

A New Beginning

The First Session of the 100th General Assembly convened Jan. 9, 2019. Optimism is running high in the halls of the Capitol in Jefferson City for a productive and harmonious 2019 legislative session. Rep. Elijah Haahr (Greene County) is the Speaker of the House. Rep. Rob Vescovo (Jefferson County) is the House Floor Leader. In the Senate, Sen. Dave Schatz (Franklin County) is the President Pro-Tem, with Sen. Caleb Rowden (Boone County) as Senate Floor Leader.

Pre-filing of bills began on Dec. 1, 2018, in both the House and Senate. More than 2,000 are expected to be filed before the closing of bill filing March 1.

MML Priority Legislation: Collection Of Taxes On Internet Sales

Capturing local taxes on out-of-state purchases has long been a goal of the Missouri Municipal League. On June 21, 2018, the United States Supreme Court changed the rules for collection of sales taxes by Internet-based retailers. In its decision in *South Dakota v. Wayfair Inc.*, the Court ruled that states can require out-of-state sellers to collect state sales tax on their sales, even if the seller does not have a physical presence within the state.

Legislation drafted by the MML and sponsored by Senator Sandy Crawford amends Missouri's Use Tax Law to require use tax collection by out-of-state sellers who have no physical presence in Missouri, but meet the economic threshold approved by the U.S. Supreme Court in the *South Dakota v. Wayfair* decision.

The South Dakota law at issue in the *Wayfair* decision imposed a sales tax, rather than a use tax on out-of-state sellers. Because of significant differences between the South Dakota

and Missouri tax systems and laws, the proposed MML legislation applies only to use tax collection.

Why A Use Tax Instead Of A Sales Tax?

- In Missouri, unlike in South Dakota, sales and use tax rates are not uniform. The sales tax rate is higher than the use tax rate in many local jurisdictions in Missouri. If Missouri were to take the South Dakota approach and impose sales tax rather than use tax on out of state sellers, these sellers would pay tax at a higher rate than under current law, in effect, they would experience a tax increase. Increasing taxes without a vote of the people potentially runs afoul of Missouri's Hancock Amendment (Mo. Constitution Article X, Sections 18(e) and 22), and could also result in political opposition to such legislation.

- The Missouri Constitution prohibits an increase in the taxable base of the sales tax and use tax. Mo. Constitution Article X, Section 26 (Passed in 2016). Although sales tax and use tax are designed to be complementary taxes, they are in fact separate and distinct taxes with separate tax bases. The South Dakota approach would increase the base of Missouri's sales tax, that could trigger a challenge under this provision of Missouri's Constitution.

- South Dakota's sales tax is imposed on a destination basis. Out-of-state sellers collect the sales tax imposed at their customer's location in South Dakota. In Missouri, sales are deemed to occur at the seller's place of business for local sales tax purposes. Section 32.087.12, RSMo. Out-of-state sellers would not be subject to local sales tax in Missouri unless Missouri changed its sales tax regime to impose sales tax based on the purchaser's location.

- Several other sections of the Missouri sales tax laws must be amended for Missouri to adopt the South Dakota approach. This would add to the complexity of the legislation and thereby increase the chances the legislation could lead to unintended consequences or attract additional opposition.

In addition to imposing the *Wayfair* economic threshold for use tax collection, MML's legislation also includes provisions to:

- Simplify and clarify ballot language for local use tax propositions.

- Ensure that use tax rate information is available via an online database maintained by the Missouri Department of Revenue and provide a safe harbor for sellers relying on this information.

Although the Legislature has a heavy agenda ahead of them, many bills of municipal interest have already been filed. Please be alert to MML's "Capitol Report" and "Legislative Alerts" notifying you when to contact your legislators. Keep the League informed of your legislative activities by notifying us when you are meeting with legislators and if you plan to testify on an issue. Also, send copies of legislative correspondence and replies to League headquarters.

Cities are strongest when they speak with a unified voice. You have the ability to show legislators how decisions they make in Jefferson City impact your community. Together, we can strengthen the voice of cities, keeping decisions on local issues at the local level. 🌿

Registration Now Open!

MML Legislative Conference

February 12-13, 2019

Jefferson City, Missouri

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