, DOR will assume that 79 Missourians have glioblastoma and 55 have mesothelioma.

Applying the 7.2% percentage to the number of Missouri residents with these conditions DOR estimates that 6 Missourians are using it for glioblastoma and 4 are using it for mesothelioma and will qualify for the sales tax exemption annually.

At a cost of \$252,000 per year per person, DOR notes that this would result in taxable sales of \$2,520,000. This proposal removes both the state sales tax (4.225%) and the local sales tax (6.32% weighted average local tax rate). This would result in a loss to the state of \$106,470 in total state revenue.

		9/12 Year	Full Year
General Revenue	3%	(\$56,700)	(\$75,600)
School District Trust	1%	(\$18,900)	(\$25,200)
Conservation Commission	0.125%	(\$2,363)	(\$3,150)
Park, Soil & Water	0.10%	(\$1,890)	(\$2,520)
Total State Revenue		(\$79,853)	(\$106,470)
Local	6.32%	(\$119,448)	(\$159,264)

Embolization Devices

The Department is aware there is a device that is used to treat brain aneurysms. It is an embolization device that costs about \$1,000.

Approximately 300,000 people in the U.S., and 556 in Missouri have a ruptured brain aneurysm each year. Therefore, up to \$666,533 (556 patients * \$1,199 device) could be exempt from state and local taxes annually.

The Department estimates that this provision may reduce total state revenue by \$28,161 per year.

	Tax Rate	9/12 Year	Annual Loss
General Revenue	3%	(\$14,997)	(\$19,996)
School district	1%	(\$4,999)	(\$6,665)
Conservation	0.125%	(\$625)	(\$833)
DNR	0.10%	(\$500)	(\$667)
total State Tax		(\$21,121)	(\$28,161)
Locals	6.32%	(\$31,594)	(\$42,125)

Wheelchair accessories

This proposal would add wheelchair accessories to the list of devices that will be considered tax exempt. Wheelchairs and some accessories are already tax exempt while other accessories are not. The Department notes that when most accessories are purchased with the wheelchair, such as a seatbelt or restraints those accessories are tax exempt. However, sometimes when a taxpayer buys those accessories later those accessories may be subject to sales tax. This proposal will make it clear that all the accessories are considered tax exempt regardless of when purchased. Due to the limited sales tax, the impact of this provision is unknown, but it is anticipated to be minimal.

These provisions would require a change to the to the department’s website and to the tax computer system. The estimated costs of these changes are \$3,570.

Oversight assumes the Department of Revenue is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR could absorb the programming and form costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process.

Officials from the **Department of Natural Resources** defer to the **Department of Revenue** for the potential fiscal impact of this proposal.

Oversight notes the Park, Soil, and Water Sales Tax funds are derived from the one-tenth of one percent sales and use tax pursuant to Article IV Section 47 (a) thus DNR’s sales taxes are constitutional mandates. Oversight notes this proposed sale tax exemption would decrease the revenue distributed to the Park, Soil, and Water Sales Tax Fund. Therefore, Oversight will reflect the B&P’s and DOR’s fiscal impact estimates for DNR’s funds.

Officials from the **Missouri Department of Conservation** assume an unknown fiscal impact. 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. The Department defers to the Department of Revenue as it is responsible for tax collection and would be better able to estimate the anticipated fiscal impact that would result from this proposal.

Oversight notes that the Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax of the Missouri Constitution, thus MDC=s sales taxes are constitutional mandates. Oversight notes this proposed sale tax exemption would decrease the revenue distributed to the Conservation Sales Tax Fund. Therefore, Oversight will reflect the B&P’s and DOR’s fiscal impact estimates for MDC’s funds.

Officials from the **City of Kansas City** assume this legislation is projected to have a negative fiscal impact of an indeterminable amount. Additional exemptions and/or limits on revenue growth will hamper the City of Kansas City’s ability to ensure that basic services such as public safety, road repair, and emergency response can continue to be provided to serve the needs of the City’s growing population.

Officials from the **St Louis Budget Division** note the proposed legislation would exempt sales of certain medical devices from the City sales and use tax. It is anticipated that this provision would have a negative fiscal impact on sales and use tax collections with this amount being undetermined.

Oversight notes the above local political subdivisions stated this proposal would have a negative fiscal impact on their respective cities of an indeterminate amount. Oversight notes this proposed sale tax exemption could impact the local sales tax revenue to all localities. Therefore, Oversight will note B&P and DOR’s estimates for all local political subdivisions on the fiscal note.

Oversight notes according to the [Wheelchair Foundation](#), about 1% of people require a wheelchair. Using the US Census Missouri population of [6,196,156](#), Oversight estimates there could be about 61,962 wheelchair users in Missouri.

For informational purposes, **Oversight** will show the potential fiscal impact if each of the estimated wheelchair users purchased a range of accessories from \$100 - \$1,000.

Amount spent on Accessories	Estimated Taxable Sales	General Revenue	School	Conservation	Parks	Locals
\$100	\$6,196,200	(\$185,886)	(\$61,962)	(\$7,745)	(\$6,196)	(\$391,600)
\$300	\$18,588,600	(\$557,658)	(\$185,886)	(\$23,236)	(\$18,589)	(\$1,174,800)
\$500	\$30,981,000	(\$929,430)	(\$309,810)	(\$38,726)	(\$30,981)	(\$1,957,999)
\$700	\$43,373,400	(\$1,301,202)	(\$433,734)	(\$54,217)	(\$43,373)	(\$2,741,199)
\$1,000	\$61,962,000	(\$1,858,860)	(\$619,620)	(\$77,453)	(\$61,962)	(\$3,915,998)

Oversight notes there are a wide range of products available to assist wheelchair users, including but not limited to: seat cushions, arm rests, head rests, storage pouches, gloves, cupholders, trays, and phone holders. Oversight is unable to determine which of these, if any, are considered wheelchair parts and are already exempt under current law. Therefore, Oversight will show an unknown impact for this provision.

Oversight notes officials from B&P and DOR both assume the proposal will have a negative fiscal impact on state and local revenues. Oversight does not have any information to the contrary. Therefore, Oversight will reflect DOR’s and B&P’s estimated impact in the fiscal note

Officials from the **Phelps County Sheriff, Kansas City Police Dept., St. Louis County Police Dept, Branson Police Dept, Fruitland Area Fire Protection District (FRUI) - Cape Girardeau, and the Eureka Fire Protection District (EURE) - St. Louis** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other cities and counties were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the MOLIS database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (9 Mo.)	FY 2026	FY 2027
GENERAL REVENUE			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption - p. (4-6)	(\$56,700)	(\$75,600)	(\$75,600)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption - p. (4-7)	(\$14,999)	(\$19,999)	(\$19,999)
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions - p. (3-5)	(Unknown)	(Unknown)	(Unknown)
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption p. (8)	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON GENERAL REVENUES	Could exceed <u>(\$71,699)</u>	Could exceed <u>(\$95,599)</u>	Could exceed <u>(\$95,599)</u>
SCHOOL DISTRICT TRUST FUND (0688)			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption - p. (4-6)	(\$18,900)	(\$25,200)	(\$25,200)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption - p. (4-7)	(\$4,999)	(\$6,665)	(\$6,665)
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions - p. (3-5)	(Unknown)	(Unknown)	(Unknown)
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption p. (8)	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND	Could exceed <u>(\$23,899)</u>	Could exceed <u>(\$31,865)</u>	Could exceed <u>(\$31,865)</u>
CONSERVATION COMMISSION FUNDS (0609)			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption - p. (4-6)	(\$2,363)	(\$3,150)	(\$3,150)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption - p. (4-7)	(\$625)	(\$833)	(\$833)

<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions - p. (3-5)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption p. (8)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUNDS	Could exceed <u>(\$2,988)</u>	Could exceed <u>(\$3,983)</u>	Could exceed <u>(\$3,983)</u>
PARK, SOIL, WATER FUNDS (0614)			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption - p. (4-6)	<u>(\$1,890)</u>	<u>(\$2,520)</u>	<u>(\$2,520)</u>
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption - p. (4-7)	<u>(\$500)</u>	<u>(\$667)</u>	<u>(\$667)</u>
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions - p. (3-5)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption p. (8)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON PARK , SOIL AND WATER FUNDS	Could exceed <u>(\$2,390)</u>	Could exceed <u>(\$3,187)</u>	Could exceed <u>(\$3,187)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (9 Mo.)	FY 2026	FY 2027
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenue Reduction</u> - §144.813 Brain cancer device sales tax exemption - p. (4-6)	(\$119,448)	(\$159,264)	(\$159,264)
<u>Revenue Reduction</u> - §144.813 Embolization device sales tax exemption - p. (4-7)	(\$31,598)	(\$42,132)	(\$42,132)
<u>Revenue Reduction</u> - §144.813 Rolling conformity for Medicare exemptions - p. (3-5)	(Unknown)	(Unknown)	(Unknown)
<u>Revenue Reduction</u> - §144.813 Wheelchair accessories sales tax exemption p. (8)	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	Could exceed (\$151,046)	Could exceed (\$201,396)	Could exceed (\$201,396)

FISCAL IMPACT – Small Business

Businesses that purchase qualified medical devices could be positively impacted by this proposal.

FISCAL DESCRIPTION

This bill authorizes a sales tax exemption for sales of class III medical devices that use electric fields for the purposes of treating cancer, including components, repair parts, and disposable or single-patient-use supplies required for such devices.

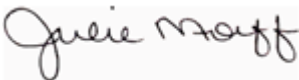
Current law provides a sales tax exemption for certain durable medical equipment as defined on January 1, 1980, by the federal Medicare program. This bill removes the reference to January 1, 1980.

Additionally, current law provides a sales tax exemption for the sales or rental of manual and powered wheelchairs, including parts. The bill also applies the exemption to accessories for such wheelchairs.

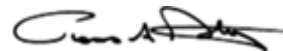
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration - Budget and Planning
Department of Revenue
Missouri Department of Conservation
Department of Natural Resources
City of Kansas City
St Louis Budget Division
Phelps County Sheriff
Kansas City Police Dept.
St. Louis County Police Dept
Eureka Fire Protection District (EURE) - St. Louis
Branson Police Dept
Fruitland Area Fire Protection District (FRUI) - Cape Girardeau



Julie Morff
Director
January 9, 2024



Ross Strope
Assistant Director
January 9, 2024