

Missouri's Use Tax: Tips, Myths, And What You Need To Know



City officials across Missouri are talking about the use tax, and with good reason. The use tax can help make the difference between a thriving shopping district and a struggling main street. With an ever-changing marketplace that includes increased online and mobile purchases, customers shopping online may not pay regular local sales tax if the vendor is out of state. This presents an incentive for the consumer to shop online, while the local brick-and-mortar shops in a community are left out. Over time, the local voter-approved sales taxes decline – forcing an inevitable decline in the essential services paid for by that local sales tax.

The use tax allows a city to impose the exact same amount of tax it would have collected as a local sales tax. Cities are realizing the lost revenue to fund vital services, and are working to close this digital divide. More than 160 cities in Missouri have passed the use tax, and many more are planning to put it on an upcoming ballot.

As you consider how to present the proposal to your community, MML offers some important tips to consider, stemming from conversations with city officials who conducted successful campaigns. In addition, this article contains 10 myths often heard by League staff regarding, how a use tax affects citizens.

Is your city considering the use tax? The League has valuable resources to help at www.mocities.com. Use the tips, experiences and materials from the League and other cities to clearly propose this important initiative to your citizens.

TOP 10 CAMPAIGN TIPS

1. Be prepared with the right answers.

Use tax is confusing. Do not be caught off guard with unexpected questions, and be prepared to explain the intricacies involved with the tax. MML has many resources available to members, including webinars, articles, FAQ's, and a library of sample campaign materials from other cities. Estimates of potential revenue, lists of the cities that have already passed the use tax, and samples ordinances are all available on the MML website. Member officials are further

encouraged to contact League staff with any questions related to the use tax. Please take advantage of what your MML can offer.

2. Get in front of the issue and give it a full-court press.

Some cities have taken a hands-off approach to the use tax, perhaps thinking that an under-the-radar approach will provide a chance for the tax to squeak by. Feedback from cities that had successful use tax campaigns in April show

these cities took the opposite approach. Many focused on the civic-minded groups/organizations whose members are more likely to be the “cheerleaders” in the community. They participated in public speaking engagements and mainstream media interviews (radio, newspaper and television.)

Some successful cities did report taking a hands-off approach when it came to social media, mostly in an effort to avoid stirring the pot. As one city public information officer said, “Do not feed the trolls.” Choose your battles wisely.

3. Get the support of the local businesses and civic groups.

Most local chambers are supportive of the passage of the use tax. Brick-and-mortar stores face the familiar scenario of today’s shoppers visiting a store to view the physical products only to turn around and purchase the product online, thus avoiding the local sales tax. Most local retailers will support a use tax that imposes the same taxes on out-of-state retailers that are imposed locally. Encourage the mayor and/or city councilmembers to make presentations to local civic groups. Make plans to do the civic group circuit: go to the senior center, Rotary Club, or any other interested group with a prepared PowerPoint and other promotional materials. MML has an online library with sample PowerPoints, brochures and other resources.

4. Explain where the tax money will go.

Missouri voters tend to be more supportive when they know where the revenue will be directed. Even if the estimated revenue for what a use tax will bring in is low, expressing where the money will go generally aids in the chances for voter approval. Stating that the revenue will go into operating expenses to help fund police, fire, parks, sidewalk construction and street repairs may help. If the numbers are small, it may make sense not to get into specifics. However, almost universally, the cities that have had successful use tax campaigns did report committing to particular projects or purchases if the voters approved the tax.

5. Work with the other entities in your area.

Team up with your county and neighboring cities. Try to create a unified message. Make sure the area-wide ballots use the same language. If possible, all entities should list the use tax as the same item on the ballot (for example, Prop B.)

6. Comply with Missouri campaign laws.

Missouri law prohibits city governments from spending public funds to support passage of ballot measures. Walking a fine line between simply educating voters and advocating an opinion can be difficult. City officials are cautioned to



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limit campaign materials paid for by the city to strictly be informational with “just the facts.” These materials cannot include opinions and certainly cannot include statements such as “vote for the tax.”

Additionally, the Missouri Ethics Commission requires all campaign materials to include “paid for by” identifiers that include the name of the entity, entity’s principal officer’s name, title and mailing address of entity or principal office. This identification requirement can apply to city newsletters or even a Facebook post.

7. Emphasize that the use tax plugs a loophole.

Written materials related to the use tax campaign paid for by the city need to avoid matters of opinion. However, the mayor, councilmembers and other city supporters who are not paid by the city are free to voice their opinions. An important part of that narrative should be how the “sales tax well” is drying up. Historically, Missouri cities have relied upon the sales tax as a means of funding vital city services. The rise in e-commerce has created an ever-increasing vacuum in this traditional funding source.

The U.S. Department of Commerce now estimates that 9 percent of all retail sales now occur online; if these sales are made with out-of-state vendors, then the sales are not subject to the local sales tax. Over the past 10 years, e-commerce has gone from 3 percent of total sales to the present level of more than 9 percent.¹ Links to these e-commerce figures can be found on the League’s website.

There is no reason to think this upward trend will not continue. Our marketplace has fundamentally changed. The use tax is the first step in closing the Internet loophole. In this sense, it really is not a new tax. Prior to the rise of online shopping, consumers were paying local sales tax on the goods they are now purchasing online. Passage of a use tax is essential to closing the Internet loophole.

8. Stress the fairness angle.

Again, campaign materials paid for by the city cannot include opinions; however, mayors and councilmembers are encouraged to stress the fairness angle of the use tax. The citizens of your city, through the election process, have voted to impose local sales taxes as a means to fund vital city services. Online shopping creates an unfair marketplace mechanism wherein your local brick-and-mortar, job-creating retailers are placed at a tax disadvantage against giant online retailers that do not have to charge the local sales tax. Passing the use tax, levels the playing field.

Not only does the use tax level the playing field for your brick-and-mortar stores; the tax bridges an ever-increasing digital divide between your citizens. For example, senior citizens who may still prefer to shop at traditional local retailers shoulder more of the tax burden while younger, more

internet-savvy citizens may not be paying any local sales tax at all. The use tax levels the playing field for your residents so that they all equally share in the consumption tax burden that was previously approved by city residents.

9. Debunk the myths.

There is no end to the sometimes, ludicrous claims opponents of the use tax may make. The second half of this article addresses the top 10 myths the League continues to hear about on a daily basis. Be prepared to debunk these myths. Explain that the use tax is only a method for the cities to keep up with an ever-changing marketplace.

10. Utilize MML’s online campaign library.

Several MML member cities have provided copies of the materials they used in their use tax campaigns. These materials may be accessed via the League’s website. Materials include a variety of resources, such as newsletter blurbs, videos, radio ads, as well as sample PowerPoint presentations.

TOP 10 MYTHS INVOLVING THE USE TAX

Myth #1: The use tax must be passed by 2018.

There is no deadline for the passage of the local use tax and cities may absolutely bring the issue to the voters after 2018. However, cities that have not received voter approval for either the continuation of the local sales on vehicles purchased from out-of-state or passed a local use tax by November 2018 will lose the revenue they are currently receiving on the titling of vehicles (and trailers, out-board motors and boats) purchased out of state. Further, the Missouri Department of Revenue (Mo-DOR) has indicated that cities imposing the use tax after November 2018 will not be able to apply the use tax to the titling of vehicles purchased from out of state (this would not apply to cities that have already passed the continuation of the sales tax on titling.)

Myth #2: The Missouri Department of Revenue is already collecting the local use tax and holding those funds for cities.

The local use tax is only imposed upon voter approval. The Mo-DOR will not collect a local use tax until citizens approve the tax locally. Additionally, Mo-DOR is not holding any funds for cities to be turned over upon passage of the use tax.

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Myth #3: Passage of the use tax means every time a resident purchases something on the Internet, the city will receive revenue.

Although passage of a local use tax will allow a city to impose the tax on purchases made by residents from out-of-state vendors, the tax collected at the time of the sale depends on many factors. Vendors with a nexus (physical presence) in the state of Missouri are required to collect the use tax, while vendors without a nexus currently do not have to collect the tax. A ruling from the United State Supreme Court on the *Wayfair vs. South Dakota* case may make it easier to enforce the use tax on vendors that do not have a nexus in Missouri. Currently, when vendors don't collect the use tax the consumer is supposed to self-report if their total annual purchases from out-of-state vendors exceed \$2,000 (on purchases for where no use tax was paid.)

It is important to remember that the use tax only applies to goods purchased from vendors located outside Missouri. When Missouri residents buy items online from vendors located in Missouri, they will pay the sales tax rate imposed at that Missouri vendor's location. The revenue from that local sales tax will remain in the local jurisdiction where the vendor is located.

Myth #4: We don't need to pass the local use tax because Federal action such as Marketplace Fairness or the *Wayfair vs. South Dakota* Supreme Court Case will impose the tax for us.

Even if the U.S. Supreme Court does away with the requirement for vendors to have nexus in the state, Missouri cities will only see a revenue gain from that decision if they have a use tax in place. The same can be said about the federal Marketplace Fairness Act, sponsored by Missouri Sen. Blunt and supported by Sen. McCaskill; even if this bill passed, only cities with an existing use tax jurisdiction would see a revenue increase.

Myth #5: We don't need to pass the local use tax because Missouri is going to join the Streamlined Sales Tax Compact.

Even if the Missouri Legislature passes legislation for Missouri to enter into the Streamlined Sales Tax Compact, the legislation as currently written (at the time of this article) would still require local municipalities to get voter approval for a use tax in order for the local sales tax rate to apply to out-of-state purchases.

Myth #6: The use tax is illegal because Congress has outlawed taxes on the Internet.

In 2015, Congress passed the Permanent Internet Tax Freedom Act. This law prohibits state and local taxes on Internet service providers. This law has nothing to do with taxes on goods sold over the Internet.

Myth #7: Amazon is already collecting our local sales tax and/or Amazon is only collecting the state sales tax.

There is a lot of conflicting information surrounding last year's mega announcement that Amazon would begin collecting Missouri taxes. While news reports often proclaimed that Amazon would be collecting Missouri sales tax, the tax actually collected currently is the use tax. Moving forward upon completion of Amazon's Hazelwood and St. Peter's facilities, the Missouri Department of Revenue has reported to MML staff that it will consider those facilities to be the point of sale for goods originating from those facilities. This means residents in other locations in Missouri will pay the local sales tax rate to Hazelwood or St. Peters on goods shipped from those facilities. Presumably goods shipped from Amazon facilities located outside Missouri will be subject to the use tax.

Myth #8: Passage of a local use tax will mean our residents will now have to self-report their online purchases.

The state of Missouri already imposes a statewide use tax. This means consumers and businesses that make more than \$2,000 worth of purchases from out-of-state vendors (that don't collect the use tax) must self-report their use tax debt. While passage of a local use tax will mean that the local sales tax rate must be added to the tax rate the individual self-reports, the passage of the local use tax does not change the self-report requirement. In other words, residents who do not currently self-report will not suddenly need to self-report as a result of the city having passed the local use tax.

Myth #9: Missouri has so many jurisdictions with so many different tax rates it is impossible for vendors to know what tax rate to impose.

Computers and Geographic Information Software (GIS) make such worries a thing of the past. Although there may be specific instances where an address has been coded with the wrong tax rate, the Mo-DOR can very easily provide the tax rate for almost any location in the state. Concerns regarding shared zip codes or post office addresses that use a different city for the mailing address are generally unfounded. To find the particular sales and use tax rates across the state visit Mo-DOR's portal at: <https://mytax.mo.gov/rptp/portal/home/business/customFindSalesUseTaxRates/>

Myth #10: The use tax is double taxation.

The use tax is imposed only when Missouri residents purchase goods from out-of-state vendors and plans for those goods shipped to be used in Missouri. If a use tax is paid on a purchase, a sales tax will not also apply. For instance, if a Missouri resident travels to Illinois and makes a purchase

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while in that state, the resident will pay the Illinois sales tax but, will not pay the Missouri use tax when the good is brought back to Missouri. 🍃

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Endnotes:

1. U.S. Department of Commerce retail sales figures: https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf

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