

FAQ: What Is A Use Tax?

by League Staff

Every workday your Missouri Municipal League staff answers dozens of questions on municipal issues. This column provides an opportunity to share some of the most frequently asked questions. The recent announcement by Amazon that it will collect Missouri taxes has resulted in a deluge of calls to League headquarters about the use tax. In this issue, the FAQ will focus on the use tax, as well as local sales tax on the titling 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 for the specific challenges faced by their municipality. Answers provided in this column should serve only as a general reference.



What Is A 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 traditional sales tax. The difference is where the goods are purchased and shipped. When individuals make purchases at retail stores in Missouri, they pay the sales tax that is applicable at that location. On the other hand, purchases by Missouri residents from out-of-state vendors that are shipped to Missouri are subject to a 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. While the sales tax rate is based on the point of sale, the use tax rate is determined based on the point of delivery.

What Is The Rate Of The Use Tax?

The state of Missouri imposes a use tax at 4.225 percent, the same as the state 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 jurisdiction's local option sales taxes. If a local sales tax sunsets or is repealed, the use tax would decrease in an amount equal to the sales tax that

repealed.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 amount of the new local sales tax.

What If I Buy Something From A Missouri Retailer Using The Internet; Will The Use Tax Apply?

No. The use tax does not apply to purchases made by Missouri residents from a Missouri retailer. The use tax applies to purchases from out-of-state vendors only. If a Missouri resident buys a product from a Missouri vendor over the Internet, 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?

Yes. If the goods purchased are subject to a sales tax when purchased at retail, the use tax applies. That being said, the collection of the tax is not universal. The Missouri Department of Revenue requires out-of-state vendors that have "nexus" in Missouri to collect and remit use tax. Nexus may include having any of the following in Missouri: an office; an employee present more than two days a year; goods in a warehouse; ownership of real or personal property; or delivery of goods to Missouri via vehicles owned by the taxpayer. Out-of-state vendors who do not fall into those categories often do not collect the use tax. If an out-of-state seller does not collect use tax from the

purchaser, the purchaser is responsible for remitting the use tax.

Now That Amazon Has Announced It Will Collect Missouri Tax, Won't Our City Revenue Increase?

Only cities that have passed the local optional use tax can expect a revenue increase from Amazon sales.

Would Passage Of The Federal Marketplace Fairness Act Make Passage Of A Local Use Tax Unnecessary?

No. The Marketplace Fairness Act is 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. Even if the federal government passes Marketplace Fairness, state-level action will be needed to standardize Missouri's state and local sales taxes. Issues such as product exemptions, sales tax holidays, and domestic utilities will likely need to be resolved.

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. The sales tax on these purchases is

assessed based on the location the item is registered. When Missouri residents purchase a car at an auto dealership, no sales tax is paid on the purchase at that time. When the resident goes to license the vehicle, trailer, boat or outboard motor with the Missouri Department of Revenue, the local sales tax will be imposed based on the address of the registrant.

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 purchases of vehicles, boats, trailers and outboard motors from out-of-state vendors should be exempt from the local sales tax. The Court ignored the special legislation that had been built around vehicle purchases to insure that all cities shared in the sales distribution on vehicle sales instead of only those with dealerships. The Court found that only residents of cities with a local use tax could collect local sales tax on vehicles purchased from out of state. Purchases from Missouri auto dealerships were still subject to the local sales 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 in a loss in revenue to local jurisdictions of approximately \$20.5 million. The Missouri Department of Revenue provided data showing the estimated loss to each city. A copy of this document is on the League's website.

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). Initially, the legislation required 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. Legislation that passed in 2016 extended this deadline to November 2018. Cities that do not gain voter approval to continue the tax by November 2018 will lose the revenue stream after that date.



**RESPONSIVE TO YOU.
DEDICATED TO YOUR COMMUNITY.**

LAUBER MUNICIPAL LAW, LLC
Serving those who serve the public
816-525-7881
www.laubermunicipallaw.com

The choice of a lawyer is an important decision and should not be based solely on advertisements.

What Does Our City Need To Do To Plug the Street Decision Loophole?

It appears there are two options; a use tax or the continuation of the sales tax of licensing of vehicles. Both measures require passage of an ordinance calling for the issue to be brought before the voters. (MML has sample ordinances.)

Legislation passed in 2016 appears to provide that a new use tax will capture out-of-state vehicle sales revenue. Prior to this legislation, the belief was that because SB 182 (passed in 2013) referred to municipalities "in which voters have previously approved a local use tax," a newly passed use tax would not capture the out-of-state vehicle sales. The 2016 legislation deleted the word "previously" from this clause (32.087.5 (2) RSMo). Municipal leaders considering their options for closing the *Street* decision loophole are strongly encouraged to consult with their city attorney regarding the appropriate action to take.

What Has the Missouri Municipal League Done To Address The Street Decision Loophole?

League staff, together with the Missouri Automobile 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 for Missouri cities.

How Much Revenue Will A Use Tax Generate?

The Missouri Department of Revenue's website includes a Public information Report page (<http://dor.mo.gov/publicreports/#pubtax>). Here users may download a report of the annual gross sales by city and year that were subject to the use tax (sales tax data is also available). Multiplying this gross sales number by the municipalities local sales tax rate will provide a rough estimate of how much revenue the use tax can provide. MML has done this calculation for all cities with a sales tax for 2015 and this worksheet is available on the MML use tax webpage.

Where Can We Get Ballot Language Or Sample Ordinances For The Motor Vehicle Sales Tax?

The Missouri Municipal League has prepared model ordinances for both the use tax and the vehicles sales tax. These ordinances are available on the League's website at www.mocities.com; or you may contact League headquarters at (573) 635-9134 and request a copy. 🍃