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Enacting the Marketplace Fairness Act Will Help Missouri Retailers and the Missouri Budget

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When the sales and use tax was authorized in Missouri in 1934, lawmakers could never have imagined cyberspace, the Internet, or shopping from a smartphone. However, as more and more shopping has moved online, existing tax laws have put Missouri's "bricks-and-mortar" retailers at a competitive disadvantage compared to online retailers located in other states. Fortunately, lawmakers have the opportunity to enact the Marketplace Fairness Act and join 24 other states in taking steps toward putting Missouri retailers on a level playing field.

These changes would also help strengthen the resources available to the state budget, allowing it to capture about \$16 million in state revenue based on state action alone, and more than \$350 million when the federal government also acts. **To fully address the complex issue, legislative changes need to be made at both the state and federal levels.**

E-Commerce Trends Point to a Growing Problem

Due to a U.S. Supreme Court decision, Missouri is prohibited from requiring most out-of-state retailers to collect and remit sales or use taxes, even as remote or online sales rapidly increase.¹ Instead, Missouri law requires consumers to remit sales taxes for online and catalog purchases through what is known as the "use tax."² However, because the responsibility for compliance with Missouri's existing "use tax" falls completely on consumers rather than retailers, collections are difficult to enforce. Most Missourians are likely unaware of the use tax requirements and do not remit the tax they owe. In fact, the Missouri Department of Revenue reports that in 2010, only 125 Missourians remitted use taxes totaling just \$110,784.³

These collections pale in comparison to the taxes that are owed to the state. A recent University of Missouri study estimates that **Missouri will fail to capture as much as \$358.3 million in existing state and local sales tax revenue in the current year due to online and catalog retail purchases.**⁴ Under a state Marketplace Fairness Act, which relies on voluntary compliance, Missouri is likely to retrieve about \$16 million in state revenue in the first full year of implementation (based on the average collections of Missouri's bordering states that have enacted the streamlined sales tax collections mechanism).⁵

¹ Missouri Department of Revenue

² Missouri revised statute 144.655

³ Missouri Department of Revenue, Division of Taxation

⁴ Huang, Y., Kosash, J. and Andrew Wesemann (2012) Internet Sales and Use Tax Issues in Missouri, University of Missouri, Truman School of Public Affairs Institute of Public Policy, Retrieved from http://ipp.missouri.edu/files/ipp/attachments/4-2012_-_internet_sales_and_use_tax_final.pdf

⁵ Mike Sutherland, *Missouri Wonk*, March 1, 2012

Nationwide in 2012, the projected loss of sales tax revenue for state and local governments was estimated at \$23.3 billion, including \$11.4 billion from remote electronic commerce, \$6.8 billion from business-to-consumer catalog sales, and \$5 billion from business-to-business catalog sales.⁶

Retail trends indicate that the loss will continue to increase as consumers turn to online retailers for their purchases. An estimated 50 percent of all computers and 30 percent of consumer electronics sold in the United States are purchased online. Sales of consumer electronics through online stores grew by more than 9 percent in April of 2011 alone, while simultaneously, sales of electronics sold throughout the nation in bricks-and-mortar locations as well as online retailers dropped overall by 1.8 percent. The result is that an increasing portion of retail overall is occurring through online stores.⁷

Current State and Federal Statute is Prohibitive

States are prohibited from requiring out-of-state businesses to comply with their sales tax laws as a result of a 1992 U.S. Supreme Court Case in which the Court ruled that businesses that did not have “nexus,” or a physical location in a state, could not be required to collect and remit sales and use taxes.⁸ The Court’s ruling noted that the burden of complying with many differing complex and diverse state tax laws violated the Commerce Clause of the United State Constitution.

In response to the Supreme Court decision, the National Governors Association and the National Conference of State Legislatures joined together to form the Streamlined Sales and Use Tax Project (SSUTP). In 2002, Missouri approved legislation that allowed state officials to participate in the Streamlined Sales and Use Tax Project.⁹ The states participating in the project created the Streamlined Sales and Use Tax Agreement (SSUTA), an agreement that included model legislation to create a simpler system for administering various state and local sales taxes. By simplifying state and local sales tax definitions and providing collections assistance, the agreement reduces the burden for online retailers in determining state and local sales tax rates and provides one critical step in addressing the problem of uncollected sales tax.

However, due to the Supreme Court’s decision, business compliance with the SSUTA is voluntary. As a result, states that have implemented the agreement have collected only a small fraction of the sales taxes due on online retail.¹⁰ **To fully address this complex issue, legislative changes need to be made at both the state and federal levels.** State tax law must be changed to simplify existing sales tax definitions and federal law must be changed to provide for full compliance. Without both, Missouri retailers will continue to face a competitive disadvantage and sales tax collections to support Missouri’s budgetary needs will continue to be compromised.

⁶ Fox, B., Bruce, D., and LeAnn Luna, (2009) State and Local Government Sales Tax Revenue Losses from Electronic Commerce, University of Tennessee

⁷ Internet Retailer’s Daily News Service

⁸ Quill Corporation vs. North Dakota <http://www.law.cornell.edu/supct/html/91-0194.ZO.html>

⁹ Missouri Statute RSMo 144.1000 to 144.1015. <http://www.moga.mo.gov/statutes/C100-199/1440001000.HTM>

¹⁰ Mike Sutherland, *Missouri Wonk*, March 1, 2012

Marketplace Fairness Requires Both State and Federal Action

State Action	+	Federal Action	=	Outcome
	+		=	<p>All online retailers collect sales taxes.</p> <p>Net Revenue: \$ 358 million</p>
	+		=	<p>Certain online retailers voluntarily collect sales taxes.</p> <p>Net Revenue: \$ 16 million</p>
	+		=	<p>Only states that have passed the legislation have online retailers collecting sales taxes</p> <p>Net Revenue: \$ 0</p>

Changing State Law for Compliance

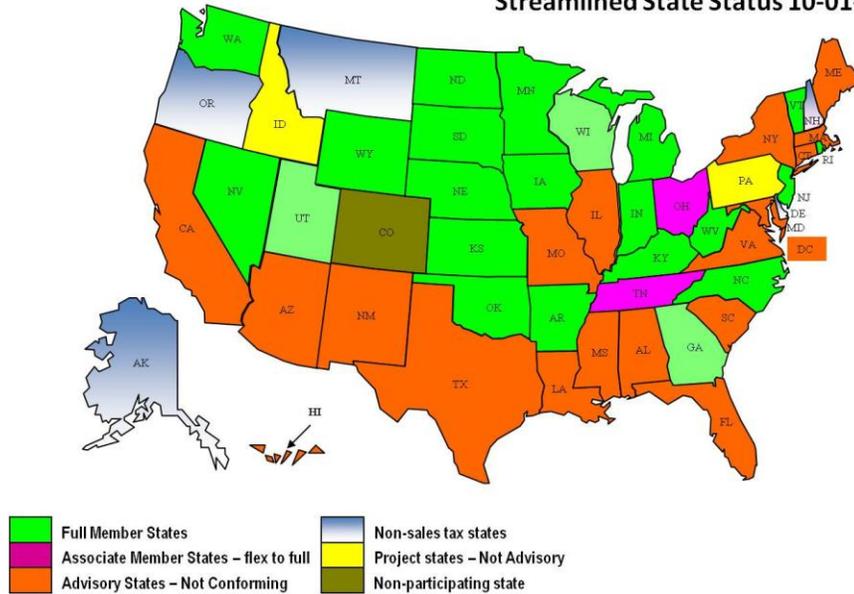
Although Missouri was initially involved in the formation of the SSUTA effort, the state has not made the necessary statutory changes to become a full member state and comply with the simplification of state and local sales taxes. While the SSUTA does not change what items are subject to sales tax or otherwise alter Missouri's sales and use tax rates, it does require states to simplify the definitions of items subject to the tax, thereby reducing the burden to online or remote retailers. **State legislation is required in order to simplify tax collection administration and to make the definition of items subject to the sales and use tax consistent with those used in other states.** While the legislation has met little opposition, it has yet to pass in both chambers of the legislature.¹¹

To date, 24 states have adopted the model legislation, including most of Missouri's neighboring states. Approximately 1,700 businesses voluntarily collect and remit tax to member states, and so far they have collected over \$900 million.¹² Based on these voluntary collection trends, if Missouri approves the state Marketplace Fairness Act and becomes a full member of the SSUTA, the state will receive about \$16 million in state sales tax revenue in the first full year of implementation.

¹¹ In 2010, the Missouri House of Representatives passed legislation that would have allowed Missouri to be a full member of the SSUTA, but after being passed out of a Senate committee no further action was taken.

¹² Streamlined Sales Tax Governing Board

Streamlined State Status 10-01-12



Changing Federal Law for Full Enforcement

Due to the 1992 Supreme Court ruling, not only will Missouri need to approve a “Marketplace Fairness Act,” but the U.S. Congress must also act in order to fully address this issue. In the last Congress, Senator Roy Blunt co-sponsored Senate Bill 1832, known as the federal Marketplace Fairness Act, and similar legislation is expected to be reintroduced in the 113th Congress.¹⁴ If approved, the legislation will provide collections authority to member states of the SSUTA. Under the bill, SSUTA member states will be authorized to require all sellers that have remote sales of more than \$500,000 to collect and remit sales and use tax to the state where the purchasers live. Non-member states will only be provided authority to enforce collections if they meet several requirements including uniform definitions of products and sales taxes. As a result, if changes are made at the federal level, Missouri could gain the authority to enforce sales tax collections, but only if the companion state legislation to simplify Missouri’s sales tax law is also approved.

While the U.S. Congress should act to allow states to collect sales taxes they are owed from online retailers, **Missouri legislators must also take action by passing a state-level Marketplace Fairness Act.** In the absence of federal action, the state-level Marketplace Fairness Act would allow Missouri to begin collecting some of the hundreds of millions in sales taxes that it is owed each year, as 24 states already do.

¹³ Streamlined Sales Tax Governing Board

¹⁴ See: <http://www.marketplacefairness.org/> and <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:s.1832>