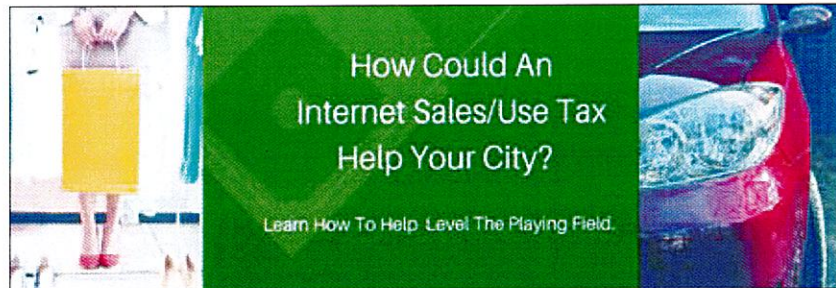


# FAQ: What Is A Use Tax?

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 If a local sales tax sunsets or is repealed, the use tax would decrease in an amount equal to the sales tax that

repealed.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](http://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](http://www.mocities.com); or you may contact League headquarters at (573) 635-9134 and request a copy. 🍃



## **CITY USE TAX FACT SHEET**

Note: The MML also has prepared a model use tax election ordinance.)

### **Municipalities May Enact A Use Tax**

Sections 144.757.144.761 RSMo. authorizes any incorporation city, town or village to impose a local use tax.

### **What is the Local Use Tax?**

The local use tax is applied, in lieu of the local sales tax, on transactions that individuals and businesses conduct with out-of-state vendors, including catalog and direct market sales.

### **Is This a Fair Tax?**

Yes, the main purpose of the local use tax is to create a level playing field for your local retail businesses that must collect the city sales taxes. Currently, your local retailers are at a competitive disadvantage with out-of-state vendors who do not have to collect local sales taxes. The local use tax will fix this "loophole."

### **City Adopting a Use Tax Must Submit Ordinance to Voters**

The governing body of any city may adopt a local use tax ordinance. However, the proposal must be submitted to the voters of the city at either a city, county or state general, primary or special election and receive a majority of the votes cast on the proposal.

### **What Use Tax Rate is Authorized**

The city may impose a use tax only at the same rate as its city sales tax rate. If the city's sales tax rate is repealed, reduced or increased, by voter approval, then the city's use tax rate is similarly repealed, reduced or increased.

### **What if the City's Voters Turn Down the Use Tax?**

If the voters of the city do not authorize a local sales tax, the legislative body of the city may submit the sales tax proposal again at the later election. There is no limitation as to how many times the local sales tax proposal may be submitted to the electorate.

### **When Does a City Use tax Ordinance Take Effect?**

If the city voters approve the use tax on August 6, 1996, then the tax becomes effective October 1, 1996, as long as the Director of Revenue receives notice of adoption of the local use tax on or before August 16.

If the city voters approve the use tax after December 31, 1996, then the tax becomes effective on the first day of the calendar quarter which begins at least forty-five days after the Director of Revenue receives notice of adoption of the local use tax.

### **How is the Tax Collected?**

If the out-of-state vendor has a facility in Missouri, the vendor will collect the local use tax, along with the state use tax, and remit both to the Missouri Department of Revenue (DOR). If the out-of-state vendor does not have a facility in Missouri, the purchaser must file a use tax return

with DOR but only if the individual or business has more than \$2,000 in such purchases during the calendar year.

#### **The State Director of Revenue Collects the tax for the City**

Under the law, the State Director of Revenue collects both the state and city use taxes. City taxes, less charges for collection, are sent back to the city imposing the tax. A city receives only the amount of tax imposed by it and collected from it. Thus, while the state is not sharing any of its revenues with a city imposing a local use tax, the state is providing its collection machinery, and no additional collection machinery or additional personnel will be required by the city in order for the city to receive a city use tax.

#### **What Does the State Charge for the Collection of the City Use Tax and How is the City tax Accounted For?**

The Director of revenue is required to deposit all city use taxes collected in a special City Use Tax Trust Fund, less one percent for the cost of collection. The one percent deducted, less the cost of premiums on surety bonds, is deposited in the State General Revenue Fund. The Director of Revenue of the state is to keep an accurate record of the amount of money collected from each city.

#### **When is Local City Use Tax Money Distributed to the City?**

The law provides that not later than the tenth day of each month the State Treasurer will distribute all moneys deposited in the City Use Tax Trust Fund during the preceding month to the city treasurer or to any other officer as may be designated by city ordinance of any city imposing the use tax.

#### **What Purchases are Exempt From the Use Tax?**

If an item is exempt from the state and local sales tax, it is also exempt from the state and local use tax, including raw materials and component parts used in manufacturing, machinery used in manufacturing, farm equipment, etc.

#### **How Much will My City Receive From a Local use Tax?**

It is very difficult to estimate the revenue from a local use tax because it is based on the purchases made by individuals and businesses in your city from out-of-state vendors. There is no information available on such sales in prior years.



## DOR FACT SHEET

### Use Tax

Use tax is imposed on the use, storage or consumption of tangible personal property shipped into Missouri from out of state. The state use tax rate is also imposed at a rate of 4.225%. In addition, cities and counties may impose local use tax. The amount of use tax paid on the transaction will depend on the combined local use tax rate in effect at the Missouri location to which the tangible personal property is shipped. Either the out-of-state seller will collect and remit the use tax directly to Missouri or the purchaser is responsible for remitting the tax to the department if the out-of-state seller does not collect use tax on the transaction. Local use taxes are distributed in the same manner as sales tax. Missouri cannot require out of state companies that do not have nexus or "direct connection" with the state to collect and remit use tax.

Any vendor and its affiliates selling tangible personal property to Missouri customers should collect and pay sales or use tax in order to be eligible to receive Missouri state contracts, regardless of whether that vendor or affiliate has nexus with Missouri.

Effective August 28, 2003, Section 34.040.6 states, "The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 114, RSMo. For purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise."

NOTICE OF ELECTION  
CITY OF HIGGINSVILLE, MISSOURI  
TUESDAY, AUGUST 8, 2017

Notice is given to the qualified voters of the City of Higginsville, Missouri, that an election will be held in the City of Higginsville, Missouri, on Tuesday, August 8, 2017, for the purpose of voting on a proposition seeking to adopt a local use tax.

The qualified voters of the City will vote at the polling places designated by the Election Authority.

The polls will open at 6:00 a.m. and will closed at 7:00 p.m. Each voter will be furnished a ballot reading as follows:

OFFICIAL BALLOT

Shall the City of Higginsville impose a local use tax at the same rate as the total local tax rate, currently two and one-quarter percent (.0225)%, provided that if the local sales tax rate is reduced or raised by voter approval, the local use tax rate shall also be reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

☐ YES ☐ NO

If you are in favor of the question, darken the space opposite "YES." If you are opposed to the question, darken the space opposite "NO."

I certify this is a true and exact copy of the official legal notice for the election to be held in the City of Higginsville, Missouri, on August 8, 2017, as approved by the Board of Aldermen.

Sheri Tieman  
Sheri Tieman, City Clerk

**AN ORDINANCE OF THE CITY OF HIGGINSVILLE, MISSOURI  
SUBMITTING TO THE VOTERS IMPOSITION OF LOCAL USE TAX  
PURSUANT TO SECTION 144.757 RSMO.**

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF  
HIGGINSVILLE, MISSOURI, AS FOLLOWS:**

WHEREAS, the City of Higginsville is authorized to enact a use tax equal to local sales taxes for the purpose of collecting use taxes on taxable transactions by out of state sellers to in state buyers, and

WHEREAS, the proposed tax cannot become effective until approved by the voters at a municipal or state general, primary, or special election, and

NOW THEREFORE, be it ordained by the Board of Aldermen of the City of Higginsville, Missouri as follows:

**Section 1.** This ordinance and tax should be submitted to the qualified voters of the City of Higginsville, Missouri, for their approval, as required by Section 144.757 RSMo, at the general election hereby called and to be held in the City of Higginsville, on Tuesday, the 8<sup>th</sup> day of August, 2017. The ballot of submission shall contain substantially the following language:

Shall the City of Higginsville impose a local use tax at the same rate as the total local tax rate, currently two and one-quarter percent (.0225%), provided that if the local sales tax rate is reduced or raised by voter approval, the local use tax rate shall also be reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

☐ YES ☐ NO

If you are in favor of the question, darken the space opposite "YES."

If you are opposed to the question, darken the space opposite "NO."

**Section 2.** Upon approval by the voters, and pursuant to the authority granted by Section 144.757 RSMo, and subject to its provisions, use tax will be imposed immediately within the City of Higginsville to the fullest extent allowable under Sections 144.757, 144.759, 144.010 to 144.525 RSMo and the rules and regulations of the Director of Revenue issued thereunder.

**Section 3.** The rate of the tax shall be equal to the rate of taxation on local sales to the fullest extent allowable under Sections 144.757, 144.759, 144.010 to 144.525 RSMo, all other applicable state statutes, and the rules and regulations of the Director of Revenue issued thereunder.

**Section 4.** Within ten (10) days after the approval of this ordinance by the qualified voters of Higginsville, Missouri, the City Clerk shall forward to the Director of Revenue of the



BILL NO. 2017-22

ORDINANCE NO. 2664

State of Missouri, by U.S. registered or certified mail, a copy of this ordinance, together with certifications of the election returns, and accompanied by a map of the City, clearly showing the boundaries thereof.

**Section 5.** The City Clerk shall cause the election authority to be notified of this ordinance in accordance with Chapter 115 RSMo, and proper notice to be published of the election in accordance with Chapter 115 RSMo.

**Section 6.** This ordinance shall be in full force and effect from and after its passage; and said tax shall be in full force and effect after its approval by a majority of qualified voters voting on the issue. Should the tax not receive approval, this ordinance shall be of no force or effect.

Read two (2) times and passed by title this 20<sup>th</sup> day of March 2017.

Bill Kolas  
Bill Kolas, Mayor

ATTEST:

Sheri Tieman  
Sheri Tieman, City Clerk

APPROVED BY THE MAYOR THIS 20<sup>th</sup> DAY OF March 2017.

Bill Kolas  
Bill Kolas, Mayor

ATTEST:

Sheri Tieman  
Sheri Tieman, City Clerk

M/S by Fleishmann and Rhoad to accept first reading, motion Carried.

M/S by Knehans and Rhoad to accept second and final reading and assign Ordinance No. 2664.

Said Ordinance passed by the following roll call votes:

Fleischmann yes, Knehans yes, Linebach absent, Rhoad yes, Wagner yes, and Wallace absent.

CERTIFICATE OF RECORDING OFFICER

The undersigned, duly qualified and acting City Clerk of the City of Higginsville, County of Lafayette, Missouri, does hereby certify: That the above ordinance is a true and correct copy of the ordinance adopted at a legally convened meeting of the Board of Aldermen of the City of Higginsville, Missouri held on the 20th day of March, 2017; and, further that such ordinance has been fully recorded in the journal of proceedings and records in my office.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of the City of Higginsville, Missouri, this 20th day of March,

2017. Sheri Tieman  
Sheri Tieman, City Clerk